
HOUSE BILL 2718

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By Representatives Sullivan, Simpson, G., Kirby, Schual-Berke, Chase, Darneille, Lantz, Conway, Kenney, Morrell, Hudgins and Kagi

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1 AN ACT Relating to preventing acts of fraud against elderly persons
2 and vulnerable adults; amending RCW 9.94A.030, 19.86.010, 19.86.080,
3 and 19.86.090; adding a new section to chapter 7.68 RCW; adding a new
4 section to chapter 9A.60 RCW; creating a new section; prescribing
5 penalties; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 7.68 RCW
8 to read as follows:

9 (1) When any person is found guilty in any superior, district, or
10 juvenile court of having committed any of the crimes listed in
11 subsection (2) of this section where the victim is an elderly person or
12 a vulnerable adult, the court may impose upon the convicted person a
13 penalty assessment. If the penalty is imposed, it shall be in addition
14 to any other penalty or fine imposed by law, including a penalty
15 assessment imposed under RCW 7.68.035. The amount of the penalty shall
16 be up to ten thousand dollars per conviction for felonies, up to five
17 thousand dollars per conviction for gross misdemeanors, and up to one
18 thousand dollars per conviction for misdemeanors.

1 (2) A superior or district court may impose a penalty assessment
2 under subsection (1) of this section if the person is found guilty of
3 any of the following crimes where the victim is an elderly person or a
4 vulnerable adult:

5 (a) Identity theft in the first degree under RCW 9.35.020;

6 (b) Identity theft in the second degree under RCW 9.35.020;

7 (c) Theft in the first degree under RCW 9A.56.030;

8 (d) Theft in the second degree under RCW 9A.56.040;

9 (e) Theft in the third degree under RCW 9A.56.050;

10 (f) Forgery under RCW 9A.60.020;

11 (g) Obtaining a signature by deception or duress under RCW
12 9A.60.030;

13 (h) Criminal impersonation in the first degree under RCW 9A.60.040;

14 (i) Criminal impersonation in the second degree under RCW
15 9A.60.045;

16 (j) False certification under RCW 9A.60.050;

17 (k) A violation of RCW 18.27.020; or

18 (l) A securities act violation under RCW 21.20.400.

19 (3) Moneys collected under this section shall be transmitted to the
20 state treasurer for deposit in the elder and vulnerable adult fraud
21 prevention account.

22 (4) For purposes of this section:

23 (a) "Elderly person" means a person sixty years of age or older.

24 (b) "Vulnerable adult" means a person found incapacitated under
25 chapter 11.88 RCW, a person over eighteen years of age who has a
26 developmental disability under chapter 71A.10 RCW, a person admitted to
27 a long-term care facility that is licensed or required to be licensed
28 under chapter 18.20, 18.51, 72.36, or 70.128 RCW, or a person receiving
29 services from a home health, hospice, or home care agency licensed or
30 required to be licensed under chapter 70.127 RCW.

31 **Sec. 2.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
32 as follows:

33 Unless the context clearly requires otherwise, the definitions in
34 this section apply throughout this chapter.

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

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

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

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

14 (5) "Community custody" means that portion of an offender's
15 sentence of confinement in lieu of earned release time or imposed
16 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
17 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
18 community subject to controls placed on the offender's movement and
19 activities by the department. For offenders placed on community
20 custody for crimes committed on or after July 1, 2000, the department
21 shall assess the offender's risk of reoffense and may establish and
22 modify conditions of community custody, in addition to those imposed by
23 the court, based upon the risk to community safety.

24 (6) "Community custody range" means the minimum and maximum period
25 of community custody included as part of a sentence under RCW
26 9.94A.715, as established by the commission or the legislature under
27 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

28 (7) "Community placement" means that period during which the
29 offender is subject to the conditions of community custody and/or
30 postrelease supervision, which begins either upon completion of the
31 term of confinement (postrelease supervision) or at such time as the
32 offender is transferred to community custody in lieu of earned release.
33 Community placement may consist of entirely community custody, entirely
34 postrelease supervision, or a combination of the two.

35 (8) "Community restitution" means compulsory service, without
36 compensation, performed for the benefit of the community by the
37 offender.

1 (9) "Community supervision" means a period of time during which a
2 convicted offender is subject to crime-related prohibitions and other
3 sentence conditions imposed by a court pursuant to this chapter or RCW
4 16.52.200(6) or 46.61.524. Where the court finds that any offender has
5 a chemical dependency that has contributed to his or her offense, the
6 conditions of supervision may, subject to available resources, include
7 treatment. For purposes of the interstate compact for out-of-state
8 supervision of parolees and probationers, RCW 9.95.270, community
9 supervision is the functional equivalent of probation and should be
10 considered the same as probation by other states.

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

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

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

22 (13) "Criminal history" means the list of a defendant's prior
23 convictions and juvenile adjudications, whether in this state, in
24 federal court, or elsewhere.

25 (a) The history shall include, where known, for each conviction (i)
26 whether the defendant has been placed on probation and the length and
27 terms thereof; and (ii) whether the defendant has been incarcerated and
28 the length of incarceration.

29 (b) A conviction may be removed from a defendant's criminal history
30 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
31 a similar out-of-state statute, or if the conviction has been vacated
32 pursuant to a governor's pardon.

33 (c) The determination of a defendant's criminal history is distinct
34 from the determination of an offender score. A prior conviction that
35 was not included in an offender score calculated pursuant to a former
36 version of the sentencing reform act remains part of the defendant's
37 criminal history.

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

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

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

11 (17) "Determinate sentence" means a sentence that states with
12 exactitude the number of actual years, months, or days of total
13 confinement, of partial confinement, of community supervision, the
14 number of actual hours or days of community restitution work, or
15 dollars or terms of a legal financial obligation. The fact that an
16 offender through earned release can reduce the actual period of
17 confinement shall not affect the classification of the sentence as a
18 determinate sentence.

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

31 (19) "Drug offender sentencing alternative" is a sentencing option
32 available to persons convicted of a felony offense other than a violent
33 offense or a sex offense and who are eligible for the option under RCW
34 9.94A.660.

35 (20) "Drug offense" means:

36 (a) Any felony violation of chapter 69.50 RCW except possession of
37 a controlled substance (RCW 69.50.4013) or forged prescription for a
38 controlled substance (RCW 69.50.403);

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

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

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

9 (22) "Escape" means:

10 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
11 first degree (RCW 9A.76.110), escape in the second degree (RCW
12 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
13 willful failure to return from work release (RCW 72.65.070), or willful
14 failure to be available for supervision by the department while in
15 community custody (RCW 72.09.310); or

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

19 (23) "Felony traffic offense" means:

20 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
21 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
22 and-run injury-accident (RCW 46.52.020(4)); or

23 (b) 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 felony
25 traffic offense under (a) of this subsection.

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

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

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

35 (27) "Legal financial obligation" means a sum of money that is
36 ordered by a superior court of the state of Washington for legal
37 financial obligations which may include restitution to the victim,
38 statutorily imposed crime victims' compensation fees as assessed

1 pursuant to RCW 7.68.035, statutorily imposed penalty assessments under
2 section 1 of this act, court costs, county or interlocal drug funds,
3 court-appointed attorneys' fees, and costs of defense, fines, and any
4 other financial obligation that is assessed to the offender as a result
5 of a felony conviction. Upon conviction for vehicular assault while
6 under the influence of intoxicating liquor or any drug, RCW
7 46.61.522(1)(b), or vehicular homicide while under the influence of
8 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
9 obligations may also include payment to a public agency of the expense
10 of an emergency response to the incident resulting in the conviction,
11 subject to RCW 38.52.430.

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

14 (a) Any felony defined under any law as a class A felony or
15 criminal solicitation of or criminal conspiracy to commit a class A
16 felony;

17 (b) Assault in the second degree;

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

19 (d) Child molestation in the second degree;

20 (e) Controlled substance homicide;

21 (f) Extortion in the first degree;

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

23 (h) Indecent liberties;

24 (i) Kidnapping in the second degree;

25 (j) Leading organized crime;

26 (k) Manslaughter in the first degree;

27 (l) Manslaughter in the second degree;

28 (m) Promoting prostitution in the first degree;

29 (n) Rape in the third degree;

30 (o) Robbery in the second degree;

31 (p) Sexual exploitation;

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

36 (r) Vehicular homicide, when proximately caused by the driving of
37 any vehicle by any person while under the influence of intoxicating

1 liquor or any drug as defined by RCW 46.61.502, or by the operation of
2 any vehicle in a reckless manner;

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

5 (t) Any other felony with a deadly weapon verdict under RCW
6 9.94A.602;

7 (u) Any felony offense in effect at any time prior to December 2,
8 1993, that is comparable to a most serious offense under this
9 subsection, or any federal or out-of-state conviction for an offense
10 that under the laws of this state would be a felony classified as a
11 most serious offense under this subsection;

12 (v)(i) A prior conviction for indecent liberties under RCW
13 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
14 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
15 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
16 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

17 (ii) A prior conviction for indecent liberties under RCW
18 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
19 if: (A) The crime was committed against a child under the age of
20 fourteen; or (B) the relationship between the victim and perpetrator is
21 included in the definition of indecent liberties under RCW
22 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
23 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
24 through July 27, 1997.

25 (29) "Nonviolent offense" means an offense which is not a violent
26 offense.

27 (30) "Offender" means a person who has committed a felony
28 established by state law and is eighteen years of age or older or is
29 less than eighteen years of age but whose case is under superior court
30 jurisdiction under RCW 13.04.030 or has been transferred by the
31 appropriate juvenile court to a criminal court pursuant to RCW
32 13.40.110. Throughout this chapter, the terms "offender" and
33 "defendant" are used interchangeably.

34 (31) "Partial confinement" means confinement for no more than one
35 year in a facility or institution operated or utilized under contract
36 by the state or any other unit of government, or, if home detention or
37 work crew has been ordered by the court, in an approved residence, for
38 a substantial portion of each day with the balance of the day spent in

1 the community. Partial confinement includes work release, home
2 detention, work crew, and a combination of work crew and home
3 detention.

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

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

7 (ii) Has, before the commission of the offense under (a) of this
8 subsection, been convicted as an offender on at least two separate
9 occasions, whether in this state or elsewhere, of felonies that under
10 the laws of this state would be considered most serious offenses and
11 would be included in the offender score under RCW 9.94A.525; provided
12 that of the two or more previous convictions, at least one conviction
13 must have occurred before the commission of any of the other most
14 serious offenses for which the offender was previously convicted; or

15 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
16 of a child in the first degree, child molestation in the first degree,
17 rape in the second degree, rape of a child in the second degree, or
18 indecent liberties by forcible compulsion; (B) any of the following
19 offenses with a finding of sexual motivation: Murder in the first
20 degree, murder in the second degree, homicide by abuse, kidnapping in
21 the first degree, kidnapping in the second degree, assault in the first
22 degree, assault in the second degree, assault of a child in the first
23 degree, or burglary in the first degree; or (C) an attempt to commit
24 any crime listed in this subsection (32)(b)(i); and

25 (ii) Has, before the commission of the offense under (b)(i) of this
26 subsection, been convicted as an offender on at least one occasion,
27 whether in this state or elsewhere, of an offense listed in (b)(i) of
28 this subsection or any federal or out-of-state offense or offense under
29 prior Washington law that is comparable to the offenses listed in
30 (b)(i) of this subsection. A conviction for rape of a child in the
31 first degree constitutes a conviction under (b)(i) of this subsection
32 only when the offender was sixteen years of age or older when the
33 offender committed the offense. A conviction for rape of a child in
34 the second degree constitutes a conviction under (b)(i) of this
35 subsection only when the offender was eighteen years of age or older
36 when the offender committed the offense.

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

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

5 (35) "Risk assessment" means the application of an objective
6 instrument supported by research and adopted by the department for the
7 purpose of assessing an offender's risk of reoffense, taking into
8 consideration the nature of the harm done by the offender, place and
9 circumstances of the offender related to risk, the offender's
10 relationship to any victim, and any information provided to the
11 department by victims. The results of a risk assessment shall not be
12 based on unconfirmed or unconfirmable allegations.

13 (36) "Serious traffic offense" means:

14 (a) Driving while under the influence of intoxicating liquor or any
15 drug (RCW 46.61.502), actual physical control while under the influence
16 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
17 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
18 or

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

22 (37) "Serious violent offense" is a subcategory of violent offense
23 and means:

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

25 (ii) Homicide by abuse;

26 (iii) Murder in the second degree;

27 (iv) Manslaughter in the first degree;

28 (v) Assault in the first degree;

29 (vi) Kidnapping in the first degree;

30 (vii) Rape in the first degree;

31 (viii) Assault of a child in the first degree; or

32 (ix) An attempt, criminal solicitation, or criminal conspiracy to
33 commit one of these felonies; or

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

37 (38) "Sex offense" means:

1 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
2 RCW 9A.44.130(11);
3 (ii) A violation of RCW 9A.64.020;
4 (iii) A felony that is a violation of chapter 9.68A RCW other than
5 RCW 9.68A.070 or 9.68A.080; or
6 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
7 criminal solicitation, or criminal conspiracy to commit such crimes;
8 (b) Any conviction for a felony offense in effect at any time prior
9 to July 1, 1976, that is comparable to a felony classified as a sex
10 offense in (a) of this subsection;
11 (c) A felony with a finding of sexual motivation under RCW
12 9.94A.835 or 13.40.135; or
13 (d) Any federal or out-of-state conviction for an offense that
14 under the laws of this state would be a felony classified as a sex
15 offense under (a) of this subsection.
16 (39) "Sexual motivation" means that one of the purposes for which
17 the defendant committed the crime was for the purpose of his or her
18 sexual gratification.
19 (40) "Standard sentence range" means the sentencing court's
20 discretionary range in imposing a nonappealable sentence.
21 (41) "Statutory maximum sentence" means the maximum length of time
22 for which an offender may be confined as punishment for a crime as
23 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
24 crime, or other statute defining the maximum penalty for a crime.
25 (42) "Total confinement" means confinement inside the physical
26 boundaries of a facility or institution operated or utilized under
27 contract by the state or any other unit of government for twenty-four
28 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.
29 (43) "Transition training" means written and verbal instructions
30 and assistance provided by the department to the offender during the
31 two weeks prior to the offender's successful completion of the work
32 ethic camp program. The transition training shall include instructions
33 in the offender's requirements and obligations during the offender's
34 period of community custody.
35 (44) "Victim" means any person who has sustained emotional,
36 psychological, physical, or financial injury to person or property as
37 a direct result of the crime charged.
38 (45) "Violent offense" means:

1 (a) Any of the following felonies:
2 (i) Any felony defined under any law as a class A felony or an
3 attempt to commit a class A felony;
4 (ii) Criminal solicitation of or criminal conspiracy to commit a
5 class A felony;
6 (iii) Manslaughter in the first degree;
7 (iv) Manslaughter in the second degree;
8 (v) Indecent liberties if committed by forcible compulsion;
9 (vi) Kidnapping in the second degree;
10 (vii) Arson in the second degree;
11 (viii) Assault in the second degree;
12 (ix) Assault of a child in the second degree;
13 (x) Extortion in the first degree;
14 (xi) Robbery in the second degree;
15 (xii) Drive-by shooting;
16 (xiii) Vehicular assault, when caused by the operation or driving
17 of a vehicle by a person while under the influence of intoxicating
18 liquor or any drug or by the operation or driving of a vehicle in a
19 reckless manner; and
20 (xiv) Vehicular homicide, when proximately caused by the driving of
21 any vehicle by any person while under the influence of intoxicating
22 liquor or any drug as defined by RCW 46.61.502, or by the operation of
23 any vehicle in a reckless manner;
24 (b) Any conviction for a felony offense in effect at any time prior
25 to July 1, 1976, that is comparable to a felony classified as a violent
26 offense in (a) of this subsection; and
27 (c) Any federal or out-of-state conviction for an offense that
28 under the laws of this state would be a felony classified as a violent
29 offense under (a) or (b) of this subsection.
30 (46) "Work crew" means a program of partial confinement consisting
31 of civic improvement tasks for the benefit of the community that
32 complies with RCW 9.94A.725.
33 (47) "Work ethic camp" means an alternative incarceration program
34 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
35 the cost of corrections by requiring offenders to complete a
36 comprehensive array of real-world job and vocational experiences,
37 character-building work ethics training, life management skills

1 development, substance abuse rehabilitation, counseling, literacy
2 training, and basic adult education.

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

6 **Sec. 3.** RCW 19.86.010 and 1961 c 216 s 1 are each amended to read
7 as follows:

8 As used in this chapter:

9 (1) "Assets" include any property, tangible or intangible, real,
10 personal, or mixed, and wherever situate, and any other thing of value.

11 (2) "Elderly person" means a person sixty years of age or older.

12 (3) "Person" shall include, where applicable, natural persons,
13 corporations, trusts, unincorporated associations, and partnerships.

14 ~~((+2))~~ (4) "Trade" and "commerce" shall include the sale of assets
15 or services, and any commerce directly or indirectly affecting the
16 people of the state of Washington.

17 ~~((3) "Assets" shall include any property, tangible or intangible,~~
18 ~~real, personal, or mixed, and wherever situate, and any other thing of~~
19 ~~value.))~~

20 (5) "Vulnerable adult" means a person found incapacitated under
21 chapter 11.88 RCW, a person over eighteen years of age who has a
22 developmental disability under chapter 71A.10 RCW, a person admitted to
23 a long-term care facility that is licensed or required to be licensed
24 under chapter 18.20, 18.51, 72.36, or 70.128 RCW, or a person receiving
25 services from a home health, hospice, or home care agency licensed or
26 required to be licensed under chapter 70.127 RCW.

27 **Sec. 4.** RCW 19.86.080 and 1970 ex.s. c 26 s 1 are each amended to
28 read as follows:

29 (1) The attorney general may bring an action in the name of the
30 state against any person to restrain and prevent the doing of any act
31 herein prohibited or declared to be unlawful; and the prevailing party
32 may, in the discretion of the court, recover the costs of said action
33 including a reasonable attorney's fee.

34 (2)(a) The court may make such additional orders or judgments as
35 may be necessary to restore to any person in interest any moneys or

1 property, real or personal, which may have been acquired by means of
2 any act herein prohibited or declared to be unlawful.

3 (b) If the prohibited or unlawful act was committed against an
4 elderly person or a vulnerable adult, the court may assess a civil fine
5 of up to ten thousand dollars for each elderly person injured by the
6 act, which must be deposited in the elder and vulnerable adult fraud
7 prevention account.

8 **Sec. 5.** RCW 19.86.090 and 1987 c 202 s 187 are each amended to
9 read as follows:

10 (1)(a)(i) Any person who is injured in his or her business or
11 property by a violation of RCW 19.86.020, 19.86.030, 19.86.040,
12 19.86.050, or 19.86.060, or any person so injured because he or she
13 refuses to accede to a proposal for an arrangement which, if
14 consummated, would be in violation of RCW 19.86.030, 19.86.040,
15 19.86.050, or 19.86.060, may bring a civil action in the superior court
16 to enjoin further violations, to recover the actual damages sustained
17 by him or her, or both, together with the costs of the suit, including
18 a reasonable attorney's fee, and the court may in its discretion,
19 increase the award of damages to an amount not to exceed three times
20 the actual damages sustained(~~(;—PROVIDED, That)~~). Such increased
21 damage award for violation of RCW 19.86.020 may not exceed ten thousand
22 dollars(~~(;—PROVIDED FURTHER, That such)~~).

23 (ii) If the person is an elderly person or a vulnerable adult, the
24 superior court may assess a civil fine of up to ten thousand dollars,
25 which must be deposited in the elder and vulnerable adult fraud
26 prevention account.

27 (b) A person may bring a civil action in the district court to
28 recover his or her actual damages, except for damages which exceed the
29 amount specified in RCW 3.66.020, and the costs of the suit, including
30 reasonable attorney's fees.

31 (i) The district court may, in its discretion, increase the award
32 of damages to an amount not more than three times the actual damages
33 sustained, but such increased damage award shall not exceed the amount
34 specified in RCW 3.66.020. (~~(For the purpose of this section "person"~~
35 ~~shall include the counties, municipalities, and all political~~
36 ~~subdivisions of this state.)~~)

1 (ii) If the person is an elderly person or a vulnerable adult, the
2 superior court may, in its discretion, assess a civil fine of up to ten
3 thousand dollars, which must be deposited in the elder and vulnerable
4 adult fraud prevention account.

5 (2) Whenever the state of Washington is injured by reason of a
6 violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, it may
7 sue therefor in the superior court to recover the actual damages
8 sustained by it and to recover the costs of the suit including a
9 reasonable attorney's fee.

10 (3) For the purpose of this section "person" shall include the
11 counties, municipalities, and all political subdivisions of this state.

12 NEW SECTION. Sec. 6. A new section is added to chapter 9A.60 RCW
13 to read as follows:

14 (1) The following are subject to seizure and forfeiture and no
15 property right exists in them:

16 (a) Proceeds traceable to or derived from a violation, where the
17 victim is an elderly person or a vulnerable adult, of this chapter, RCW
18 9.35.020, 9A.56.030, 9A.56.040, 9A.56.050, 18.27.020, or 21.20.400; and

19 (b) Instrumentalities used significantly to facilitate a violation,
20 where the victim is an elderly person or a vulnerable adult, of this
21 chapter, RCW 9.35.020, 9A.56.030, 9A.56.040, 9A.56.050, 18.27.020, or
22 21.20.400, subject to the following limitations:

23 (i) An instrumentality is not subject to forfeiture under this
24 section, to the extent of the interest of an owner, by reason of any
25 act or omission committed or omitted without the owner's knowledge or
26 consent;

27 (ii) A forfeiture of an instrumentality encumbered by a bona fide
28 security interest is subject to the interest of the secured party if
29 the secured party neither had knowledge of nor consented to the
30 violation; and

31 (iii) A conveyance, including an aircraft, a vehicle, or a vessel,
32 used by any person as a common carrier in the transaction of business
33 as a common carrier is not subject to forfeiture under this section
34 unless it appears that the owner or other person in charge of the
35 conveyance is a consenting party or privy to the violation.

36 (2) Real or personal property subject to forfeiture under this
37 chapter may be seized by any law enforcement officer of this state upon

1 process issued by any superior court having jurisdiction over the
2 property. Seizure of real property shall include the filing of a lis
3 pendens by the seizing agency. Real property seized under this section
4 shall not be transferred or otherwise conveyed until ninety days after
5 seizure or until a judgment of forfeiture is entered, whichever is
6 later: PROVIDED, That real property seized under this section may be
7 transferred or conveyed to any person or entity who acquires title by
8 foreclosure or deed in lieu of foreclosure of a security interest.
9 Seizure of personal property without process may be made if:

10 (a) The seizure is incident to an arrest or a search under a search
11 warrant or an inspection under an administrative inspection warrant;

12 (b) The property subject to seizure has been the subject of a prior
13 judgment in favor of the state in a criminal injunction or forfeiture
14 proceeding based upon this chapter;

15 (c) A law enforcement officer has probable cause to believe that
16 the property is directly or indirectly dangerous to health or safety;
17 or

18 (d) The law enforcement officer has probable cause to believe that
19 the property was used or is intended to be used in violation of this
20 chapter.

21 (3) In the event of seizure pursuant to subsection (2) of this
22 section, proceedings for forfeiture shall be deemed commenced by the
23 seizure. The law enforcement agency under whose authority the seizure
24 was made shall cause notice to be served within fifteen days following
25 the seizure on the owner of the property seized and the person in
26 charge thereof, the office of crime victims' advocacy, and any person
27 having any known right or interest therein, including any community
28 property interest, of the seizure and intended forfeiture of the seized
29 property. Service of notice of seizure of real property shall be made
30 according to the rules of civil procedure. However, the state may not
31 obtain a default judgment with respect to real property against a party
32 who is served by substituted service absent an affidavit stating that
33 a good faith effort has been made to ascertain if the defaulted party
34 is incarcerated within the state, and that there is no present basis to
35 believe that the party is incarcerated within the state. Notice of
36 seizure in the case of property subject to a security interest that has
37 been perfected by filing a financing statement in accordance with
38 chapter 62A.9A RCW, or a certificate of title, shall be made by service

1 upon the secured party or the secured party's assignee at the address
2 shown on the financing statement or the certificate of title. The
3 notice of seizure in other cases may be served by any method authorized
4 by law or court rule including but not limited to service by certified
5 mail with return receipt requested. Service by mail shall be deemed
6 complete upon mailing within the fifteen-day period following the
7 seizure.

8 (4) If no person notifies the seizing law enforcement agency in
9 writing of the person's claim of ownership or right to possession of
10 items seized under subsection (2) of this section within forty-five
11 days of the seizure in the case of personal property and ninety days in
12 the case of real property, the item seized shall be deemed forfeited.
13 The community property interest in real property of a person whose
14 spouse committed a violation giving rise to seizure of the real
15 property may not be forfeited if the person did not participate in the
16 violation.

17 (5) If any person notifies the seizing law enforcement agency in
18 writing of the person's claim of ownership or right to possession of
19 items seized under subsection (2) of this section within forty-five
20 days of the seizure in the case of personal property and ninety days in
21 the case of real property, the person or persons shall be afforded a
22 reasonable opportunity to be heard as to the claim or right. The
23 hearing shall be before the chief law enforcement officer of the
24 seizing agency or the chief law enforcement officer's designee, except
25 where the seizing agency is a state agency as defined in RCW
26 34.12.020(4), the hearing shall be before the chief law enforcement
27 officer of the seizing agency or an administrative law judge appointed
28 under chapter 34.12 RCW, except that any person asserting a claim or
29 right may remove the matter to a court of competent jurisdiction.
30 Removal of any matter involving personal property may only be
31 accomplished according to the rules of civil procedure. The person
32 seeking removal of the matter must serve process against the state,
33 county, political subdivision, or municipality that operates the
34 seizing agency, and any other party of interest, in accordance with RCW
35 4.28.080 or 4.92.020, within forty-five days after the person seeking
36 removal has notified the seizing law enforcement agency of the person's
37 claim of ownership or right to possession. The court to which the
38 matter is to be removed shall be the district court when the aggregate

1 value of personal property is within the jurisdictional limit set forth
2 in RCW 3.66.020. A hearing before the seizing agency and any appeal
3 therefrom shall be under Title 34 RCW. In all cases, the burden of
4 proof is upon the law enforcement agency to establish, by a
5 preponderance of the evidence, that the property is subject to
6 forfeiture.

7 The seizing law enforcement agency shall promptly return the
8 article or articles to the claimant upon a determination by the
9 administrative law judge or court that the claimant is the present
10 lawful owner or is lawfully entitled to possession thereof of items
11 seized under subsection (2) of this section.

12 (6) In any proceeding to forfeit property under this title, where
13 the claimant substantially prevails, the claimant is entitled to
14 reasonable attorneys' fees reasonably incurred by the claimant. In
15 addition, in a court hearing between two or more claimants to the
16 article or articles involved, the prevailing party is entitled to a
17 judgment for costs and reasonable attorneys' fees.

18 (7)(a) When property is forfeited, the seizing agency shall keep a
19 record indicating the identity of the prior owner, if known, a
20 description of the property, the disposition of the property, the value
21 of the property at the time of seizure, and the amount of proceeds
22 realized from disposition of the property.

23 (b) Each seizing agency shall retain records of forfeited property
24 for at least seven years.

25 (c) Each seizing agency shall file a report including a copy of the
26 records of forfeited property with the state treasurer each calendar
27 quarter.

28 (d) The quarterly report need not include a record of forfeited
29 property that is still being held for use as evidence during the
30 investigation or prosecution of a case or during the appeal from a
31 conviction.

32 (8)(a) The net proceeds of any property forfeited under this
33 section shall be paid as restitution to any person readily
34 ascertainable by the seizing agency at the time of the forfeiture who
35 was damaged by the crime giving rise to the forfeiture. The seizing
36 agency shall then remit ten percent of the remainder to the state
37 treasurer. Money remitted shall be deposited in the elder and
38 vulnerable adult fraud prevention account.

1 (b) The net proceeds of forfeited property is the value of the
2 forfeitable interest in the property after deducting the cost of
3 satisfying any bona fide security interest to which the property is
4 subject at the time of seizure; and in the case of sold property, after
5 deducting the cost of sale, including reasonable fees or commissions
6 paid to independent selling agents, and the cost of any valid
7 landlord's claim for damages under subsection (11) of this section.

8 (c) The value of sold forfeited property is the sale price. The
9 value of retained forfeited property is the fair market value of the
10 property at the time of seizure, determined when possible by reference
11 to an applicable commonly used index, such as the index used by the
12 department of licensing for valuation of motor vehicles. A seizing
13 agency may use, but need not use, an independent qualified appraiser to
14 determine the value of retained property. If an appraiser is used, the
15 value of the property appraised is net of the cost of the appraisal.
16 The value of destroyed property and retained firearms or illegal
17 property is zero.

18 (9)(a) Forfeited property and net proceeds not required to be paid
19 as restitution or to the state treasurer shall be retained by the
20 seizing law enforcement agency.

21 (b) When property is retained under this subsection, the seizing
22 law enforcement agency may:

23 (i) Retain it for official use, or upon application by any law
24 enforcement agency of this state, release such property to such agency
25 for the exclusive use of preventing fraud-related crimes against
26 elderly persons and vulnerable adults;

27 (ii) Sell that which is not required to be destroyed by law and
28 which is not harmful to the public; or

29 (iii) Request the appropriate sheriff or director of public safety
30 to take custody of the property and remove it for disposition in
31 accordance with law.

32 (c) Money retained under this subsection may not be used to
33 supplant preexisting funding sources.

34 (10) Upon the entry of an order of forfeiture of real property, the
35 court shall forward a copy of the order to the assessor of the county
36 in which the property is located. Orders for the forfeiture of real
37 property shall be entered by the superior court, subject to court

1 rules. Such an order shall be filed by the seizing agency in the
2 county auditor's records in the county in which the real property is
3 located.

4 (11)(a) A landlord may assert a claim against proceeds from the
5 sale of assets seized and forfeited under subsection (9)(b)(ii) of this
6 section, only if:

7 (i) A law enforcement officer, while acting in his or her official
8 capacity, directly caused damage to the complaining landlord's property
9 while executing a search of a tenant's residence; and

10 (ii) The landlord has applied any funds remaining in the tenant's
11 deposit, to which the landlord has a right under chapter 59.18 RCW, to
12 cover the damage directly caused by a law enforcement officer prior to
13 asserting a claim under the provisions of this section.

14 (b) Only if the funds applied under (a)(ii) of this subsection are
15 insufficient to satisfy the damage directly caused by a law enforcement
16 officer may the landlord seek compensation for the damage by filing a
17 claim against the governmental entity under whose authority the law
18 enforcement agency operates within thirty days after the search.

19 (c) Only if the governmental entity denies or fails to respond to
20 the landlord's claim within sixty days of the date of filing may the
21 landlord collect damages under this subsection by filing within thirty
22 days of denial or the expiration of the sixty-day period, whichever
23 occurs first, a claim with the seizing law enforcement agency. The
24 seizing law enforcement agency must notify the landlord of the status
25 of the claim by the end of the thirty-day period. Nothing in this
26 section requires the claim to be paid by the end of the sixty-day or
27 thirty-day period.

28 (d) For any claim filed under this subsection, the law enforcement
29 agency shall pay the claim unless the agency provides substantial proof
30 that the landlord knew or consented to the unlawful actions of the
31 tenant that led to the seizure under this section.

32 (12) The landlord's claim for damages under subsection (11) of this
33 section may not include a claim for loss of business and is limited to:

34 (a) Damage to tangible property and clean-up costs;

35 (b) The lesser of the cost of repair or fair market value of the
36 damage directly caused by a law enforcement officer;

37 (c) The proceeds from the sale of the specific tenant's property
38 seized and forfeited under subsection (9)(b)(ii) of this section; and

1 (d) The proceeds available after the seizing law enforcement agency
2 satisfies any bona fide security interest in the tenant's property and
3 costs related to sale of the tenant's property as provided by
4 subsection (8)(b) of this section.

5 (13) Subsections (11) and (12) of this section do not limit any
6 other rights a landlord may have against a tenant to collect for
7 damages. However, if a law enforcement agency satisfies a landlord's
8 claim under subsection (11) of this section, the rights the landlord
9 has against the tenant for damages directly caused by a law enforcement
10 officer under the terms of the landlord and tenant's contract are
11 subrogated to the law enforcement agency.

12 NEW SECTION. **Sec. 7.** The elder and vulnerable adult fraud
13 prevention account is created in the custody of the state treasurer.
14 All receipts from fines, assessments, or forfeitures collected under
15 RCW 19.86.080(2)(b), 19.86.090(1) (a)(ii) or (b)(ii), or section 1 or
16 6 of this act must be deposited into the account. Moneys in the
17 account may be spent only after appropriation. Expenditures from the
18 account may only be used to fund activities relating to advocating on
19 behalf of, or preventing fraud against, elderly persons or vulnerable
20 adults.

21 NEW SECTION. **Sec. 8.** This act takes effect July 1, 2004.

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