

2 **SSB 6704** - S AMD 607

3 By Senators Kline, Zarelli and Johnson

4 ADOPTED 02/18/02

5 Strike everything after the enacting clause and insert the
6 following:

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

13 NEW SECTION. **Sec. 2.** For the purposes of this chapter, "terrorist
14 intent" means the intent to significantly disrupt the general civilian
15 population or the conduct of government by committing an act which:
16 (1) Manifests an extreme indifference to human life; or (2) causes or
17 is intended to cause permanent or protracted loss of use of private or
18 public property.

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

- 21 (a) Claims to have committed a felony with terrorist intent; or
22 (b) Makes any statement or takes any other action that causes or is
23 intended to cause a reasonable belief that a felony with terrorist
24 intent has been or will be committed.
25 (2) A hoax terrorist act is a class A felony.

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

28 The court may impose a sentence outside the standard sentence range
29 for an offense if it finds, considering the purpose of this chapter,
30 that there are substantial and compelling reasons justifying an
31 exceptional sentence. Whenever a sentence outside the standard
32 sentence range is imposed, the court shall set forth the reasons for
33 its decision in written findings of fact and conclusions of law. A

1 sentence outside the standard sentence range shall be a determinate
2 sentence unless it is imposed on an offender sentenced under RCW
3 9.94A.712. An exceptional sentence imposed on an offender sentenced
4 under RCW 9.94A.712 shall be to a minimum term set by the court and a
5 maximum term equal to the statutory maximum sentence for the offense of
6 conviction under chapter 9A.20 RCW.

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

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

15 The following are illustrative factors which the court may consider
16 in the exercise of its discretion to impose an exceptional sentence.
17 The following are illustrative only and are not intended to be
18 exclusive reasons for exceptional sentences.

19 (1) Mitigating Circumstances

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

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

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

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

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

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

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

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

4 (2) Aggravating Circumstances

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (k) The offense resulted in the pregnancy of a child victim of
30 rape.

31 (l) The defendant knew that the victim of the current offense was
32 a youth who was not residing with a legal custodian and the defendant
33 established or promoted the relationship for the primary purpose of
34 victimization.

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

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

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

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

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

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

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

20 (5) "Community custody" means that portion of an offender's
21 sentence of confinement in lieu of earned release time or imposed
22 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
23 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
24 community subject to controls placed on the offender's movement and
25 activities by the department. For offenders placed on community
26 custody for crimes committed on or after July 1, 2000, the department
27 shall assess the offender's risk of reoffense and may establish and
28 modify conditions of community custody, in addition to those imposed by
29 the court, based upon the risk to community safety.

30 (6) "Community custody range" means the minimum and maximum period
31 of community custody included as part of a sentence under RCW
32 9.94A.715, as established by the commission or the legislature under
33 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

34 (7) "Community placement" means that period during which the
35 offender is subject to the conditions of community custody and/or
36 postrelease supervision, which begins either upon completion of the
37 term of confinement (postrelease supervision) or at such time as the
38 offender is transferred to community custody in lieu of earned release.

1 Community placement may consist of entirely community custody, entirely
2 postrelease supervision, or a combination of the two.

3 (8) "Community service" means compulsory service, without
4 compensation, performed for the benefit of the community by the
5 offender.

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

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

17 (11) "Conviction" means an adjudication of guilt pursuant to Titles
18 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
19 acceptance of a plea of guilty.

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

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

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

37 (15) "Day reporting" means a program of enhanced supervision
38 designed to monitor the offender's daily activities and compliance with
39 sentence conditions, and in which the offender is required to report

1 daily to a specific location designated by the department or the
2 sentencing court.

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

4 (17) "Determinate sentence" means a sentence that states with
5 exactitude the number of actual years, months, or days of total
6 confinement, of partial confinement, of community supervision, the
7 number of actual hours or days of community service work, or dollars or
8 terms of a legal financial obligation. The fact that an offender
9 through earned release can reduce the actual period of confinement
10 shall not affect the classification of the sentence as a determinate
11 sentence.

12 (18) "Disposable earnings" means that part of the earnings of an
13 offender remaining after the deduction from those earnings of any
14 amount required by law to be withheld. For the purposes of this
15 definition, "earnings" means compensation paid or payable for personal
16 services, whether denominated as wages, salary, commission, bonuses, or
17 otherwise, and, notwithstanding any other provision of law making the
18 payments exempt from garnishment, attachment, or other process to
19 satisfy a court-ordered legal financial obligation, specifically
20 includes periodic payments pursuant to pension or retirement programs,
21 or insurance policies of any type, but does not include payments made
22 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
23 or Title 74 RCW.

24 (19) "Drug offender sentencing alternative" is a sentencing option
25 available to persons convicted of a felony offense other than a violent
26 offense or a sex offense and who are eligible for the option under RCW
27 9.94A.660.

28 (20) "Drug offense" means:

29 (a) Any felony violation of chapter 69.50 RCW except possession of
30 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
31 controlled substance (RCW 69.50.403);

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

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

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

1 (22) "Escape" means:

2 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
3 first degree (RCW 9A.76.110), escape in the second degree (RCW
4 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
5 willful failure to return from work release (RCW 72.65.070), or willful
6 failure to be available for supervision by the department while in
7 community custody (RCW 72.09.310); or

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

11 (23) "Felony traffic offense" means:

12 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
13 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
14 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

27 (27) "Legal financial obligation" means a sum of money that is
28 ordered by a superior court of the state of Washington for legal
29 financial obligations which may include restitution to the victim,
30 statutorily imposed crime victims' compensation fees as assessed
31 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
32 court-appointed attorneys' fees, and costs of defense, fines, and any
33 other financial obligation that is assessed to the offender as a result
34 of a felony conviction. Upon conviction for vehicular assault while
35 under the influence of intoxicating liquor or any drug, RCW
36 46.61.522(1)(b), or vehicular homicide while under the influence of
37 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
38 obligations may also include payment to a public agency of the expense

1 of an emergency response to the incident resulting in the conviction,
2 subject to RCW 38.52.430.

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

5 (a) Any felony defined under any law as a class A felony or
6 criminal solicitation of or criminal conspiracy to commit a class A
7 felony;

8 (b) Assault in the second degree;

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

10 (d) Child molestation in the second degree;

11 (e) Controlled substance homicide;

12 (f) Extortion in the first degree;

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

14 (h) Indecent liberties;

15 (i) Kidnapping in the second degree;

16 (j) Leading organized crime;

17 (k) Manslaughter in the first degree;

18 (l) Manslaughter in the second degree;

19 (m) Promoting prostitution in the first degree;

20 (n) Rape in the third degree;

21 (o) Robbery in the second degree;

22 (p) Sexual exploitation;

23 (q) Vehicular assault, when caused by the operation or driving of
24 a vehicle by a person while under the influence of intoxicating liquor
25 or any drug or by the operation or driving of a vehicle in a reckless
26 manner;

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

31 (s) Any other class B felony offense with a finding of sexual
32 motivation;

33 (t) Any other felony with a deadly weapon verdict under RCW
34 9.94A.602;

35 (u) Any felony offense in effect at any time prior to December 2,
36 1993, that is comparable to a most serious offense under this
37 subsection, or any federal or out-of-state conviction for an offense
38 that under the laws of this state would be a felony classified as a
39 most serious offense under this subsection;

1 (v)(i) A prior conviction for indecent liberties under RCW
2 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
3 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
4 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
5 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

6 (ii) A prior conviction for indecent liberties under RCW
7 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
8 if: (A) The crime was committed against a child under the age of
9 fourteen; or (B) the relationship between the victim and perpetrator is
10 included in the definition of indecent liberties under RCW
11 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
12 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
13 through July 27, 1997.

14 (29) "Nonviolent offense" means an offense which is not a violent
15 offense.

16 (30) "Offender" means a person who has committed a felony
17 established by state law and is eighteen years of age or older or is
18 less than eighteen years of age but whose case is under superior court
19 jurisdiction under RCW 13.04.030 or has been transferred by the
20 appropriate juvenile court to a criminal court pursuant to RCW
21 13.40.110. Throughout this chapter, the terms "offender" and
22 "defendant" are used interchangeably.

23 (31) "Partial confinement" means confinement for no more than one
24 year in a facility or institution operated or utilized under contract
25 by the state or any other unit of government, or, if home detention or
26 work crew has been ordered by the court, in an approved residence, for
27 a substantial portion of each day with the balance of the day spent in
28 the community. Partial confinement includes work release, home
29 detention, work crew, and a combination of work crew and home
30 detention.

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

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

34 (ii) Has, before the commission of the offense under (a) of this
35 subsection, been convicted as an offender on at least two separate
36 occasions, whether in this state or elsewhere, of felonies that under
37 the laws of this state would be considered most serious offenses and
38 would be included in the offender score under RCW 9.94A.525; provided
39 that of the two or more previous convictions, at least one conviction

1 must have occurred before the commission of any of the other most
2 serious offenses for which the offender was previously convicted; or

3 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
4 of a child in the first degree, child molestation in the first degree,
5 rape in the second degree, rape of a child in the second degree, or
6 indecent liberties by forcible compulsion; (B) any of the following
7 offenses with a finding of sexual motivation: Murder in the first
8 degree, murder in the second degree, homicide by abuse, kidnapping in
9 the first degree, kidnapping in the second degree, assault in the first
10 degree, assault in the second degree, assault of a child in the first
11 degree, or burglary in the first degree; or (C) an attempt to commit
12 any crime listed in this subsection (32)(b)(i); and

13 (ii) Has, before the commission of the offense under (b)(i) of this
14 subsection, been convicted as an offender on at least one occasion,
15 whether in this state or elsewhere, of an offense listed in (b)(i) of
16 this subsection or any federal or out-of-state offense or offense under
17 prior Washington law that is comparable to the offenses listed in
18 (b)(i) of this subsection. A conviction for rape of a child in the
19 first degree constitutes a conviction under (b)(i) of this subsection
20 only when the offender was sixteen years of age or older when the
21 offender committed the offense. A conviction for rape of a child in
22 the second degree constitutes a conviction under (b)(i) of this
23 subsection only when the offender was eighteen years of age or older
24 when the offender committed the offense.

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

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

31 (35) "Risk assessment" means the application of an objective
32 instrument supported by research and adopted by the department for the
33 purpose of assessing an offender's risk of reoffense, taking into
34 consideration the nature of the harm done by the offender, place and
35 circumstances of the offender related to risk, the offender's
36 relationship to any victim, and any information provided to the
37 department by victims. The results of a risk assessment shall not be
38 based on unconfirmed or unconfirmable allegations.

39 (36) "Serious traffic offense" means:

1 (a) Driving while under the influence of intoxicating liquor or any
2 drug (RCW 46.61.502), actual physical control while under the influence
3 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
4 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
5 or

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

9 (37) "Serious violent offense" is a subcategory of violent offense
10 and means:

11 (a)(i) Murder in the first degree;

12 (ii) Homicide by abuse;

13 (iii) Murder in the second degree;

14 (iv) Manslaughter in the first degree;

15 (v) Assault in the first degree;

16 (vi) Kidnapping in the first degree;

17 (vii) Rape in the first degree;

18 (viii) Assault of a child in the first degree; (~~(ix)~~)

19 (ix) Possession of radioactive material for terrorist purposes;

20 (x) Releasing radioactive material;

21 (xi) Possession of agents for terrorist purposes;

22 (xii) Unlawful use of agents for terrorist purposes; or

23 (xiii) An attempt, criminal solicitation, or criminal conspiracy to
24 commit one of these felonies; or

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

28 (38) "Sex offense" means:

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

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

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

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

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

1 (c) A felony with a finding of sexual motivation under RCW
2 9.94A.835 or 13.40.135; or

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

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

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

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

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

19 (43) "Transition training" means written and verbal instructions
20 and assistance provided by the department to the offender during the
21 two weeks prior to the offender's successful completion of the work
22 ethic camp program. The transition training shall include instructions
23 in the offender's requirements and obligations during the offender's
24 period of community custody.

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

28 (45) "Violent offense" means:

29 (a) Any of the following felonies:

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

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

34 (iii) Manslaughter in the first degree;

35 (iv) Manslaughter in the second degree;

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

37 (vi) Kidnapping in the second degree;

38 (vii) Arson in the second degree;

39 (viii) Assault in the second degree;

1 (ix) Assault of a child in the second degree;
2 (x) Extortion in the first degree;
3 (xi) Robbery in the second degree;
4 (xii) Drive-by shooting;
5 (xiii) Vehicular assault, when caused by the operation or driving
6 of a vehicle by a person while under the influence of intoxicating
7 liquor or any drug or by the operation or driving of a vehicle in a
8 reckless manner; and

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

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

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

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

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

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

34 A person is guilty of aggravated murder in the first degree if he
35 or she is a terrorist offender and shall be punished in accordance with
36 the provisions of this chapter. For the purposes of this section,
37 "terrorist offender" means an offender who commits a felony that
38 results in the death of one or more persons and for which a special

1 allegation of terrorist intent has been filed and proven beyond a
2 reasonable doubt under section 13 of this act.

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

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

11 (2) The notice of special sentencing proceeding shall be filed and
12 served on the defendant or the defendant's attorney within thirty days
13 after the defendant's arraignment upon the charge of aggravated first
14 degree murder unless the court, for good cause shown, extends or
15 reopens the period for filing and service of the notice. Except with
16 the consent of the prosecuting attorney, during the period in which the
17 prosecuting attorney may file the notice of special sentencing
18 proceeding, the defendant may not tender a plea of guilty to the charge
19 of aggravated first degree murder nor may the court accept a plea of
20 guilty to the charge of aggravated first degree murder or any lesser
21 included offense.

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

25 **Sec. 8.** RCW 9.94A.515 and 2001 2nd sp.s. c 12 s 361, 2001 c 300 s
26 4, 2001 c 217 s 12, and 2001 c 17 s 1 are each reenacted and amended to
27 read as follows:

28 TABLE 2

29 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

30	XVI	Aggravated Murder 1 (RCW 10.95.020)
31	XV	Homicide by abuse (RCW 9A.32.055)
32		Malicious explosion 1 (RCW 70.74.280(1))
33		Murder 1 (RCW 9A.32.030)
34		<u>Releasing radioactive material (section</u>
35		<u>11(1) of this act)</u>

1 Unlawful use of agents for terrorist
2 purposes (section 10(1) of this act)

3 XIV Murder 2 (RCW 9A.32.050)

4 XIII Malicious explosion 2 (RCW 70.74.280(2))
5 Malicious placement of an explosive 1 (RCW
6 70.74.270(1))
7 Possession of agents for terrorist purposes
8 (section 10(2) of this act)
9 Possession of radioactive material for
10 terrorist purposes (section 11(2) of
11 this act)

12 XII Assault 1 (RCW 9A.36.011)
13 Assault of a Child 1 (RCW 9A.36.120)
14 Malicious placement of an imitation device
15 1 (RCW 70.74.272(1)(a))
16 Rape 1 (RCW 9A.44.040)
17 Rape of a Child 1 (RCW 9A.44.073)

18 XI Manslaughter 1 (RCW 9A.32.060)
19 Rape 2 (RCW 9A.44.050)
20 Rape of a Child 2 (RCW 9A.44.076)

21 X Child Molestation 1 (RCW 9A.44.083)
22 Indecent Liberties (with forcible
23 compulsion) (RCW 9A.44.100(1)(a))
24 Kidnapping 1 (RCW 9A.40.020)
25 Leading Organized Crime (RCW
26 9A.82.060(1)(a))
27 Malicious explosion 3 (RCW 70.74.280(3))
28 Manufacture of methamphetamine (RCW
29 69.50.401(a)(1)(ii))
30 Over 18 and deliver heroin,
31 methamphetamine, a narcotic from
32 Schedule I or II, or flunitrazepam
33 from Schedule IV to someone under 18
34 (RCW 69.50.406)
35 Sexually Violent Predator Escape (RCW
36 9A.76.115)

1 IX Assault of a Child 2 (RCW 9A.36.130)
2 Controlled Substance Homicide (RCW
3 69.50.415)
4 Explosive devices prohibited (RCW
5 70.74.180)
6 Hit and Run--Death (RCW 46.52.020(4)(a))
7 Hoax terrorist act (section 3 of this act)
8 Homicide by Watercraft, by being under the
9 influence of intoxicating liquor or
10 any drug (RCW 79A.60.050)
11 Inciting Criminal Profiteering (RCW
12 9A.82.060(1)(b))
13 Malicious placement of an explosive 2 (RCW
14 70.74.270(2))
15 Over 18 and deliver narcotic from Schedule
16 III, IV, or V or a nonnarcotic, except
17 flunitrazepam or methamphetamine, from
18 Schedule I-V to someone under 18 and 3
19 years junior (RCW 69.50.406)
20 Robbery 1 (RCW 9A.56.200)
21 Sexual Exploitation (RCW 9.68A.040)
22 Vehicular Homicide, by being under the
23 influence of intoxicating liquor or
24 any drug (RCW 46.61.520)

25 VIII Arson 1 (RCW 9A.48.020)
26 Deliver or possess with intent to deliver
27 m e t h a m p h e t a m i n e (R C W
28 69.50.401(a)(1)(ii))
29 Homicide by Watercraft, by the operation of
30 any vessel in a reckless manner (RCW
31 79A.60.050)
32 Manslaughter 2 (RCW 9A.32.070)
33 Manufacture, deliver, or possess with
34 intent to deliver amphetamine (RCW
35 69.50.401(a)(1)(ii))
36 Manufacture, deliver, or possess with
37 intent to deliver heroin or cocaine
38 (RCW 69.50.401(a)(1)(i))

1 Possession of Ephedrine, Pseudoephedrine,
2 or Anhydrous Ammonia with intent to
3 manufacture methamphetamine (RCW
4 69.50.440)
5 Promoting Prostitution 1 (RCW 9A.88.070)
6 Selling for profit (controlled or
7 counterfeit) any controlled substance
8 (RCW 69.50.410)
9 Theft of Anhydrous Ammonia (RCW 69.55.010)
10 Vehicular Homicide, by the operation of any
11 vehicle in a reckless manner (RCW
12 46.61.520)

13 VII Burglary 1 (RCW 9A.52.020)
14 Child Molestation 2 (RCW 9A.44.086)
15 Dealing in depictions of minor engaged in
16 sexually explicit conduct (RCW
17 9.68A.050)
18 Drive-by Shooting (RCW 9A.36.045)
19 Homicide by Watercraft, by disregard for
20 the safety of others (RCW 79A.60.050)
21 Indecent Liberties (without forcible
22 compulsion) (RCW 9A.44.100(1) (b) and
23 (c))
24 Introducing Contraband 1 (RCW 9A.76.140)
25 Involving a minor in drug dealing (RCW
26 69.50.401(f))
27 Malicious placement of an explosive 3 (RCW
28 70.74.270(3))
29 Sending, bringing into state depictions of
30 minor engaged in sexually explicit
31 conduct (RCW 9.68A.060)
32 Unlawful Possession of a Firearm in the
33 first degree (RCW 9.41.040(1)(a))
34 Use of a Machine Gun in Commission of a
35 Felony (RCW 9.41.225)
36 Vehicular Homicide, by disregard for the
37 safety of others (RCW 46.61.520)

1 VI Bail Jumping with Murder 1 (RCW
2 9A.76.170(3)(a))
3 Bribery (RCW 9A.68.010)
4 Incest 1 (RCW 9A.64.020(1))
5 Intimidating a Judge (RCW 9A.72.160)
6 Intimidating a Juror/Witness (RCW
7 9A.72.110, 9A.72.130)
8 Malicious placement of an imitation device
9 2 (RCW 70.74.272(1)(b))
10 Manufacture, deliver, or possess with
11 intent to deliver narcotics from
12 Schedule I or II (except heroin or
13 cocaine) or flunitrazepam from
14 Schedule IV (RCW 69.50.401(a)(1)(i))
15 Rape of a Child 3 (RCW 9A.44.079)
16 Theft of a Firearm (RCW 9A.56.300)
17 Unlawful Storage of Anhydrous Ammonia (RCW
18 69.55.020)

19 V Abandonment of dependent person 1 (RCW
20 9A.42.060)
21 Advancing money or property for
22 extortionate extension of credit (RCW
23 9A.82.030)
24 Bail Jumping with class A Felony (RCW
25 9A.76.170(3)(b))
26 Child Molestation 3 (RCW 9A.44.089)
27 Criminal Mistreatment 1 (RCW 9A.42.020)
28 Custodial Sexual Misconduct 1 (RCW
29 9A.44.160)
30 Delivery of imitation controlled substance
31 by person eighteen or over to person
32 under eighteen (RCW 69.52.030(2))
33 Domestic Violence Court Order Violation
34 (RCW 10.99.040, 10.99.050, 26.09.300,
35 26.10.220, 26.26.138, 26.50.110,
36 26.52.070, or 74.34.145)
37 Extortion 1 (RCW 9A.56.120)
38 Extortionate Extension of Credit (RCW
39 9A.82.020)

1 Extortionate Means to Collect Extensions of
2 Credit (RCW 9A.82.040)
3 Incest 2 (RCW 9A.64.020(2))
4 Kidnapping 2 (RCW 9A.40.030)
5 Perjury 1 (RCW 9A.72.020)
6 Persistent prison misbehavior (RCW
7 9.94.070)
8 Possession of a Stolen Firearm (RCW
9 9A.56.310)
10 Rape 3 (RCW 9A.44.060)
11 Rendering Criminal Assistance 1 (RCW
12 9A.76.070)
13 Sexual Misconduct with a Minor 1 (RCW
14 9A.44.093)
15 Sexually Violating Human Remains (RCW
16 9A.44.105)
17 Stalking (RCW 9A.46.110)
18 IV Arson 2 (RCW 9A.48.030)
19 Assault 2 (RCW 9A.36.021)
20 Assault by Watercraft (RCW 79A.60.060)
21 Bribing a Witness/Bribe Received by Witness
22 (RCW 9A.72.090, 9A.72.100)
23 Commercial Bribery (RCW 9A.68.060)
24 Counterfeiting (RCW 9.16.035(4))
25 Escape 1 (RCW 9A.76.110)
26 Hit and Run--Injury (RCW 46.52.020(4)(b))
27 Hit and Run with Vessel--Injury Accident
28 (RCW 79A.60.200(3))
29 Identity Theft 1 (RCW 9.35.020(2)(a))
30 Indecent Exposure to Person Under Age
31 Fourteen (subsequent sex offense) (RCW
32 9A.88.010)
33 Influencing Outcome of Sporting Event (RCW
34 9A.82.070)
35 Knowingly Trafficking in Stolen Property
36 (RCW 9A.82.050(2))
37 Malicious Harassment (RCW 9A.36.080)
38 Manufacture, deliver, or possess with
39 intent to deliver narcotics from

1 Schedule III, IV, or V or nonnarcotics
2 from Schedule I-V (except marijuana,
3 amphetamine, methamphetamines, or
4 flunitrazepam) (RCW 69.50.401(a)(1)
5 (iii) through (v))
6 Residential Burglary (RCW 9A.52.025)
7 Robbery 2 (RCW 9A.56.210)
8 Theft of Livestock 1 (RCW 9A.56.080)
9 Threats to Bomb (RCW 9.61.160)
10 Use of Proceeds of Criminal Profiteering
11 (RCW 9A.82.080 (1) and (2))
12 Vehicular Assault, by being under the
13 influence of intoxicating liquor or
14 any drug, or by the operation or
15 driving of a vehicle in a reckless
16 manner (RCW 46.61.522)
17 Willful Failure to Return from Furlough
18 (RCW 72.66.060)
19 III Abandonment of dependent person 2 (RCW
20 9A.42.070)
21 Assault 3 (RCW 9A.36.031)
22 Assault of a Child 3 (RCW 9A.36.140)
23 Bail Jumping with class B or C Felony (RCW
24 9A.76.170(3)(c))
25 Burglary 2 (RCW 9A.52.030)
26 Communication with a Minor for Immoral
27 Purposes (RCW 9.68A.090)
28 Criminal Gang Intimidation (RCW 9A.46.120)
29 Criminal Mistreatment 2 (RCW 9A.42.030)
30 Custodial Assault (RCW 9A.36.100)
31 Delivery of a material in lieu of a
32 controlled substance (RCW
33 69.50.401(c))
34 Escape 2 (RCW 9A.76.120)
35 Extortion 2 (RCW 9A.56.130)
36 Harassment (RCW 9A.46.020)
37 Intimidating a Public Servant (RCW
38 9A.76.180)
39 Introducing Contraband 2 (RCW 9A.76.150)

1 Maintaining a Dwelling or Place for
2 Controlled Substances (RCW
3 69.50.402(a)(6))
4 Malicious Injury to Railroad Property (RCW
5 81.60.070)
6 Manufacture, deliver, or possess with
7 intent to deliver marijuana (RCW
8 69.50.401(a)(1)(iii))
9 Manufacture, distribute, or possess with
10 intent to distribute an imitation
11 controlled substance (RCW
12 69.52.030(1))
13 Patronizing a Juvenile Prostitute (RCW
14 9.68A.100)
15 Perjury 2 (RCW 9A.72.030)
16 Possession of Incendiary Device (RCW
17 9.40.120)
18 Possession of Machine Gun or Short-Barreled
19 Shotgun or Rifle (RCW 9.41.190)
20 Promoting Prostitution 2 (RCW 9A.88.080)
21 Recklessly Trafficking in Stolen Property
22 (RCW 9A.82.050(1))
23 Securities Act violation (RCW 21.20.400)
24 Tampering with a Witness (RCW 9A.72.120)
25 Telephone Harassment (subsequent conviction
26 or threat of death) (RCW 9.61.230)
27 Theft of Livestock 2 (RCW 9A.56.080)
28 Unlawful Imprisonment (RCW 9A.40.040)
29 Unlawful possession of firearm in the
30 second degree (RCW 9.41.040(1)(b))
31 Unlawful Use of Building for Drug Purposes
32 (RCW 69.53.010)
33 Vehicular Assault, by the operation or
34 driving of a vehicle with disregard
35 for the safety of others (RCW
36 46.61.522)
37 Willful Failure to Return from Work Release
38 (RCW 72.65.070)
39 II Computer Trespass 1 (RCW 9A.52.110)

1 Counterfeiting (RCW 9.16.035(3))
2 Create, deliver, or possess a counterfeit
3 controlled substance (RCW
4 69.50.401(b))
5 Escape from Community Custody (RCW
6 72.09.310)
7 Health Care False Claims (RCW 48.80.030)
8 Identity Theft 2 (RCW 9.35.020(2)(b))
9 Improperly Obtaining Financial Information
10 (RCW 9.35.010)
11 Malicious Mischief 1 (RCW 9A.48.070)
12 Possession of controlled substance that is
13 either heroin or narcotics from
14 Schedule I or II or flunitrazepam from
15 Schedule IV (RCW 69.50.401(d))
16 Possession of phencyclidine (PCP) (RCW
17 69.50.401(d))
18 Possession of Stolen Property 1 (RCW
19 9A.56.150)
20 Theft 1 (RCW 9A.56.030)
21 Theft of Rental, Leased, or Lease-purchased
22 Property (valued at one thousand five
23 hundred dollars or more) (RCW
24 9A.56.096(4))
25 Trafficking in Insurance Claims (RCW
26 48.30A.015)
27 Unlawful Practice of Law (RCW 2.48.180)
28 Unlicensed Practice of a Profession or
29 Business (RCW 18.130.190(7))
30 I Attempting to Elude a Pursuing Police
31 Vehicle (RCW 46.61.024)
32 False Verification for Welfare (RCW
33 74.08.055)
34 Forged Prescription (RCW 69.41.020)
35 Forged Prescription for a Controlled
36 Substance (RCW 69.50.403)
37 Forgery (RCW 9A.60.020)
38 Malicious Mischief 2 (RCW 9A.48.080)

1 Possess Controlled Substance that is a
2 Narcotic from Schedule III, IV, or V
3 or Non-narcotic from Schedule I-V
4 (except phencyclidine or
5 flunitrazepam) (RCW 69.50.401(d))
6 Possession of Stolen Property 2 (RCW
7 9A.56.160)
8 Reckless Burning 1 (RCW 9A.48.040)
9 Taking Motor Vehicle Without Permission
10 (RCW 9A.56.070)
11 Theft 2 (RCW 9A.56.040)
12 Theft of Rental, Leased, or Lease-purchased
13 Property (valued at two hundred fifty
14 dollars or more but less than one
15 thousand five hundred dollars) (RCW
16 9A.56.096(4))
17 Unlawful Issuance of Checks or Drafts (RCW
18 9A.56.060)
19 Unlawful Use of Food Stamps (RCW 9.91.140
20 (2) and (3))
21 Vehicle Prowl 1 (RCW 9A.52.095)

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

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

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

28 (i) Murder;

29 (ii) Homicide by abuse;

30 (iii) Arson if a death results;

31 (iv) Vehicular homicide;

32 (v) Vehicular assault if a death results;

33 (vi) Hit-and-run injury-accident if a death results (RCW
34 46.52.020(4));

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

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

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

4 (ii) Arson if no death results; or

5 (iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is
6 reported to a law enforcement agency within one year of its commission;
7 except that if the victim is under fourteen years of age when the rape
8 is committed and the rape is reported to a law enforcement agency
9 within one year of its commission, the violation may be prosecuted up
10 to three years after the victim's eighteenth birthday or up to ten
11 years after the rape's commission, whichever is later. If a violation
12 of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape
13 may not be prosecuted: (A) More than three years after its commission
14 if the violation was committed against a victim fourteen years of age
15 or older; or (B) more than three years after the victim's eighteenth
16 birthday or more than seven years after the rape's commission,
17 whichever is later, if the violation was committed against a victim
18 under fourteen years of age.

19 (c) Violations of the following statutes shall not be prosecuted
20 more than three years after the victim's eighteenth birthday or more
21 than seven years after their commission, whichever is later: RCW
22 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080,
23 9A.44.100(1)(b), or 9A.64.020.

24 (d) The following offenses shall not be prosecuted more than six
25 years after their commission: Violations of RCW 9A.82.060 or
26 9A.82.080.

27 (e) The following offenses shall not be prosecuted more than five
28 years after their commission: Any class C felony under chapter 74.09,
29 82.36, or 82.38 RCW.

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

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

35 (h) No other felony may be prosecuted more than three years after
36 its commission; except that in a prosecution under RCW 9A.44.115, if
37 the person who was viewed, photographed, or filmed did not realize at
38 the time that he or she was being viewed, photographed, or filmed, the
39 prosecution must be commenced within two years of the time the person

1 who was viewed or in the photograph or film first learns that he or she
2 was viewed, photographed, or filmed.

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

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

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

10 (3) If, before the end of a period of limitation prescribed in
11 subsection (1) of this section, an indictment has been found or a
12 complaint or an information has been filed, and the indictment,
13 complaint, or information is set aside, then the period of limitation
14 is extended by a period equal to the length of time from the finding or
15 filing to the setting aside.

16 NEW SECTION. **Sec. 10.** (1) A person is guilty of unlawful use of
17 agents for terrorist purposes if the person willfully and with
18 terrorist intent uses, places, introduces, broadcasts, disseminates, or
19 releases any biological agent, chemical agent, or toxin.

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

23 (3) For the purposes of this section:

24 (a) "Biological agent" means any microorganism, virus, infectious
25 substance, or biological product that may be engineered as a result of
26 biotechnology, or any naturally occurring microorganism, virus,
27 infectious substance, biological product, or toxin or vector, or any
28 naturally occurring or bioengineered component thereof, capable of
29 causing:

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

32 (ii) Deterioration of food, water equipment, supplies, or material
33 of any kind; or

34 (iii) Significant deterioration of the environment.

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

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

3 (d) "Toxin" means the toxic material of plants, animals,
4 microorganisms, viruses, fungi, or infectious substances, or a
5 recombinant molecule, whatever its origin or method of production,
6 including:

7 (i) Any poisonous substance or biological product that may be
8 engineered as a result of biotechnology produced by a living organism;
9 or

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

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

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

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

19 (2) A person is guilty of possession of radioactive material with
20 terrorist intent if the person knowingly possesses a source of ionizing
21 radiation with terrorist intent.

22 (3)(a) Releasing radioactive material with terrorist intent is a
23 class A felony.

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

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

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

34 (2) If the special allegation is filed, the state shall prove
35 beyond a reasonable doubt that the accused committed the crime with
36 terrorist intent, as defined in section 2 of this act. The court shall
37 make a finding of fact of whether or not terrorist intent was present

1 at the time of the commission of the crime, or if a jury trial is had,
2 the jury shall, if it finds the defendant guilty, also find a special
3 verdict as to whether or not the defendant committed the crime with
4 terrorist intent. This finding shall not be applied to violations of
5 the Washington state explosives act, chapter 70.74 RCW, or section 10
6 or 11 of this act.

7 (3) The prosecuting attorney shall not withdraw the special
8 allegation of terrorist intent without approval of the court through an
9 order of dismissal of the special allegation. The court shall not
10 dismiss the special allegation unless it finds that such an order is
11 necessary to correct an error in the initial charging decision or
12 unless there are evidentiary problems that make proving the special
13 allegation doubtful.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 For the purposes of RCW 70.74.270, 70.74.272, and 70.74.280
11 "terrorist act" means an act (~~(that is intended to: (1) Intimidate or~~
12 ~~coerce a civilian population; (2) influence the policy of a branch or~~
13 ~~level of government by intimidation or coercion; (3) affect the conduct~~
14 ~~of a branch or level of government by intimidation or coercion; or (4)~~
15 ~~retaliate against a branch or level of government for a policy or~~
16 ~~conduct of the government)) committed with the intent to significantly
17 disrupt the general civilian population or the conduct of government by
18 committing an act which: (1) Manifests an extreme indifference to
19 human life; or (2) causes or is intended to cause permanent or
20 protracted loss of use of private or public property.~~

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

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

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

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

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

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

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

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

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

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

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

16 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;
17 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
18 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
19 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
20 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and
21 9A.56.080;
22 (f) Unlawful sale of subscription television services, as defined
23 in RCW 9A.56.230;
24 (g) Theft of telecommunication services or unlawful manufacture of
25 a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;
26 (h) Child selling or child buying, as defined in RCW 9A.64.030;
27 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
28 9A.68.050;
29 (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
30 (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
31 (l) Extortionate extension of credit, as defined in RCW 9A.82.020;
32 (m) Advancing money for use in an extortionate extension of credit,
33 as defined in RCW 9A.82.030;
34 (n) Collection of an extortionate extension of credit, as defined
35 in RCW 9A.82.040;
36 (o) Collection of an unlawful debt, as defined in RCW 9A.82.045;
37 (p) Delivery or manufacture of controlled substances or possession
38 with intent to deliver or manufacture controlled substances under
39 chapter 69.50 RCW;

1 (q) Trafficking in stolen property, as defined in RCW 9A.82.050;
2 (r) Leading organized crime, as defined in RCW 9A.82.060;
3 (s) Money laundering, as defined in RCW 9A.83.020;
4 (t) Obstructing criminal investigations or prosecutions in
5 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
6 9A.76.070, or 9A.76.180;
7 (u) Fraud in the purchase or sale of securities, as defined in RCW
8 21.20.010;
9 (v) Promoting pornography, as defined in RCW 9.68.140;
10 (w) Sexual exploitation of children, as defined in RCW 9.68A.040,
11 9.68A.050, and 9.68A.060;
12 (x) Promoting prostitution, as defined in RCW 9A.88.070 and
13 9A.88.080;
14 (y) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
15 (z) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
16 (aa) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
17 (bb) A pattern of equity skimming, as defined in RCW 61.34.020;
18 (cc) Commercial telephone solicitation in violation of RCW
19 19.158.040(1);
20 (dd) Trafficking in insurance claims, as defined in RCW 48.30A.015;
21 (ee) Unlawful practice of law, as defined in RCW 2.48.180;
22 (ff) Commercial bribery, as defined in RCW 9A.68.060;
23 (gg) Health care false claims, as defined in RCW 48.80.030;
24 (hh) Unlicensed practice of a profession or business, as defined in
25 RCW 18.130.190(7);
26 (ii) Improperly obtaining financial information, as defined in RCW
27 9.35.010; ((~~ex~~))
28 (jj) Identity theft, as defined in RCW 9.35.020; or
29 (kk) Any felony or any anticipatory crime whose object is a felony,
30 committed with terrorist intent, whether or not committed for financial
31 gain.
32 (5) "Dealer in property" means a person who buys and sells property
33 as a business.
34 (6) "Debtor" means a person to whom an extension of credit is made
35 or a person who guarantees the repayment of an extension of credit or
36 in any manner undertakes to indemnify the creditor against loss
37 resulting from the failure of a person to whom an extension is made to
38 repay the same.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (~~(18)~~) (19) "To extend credit" means to make or renew a loan or
24 to enter into an agreement, tacit or express, whereby the repayment or
25 satisfaction of a debt or claim, whether acknowledged or disputed,
26 valid or invalid, and however arising, may or shall be deferred.

27 (~~(19)~~) (20) "Traffic" means to sell, transfer, distribute,
28 dispense, or otherwise dispose of stolen property to another person, or
29 to buy, receive, possess, or obtain control of stolen property, with
30 intent to sell, transfer, distribute, dispense, or otherwise dispose of
31 the property to another person.

32 (~~(20)~~) (21)(a) "Trustee" means:

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

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

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

- 1 (b) "Trustee" does not mean a person appointed or acting as:
2 (i) A personal representative under Title 11 RCW;
3 (ii) A trustee of any testamentary trust;
4 (iii) A trustee of any indenture of trust under which a bond is
5 issued; or
6 (iv) A trustee under a deed of trust.

7 (~~((21))~~) (22) "Unlawful debt" means any money or other thing of
8 value constituting principal or interest of a debt that is legally
9 unenforceable in the state in full or in part because the debt was
10 incurred or contracted:

- 11 (a) In violation of any one of the following:
12 (i) Chapter 67.16 RCW relating to horse racing;
13 (ii) Chapter 9.46 RCW relating to gambling;
14 (b) In a gambling activity in violation of federal law; or
15 (c) In connection with the business of lending money or a thing of
16 value at a rate that is at least twice the permitted rate under the
17 applicable state or federal law relating to usury.

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

20 During the pendency of any criminal case charging a violation of
21 RCW 9A.82.060 or a violation of RCW 9A.82.080, or any offense committed
22 with terrorist intent whether or not committed for financial gain, the
23 superior court may, in addition to its other powers, issue an order
24 pursuant to RCW 9A.82.100 (2) or (3). Upon conviction of a person for
25 a violation of RCW 9A.82.060 or a violation of RCW 9A.82.080, or any
26 offense committed with terrorist intent whether or not committed for
27 financial gain, the superior court may, in addition to its other powers
28 of disposition, issue an order pursuant to RCW 9A.82.100.

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

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

1 (b) The attorney general or county prosecuting attorney may file an
2 action: (i) On behalf of those persons injured or, respectively, on
3 behalf of the state or county if the entity has sustained damages, or
4 (ii) to prevent, restrain, or remedy a pattern of criminal profiteering
5 activity, or any offense committed with terrorist intent whether or not
6 committed for financial gain, or a violation of RCW 9A.82.060 or
7 9A.82.080.

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

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

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

25 (3) Prior to a determination of liability, orders issued under
26 subsection (2) of this section may include, but are not limited to,
27 entering restraining orders or prohibitions or taking such other
28 actions, including the acceptance of satisfactory performance bonds, in
29 connection with any property or other interest subject to damages,
30 forfeiture, or other restraints pursuant to this section as the court
31 deems proper. The orders may also include attachment, receivership, or
32 injunctive relief in regard to personal or real property pursuant to
33 Title 7 RCW. In shaping the reach or scope of receivership,
34 attachment, or injunctive relief, the superior court shall provide for
35 the protection of bona fide interests in property, including community
36 property, of persons who were not involved in the violation of this
37 chapter, except to the extent that such interests or property were
38 acquired or used in such a way as to be subject to forfeiture under RCW
39 9A.82.100(4)(f).

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

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

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

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

11 (d) Ordering the payment of actual damages sustained to those
12 persons injured by a violation of RCW 9A.82.060 or 9A.82.080, or any
13 offense committed with terrorist intent whether or not committed for
14 financial gain, or an act of criminal profiteering that is part of a
15 pattern of criminal profiteering, and in the court's discretion,
16 increasing the payment to an amount not exceeding three times the
17 actual damages sustained.

18 (e) Ordering the payment of all costs and expenses of the
19 prosecution and investigation of a pattern of criminal profiteering
20 activity, or any offense committed with terrorist intent whether or not
21 committed for financial gain, or a violation of RCW 9A.82.060 or
22 9A.82.080, civil and criminal, incurred by the state or county,
23 including any costs of defense provided at public expense, as
24 appropriate to the state general fund or the antiprofitteering revolving
25 fund of the county.

26 (f) Ordering forfeiture first as restitution to any person damaged
27 by an act of criminal profiteering, or any offense committed with
28 terrorist intent whether or not committed for financial gain, that is
29 part of a pattern of criminal profiteering then to the state general
30 fund or antiprofitteering revolving fund of the county, as appropriate,
31 to the extent not already ordered to be paid in other damages, of the
32 following:

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

37 (ii) Any property, contractual right, or claim against property
38 used to influence any enterprise that a person has established,

1 operated, controlled, conducted, or participated in the conduct of, in
2 violation of RCW 9A.82.060 or 9A.82.080.

3 (iii) All proceeds traceable to or derived from an offense included
4 in the pattern of criminal profiteering activity, or any offense
5 committed with terrorist intent whether or not committed for financial
6 gain, and all moneys, negotiable instruments, securities, and other
7 things of value significantly used or intended to be used significantly
8 to facilitate commission of the offense.

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

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

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

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

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

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

1 conviction occurs, any judgment that was based upon that conviction may
2 be reopened upon motion of the defendant.

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

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

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

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

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

37 (12) In addition to the attorney general's right to intervene as a
38 party in any action under this section, the attorney general may appear
39 as amicus curiae in any proceeding in which a claim under this section

1 has been asserted or in which a court is interpreting RCW 9A.82.010,
2 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

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

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

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

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

25 (1) The state, upon filing a criminal action under RCW 9A.82.060 or
26 9A.82.080, or alleging any offense committed with terrorist intent
27 whether or not committed for financial gain, or a civil action under
28 RCW 9A.82.100, may file in accordance with this section a criminal
29 profiteering lien. A filing fee or other charge is not required for
30 filing a criminal profiteering lien.

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

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

36 (b) In the discretion of the attorney general or county prosecuting
37 attorney filing the lien, any aliases or fictitious names of the
38 defendant named in the lien;

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

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

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

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

11 (g) The amount that the state claims in the action or, with respect
12 to property or other interests that the state has requested forfeiture
13 to the state or county, a description of the property or interests
14 sought to be paid or forfeited;

15 (h) If known to the attorney general or county prosecuting attorney
16 filing the lien, a description of property that is subject to
17 forfeiture to the state or property in which the defendant has an
18 interest that is available to satisfy a judgment entered in favor of
19 the state; and

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

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

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

32 (5)(a) A criminal profiteering lien is perfected against interests
33 in personal property in the same manner as a security interest in like
34 property pursuant to RCW 62A.9-302, 62A.9-303, 62A.9-304, 62A.9-305,
35 and 62A.9-306 or as otherwise required to perfect a security interest
36 in like property under applicable law. In the case of perfection by
37 filing, the state shall file, in lieu of a financing statement in the
38 form prescribed by RCW 62A.9-402, a notice of lien in substantially the
39 following form:

NOTICE OF LIEN

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

Name:
Address:
.

State of Washington
.

By (authorized signature)

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

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

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

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

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

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

(7) The lien created in favor of the state in accordance with this section, when filed or otherwise perfected as provided in subsection (5) of this section, has, with respect to any of the property described in subsection (6) of this section, the same priority determined pursuant to the laws of this state as a mortgage or security interest given for value (but not a purchase money security interest) and perfected in the same manner with respect to such property; except that any lien perfected pursuant to Title 60 RCW by any person who, in the ordinary course of his business, furnishes labor, services, or

1 materials, or rents, leases, or otherwise supplies equipment, without
2 knowledge of the criminal profiteering lien, is superior to the
3 criminal profiteering lien.

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

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

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

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

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

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

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

1 **SSB 6704** - S AMD 607
2 By Senators Kline, Zarelli and Johnson

ADOPTED 02/18/02

3
4 On page 1, line 1 of the title, after "terrorism;" strike the
5 remainder of the title and insert "amending RCW 9.94A.535, 10.95.040,
6 9A.04.080, 9A.20.021, 70.74.285, 9A.82.090, 9A.82.100, and 9A.82.120;
7 reenacting and amending RCW 9.94A.030, 9.94A.515, and 9A.82.010; adding
8 new sections to chapter 10.95 RCW; adding a new section to chapter
9 9A.82 RCW; adding a new section to chapter 9A.20 RCW; adding a new
10 chapter to Title 9A RCW; creating a new section; and prescribing
11 penalties."

--- END ---