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ENGROSSED SUBSTITUTE SENATE BILL 5631

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State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Thibaudeau, Kohl-Welles, Brandland, Kline, Hargrove, Fraser, McAuliffe, Keiser, B. Sheldon and Winsley)

READ FIRST TIME 02/21/03.

1 AN ACT Relating to trafficking in persons; amending RCW 9.94A.535,  
2 9A.82.090, 9A.82.100, and 9A.82.120; reenacting and amending RCW  
3 9.94A.515, 9.94A.515, and 9A.82.010; adding a new section to chapter  
4 9A.40 RCW; prescribing penalties; providing an effective date; and  
5 providing an expiration 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 9A.40 RCW  
8 to read as follows:

9 (1)(a) A person is guilty of trafficking in the first degree when:

10 (i) Such person knows that force, fraud, or coercion will be used  
11 to cause any person to engage in forced labor or involuntary servitude;

12 (ii) Such person (A) recruits, harbors, transports, provides, or  
13 obtains by any means another person; or (B) benefits financially or by  
14 receiving anything of value from participation in a venture which has  
15 engaged in acts set forth in (a)(ii)(A) of this subsection; and

16 (iii) The acts or venture set forth in (a)(ii) of this subsection:

1 (A) Involve committing or attempting to commit kidnapping; (B) involve  
2 a finding of sexual motivation under RCW 9.94A.835; or (C) result in a  
3 death.

4 (b) Trafficking in the first degree is a class A felony.

5 (2)(a) A person is guilty of trafficking in the second degree when:

6 (i) Such person knows that force, fraud, or coercion will be used  
7 to cause any person to engage in forced labor or involuntary servitude;  
8 and

9 (ii) Such person (A) recruits, harbors, transports, provides, or  
10 obtains by any means another person; or (B) benefits financially or by  
11 receiving anything of value from participation in a venture which has  
12 engaged in acts set forth in (a)(ii)(A) of this subsection.

13 (b) Trafficking in the second degree is a class A felony.

14 **Sec. 2.** RCW 9.94A.515 and 2002 c 340 s 2, 2002 c 324 s 2, 2002 c  
15 290 s 2, 2002 c 253 s 4, 2002 c 229 s 2, 2002 c 134 s 2, and 2002 c 133  
16 s 4 are each reenacted and amended to read as follows:

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TABLE 2	
CRIMES INCLUDED WITHIN	
EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050) <u>Trafficking 1 (section 1(1) of this act)</u>
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))

1 Rape 1 (RCW 9A.44.040)  
2 Rape of a Child 1 (RCW 9A.44.073)  
3 XI Manslaughter 1 (RCW 9A.32.060)  
4 Rape 2 (RCW 9A.44.050)  
5 Rape of a Child 2 (RCW 9A.44.076)  
6 X Child Molestation 1 (RCW 9A.44.083)  
7 Indecent Liberties (with forcible  
8 compulsion) (RCW  
9 9A.44.100(1)(a))  
10 Kidnapping 1 (RCW 9A.40.020)  
11 Leading Organized Crime (RCW  
12 9A.82.060(1)(a))  
13 Malicious explosion 3 (RCW  
14 70.74.280(3))  
15 Manufacture of methamphetamine  
16 (RCW 69.50.401(a)(1)(ii))  
17 Over 18 and deliver heroin,  
18 methamphetamine, a narcotic  
19 from Schedule I or II, or  
20 flunitrazepam from Schedule IV  
21 to someone under 18 (RCW  
22 69.50.406)  
23 Sexually Violent Predator Escape  
24 (RCW 9A.76.115)  
25 Trafficking 2 (section 1(2) of this act)  
26 IX Assault of a Child 2 (RCW 9A.36.130)  
27 Controlled Substance Homicide (RCW  
28 69.50.415)  
29 Explosive devices prohibited (RCW  
30 70.74.180)  
31 Hit and Run--Death (RCW  
32 46.52.020(4)(a))  
33 Homicide by Watercraft, by being  
34 under the influence of intoxicating  
35 liquor or any drug (RCW  
36 79A.60.050)

1 Inciting Criminal Profiteering (RCW  
2 9A.82.060(1)(b))  
3 Malicious placement of an explosive 2  
4 (RCW 70.74.270(2))  
5 Over 18 and deliver narcotic from  
6 Schedule III, IV, or V or a  
7 nonnarcotic, except flunitrazepam  
8 or methamphetamine, from  
9 Schedule I-V to someone under 18  
10 and 3 years junior (RCW  
11 69.50.406)  
12 Robbery 1 (RCW 9A.56.200)  
13 Sexual Exploitation (RCW 9.68A.040)  
14 Vehicular Homicide, by being under  
15 the influence of intoxicating  
16 liquor or any drug (RCW  
17 46.61.520)  
18 VIII Arson 1 (RCW 9A.48.020)  
19 Deliver or possess with intent to  
20 deliver methamphetamine (RCW  
21 69.50.401(a)(1)(ii))  
22 Homicide by Watercraft, by the  
23 operation of any vessel in a  
24 reckless manner (RCW  
25 79A.60.050)  
26 Manslaughter 2 (RCW 9A.32.070)  
27 Manufacture, deliver, or possess with  
28 intent to deliver amphetamine  
29 (RCW 69.50.401(a)(1)(ii))  
30 Manufacture, deliver, or possess with  
31 intent to deliver heroin or cocaine  
32 (when the offender has a criminal  
33 history in this state or any other  
34 state that includes a sex offense or  
35 serious violent offense or the  
36 Washington equivalent) (RCW  
37 69.50.401(a)(1)(i))

1 Possession of Ephedrine or any of its  
2 Salts or Isomers or Salts of  
3 Isomers, Pseudoephedrine or any  
4 of its Salts or Isomers or Salts of  
5 Isomers, Pressurized Ammonia  
6 Gas, or Pressurized Ammonia Gas  
7 Solution with intent to  
8 manufacture methamphetamine  
9 (RCW 69.50.440)

10 Promoting Prostitution 1 (RCW  
11 9A.88.070)

12 Selling for profit (controlled or  
13 counterfeit) any controlled  
14 substance (RCW 69.50.410)

15 Theft of Ammonia (RCW 69.55.010)

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

19 VII Burglary 1 (RCW 9A.52.020)

20 Child Molestation 2 (RCW 9A.44.086)

21 Civil Disorder Training (RCW  
22 9A.48.120)

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

26 Drive-by Shooting (RCW 9A.36.045)

27 Homicide by Watercraft, by disregard  
28 for the safety of others (RCW  
29 79A.60.050)

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

33 Introducing Contraband 1 (RCW  
34 9A.76.140)

35 Involving a minor in drug dealing  
36 (RCW 69.50.401(f))

1 Malicious placement of an explosive 3  
2 (RCW 70.74.270(3))  
3 Manufacture, deliver, or possess with  
4 intent to deliver heroin or cocaine  
5 (except when the offender has a  
6 criminal history in this state or  
7 any other state that includes a sex  
8 offense or serious violent offense  
9 or the Washington equivalent)  
10 (RCW 69.50.401(a)(1)(i))  
11 Sending, bringing into state depictions  
12 of minor engaged in sexually  
13 explicit conduct (RCW  
14 9.68A.060)  
15 Unlawful Possession of a Firearm in  
16 the first degree (RCW  
17 9.41.040(1)(a))  
18 Use of a Machine Gun in Commission  
19 of a Felony (RCW 9.41.225)  
20 Vehicular Homicide, by disregard for  
21 the safety of others (RCW  
22 46.61.520)  
23 VI Bail Jumping with Murder 1 (RCW  
24 9A.76.170(3)(a))  
25 Bribery (RCW 9A.68.010)  
26 Incest 1 (RCW 9A.64.020(1))  
27 Intimidating a Judge (RCW  
28 9A.72.160)  
29 Intimidating a Juror/Witness (RCW  
30 9A.72.110, 9A.72.130)  
31 Malicious placement of an imitation  
32 device 2 (RCW 70.74.272(1)(b))

1 Manufacture, deliver, or possess with  
2 intent to deliver narcotics from  
3 Schedule I or II (except heroin or  
4 cocaine) or flunitrazepam from  
5 Schedule IV (RCW  
6 69.50.401(a)(1)(i))  
7 Rape of a Child 3 (RCW 9A.44.079)  
8 Theft of a Firearm (RCW 9A.56.300)  
9 Unlawful Storage of Ammonia (RCW  
10 69.55.020)  
11 V Abandonment of dependent person 1  
12 (RCW 9A.42.060)  
13 Advancing money or property for  
14 extortionate extension of credit  
15 (RCW 9A.82.030)  
16 Bail Jumping with class A Felony  
17 (RCW 9A.76.170(3)(b))  
18 Child Molestation 3 (RCW 9A.44.089)  
19 Criminal Mistreatment 1 (RCW  
20 9A.42.020)  
21 Custodial Sexual Misconduct 1 (RCW  
22 9A.44.160)  
23 Delivery of imitation controlled  
24 substance by person eighteen or  
25 over to person under eighteen  
26 (RCW 69.52.030(2))  
27 Domestic Violence Court Order  
28 Violation (RCW 10.99.040,  
29 10.99.050, 26.09.300, 26.10.220,  
30 26.26.138, 26.50.110, 26.52.070,  
31 or 74.34.145)  
32 Extortion 1 (RCW 9A.56.120)  
33 Extortionate Extension of Credit  
34 (RCW 9A.82.020)  
35 Extortionate Means to Collect  
36 Extensions of Credit (RCW  
37 9A.82.040)

1 Incest 2 (RCW 9A.64.020(2))  
2 Kidnapping 2 (RCW 9A.40.030)  
3 Perjury 1 (RCW 9A.72.020)  
4 Persistent prison misbehavior (RCW  
5 9.94.070)  
6 Possession of a Stolen Firearm (RCW  
7 9A.56.310)  
8 Rape 3 (RCW 9A.44.060)  
9 Rendering Criminal Assistance 1  
10 (RCW 9A.76.070)  
11 Sexual Misconduct with a Minor 1  
12 (RCW 9A.44.093)  
13 Sexually Violating Human Remains  
14 (RCW 9A.44.105)  
15 Stalking (RCW 9A.46.110)  
16 Taking Motor Vehicle Without  
17 Permission 1 (RCW  
18 9A.56.070(1))  
19 IV Arson 2 (RCW 9A.48.030)  
20 Assault 2 (RCW 9A.36.021)  
21 Assault by Watercraft (RCW  
22 79A.60.060)  
23 Bribing a Witness/Bribe Received by  
24 Witness (RCW 9A.72.090,  
25 9A.72.100)  
26 Cheating 1 (RCW 9.46.1961)  
27 Commercial Bribery (RCW  
28 9A.68.060)  
29 Counterfeiting (RCW 9.16.035(4))  
30 Endangerment with a Controlled  
31 Substance (RCW 9A.42.100)  
32 Escape 1 (RCW 9A.76.110)  
33 Hit and Run--Injury (RCW  
34 46.52.020(4)(b))  
35 Hit and Run with Vessel--Injury  
36 Accident (RCW 79A.60.200(3))  
37 Identity Theft 1 (RCW 9.35.020(2)(a))



1 Indecent Exposure to Person Under  
2 Age Fourteen (subsequent sex  
3 offense) (RCW 9A.88.010)  
4 Influencing Outcome of Sporting  
5 Event (RCW 9A.82.070)  
6 Knowingly Trafficking in Stolen  
7 Property (RCW 9A.82.050(2))  
8 Malicious Harassment (RCW  
9 9A.36.080)  
10 Manufacture, deliver, or possess with  
11 intent to deliver narcotics from  
12 Schedule III, IV, or V or  
13 nonnarcotics from Schedule I-V  
14 (except marijuana, amphetamine,  
15 methamphetamines, or  
16 flunitrazepam) (RCW  
17 69.50.401(a)(1) (iii) through (v))  
18 Residential Burglary (RCW  
19 9A.52.025)  
20 Robbery 2 (RCW 9A.56.210)  
21 Theft of Livestock 1 (RCW 9A.56.080)  
22 Threats to Bomb (RCW 9.61.160)  
23 Use of Proceeds of Criminal  
24 Profiteering (RCW 9A.82.080 (1)  
25 and (2))  
26 Vehicular Assault, by being under the  
27 influence of intoxicating liquor or  
28 any drug, or by the operation or  
29 driving of a vehicle in a reckless  
30 manner (RCW 46.61.522)  
31 Willful Failure to Return from  
32 Furlough (RCW 72.66.060)  
33 III Abandonment of dependent person 2  
34 (RCW 9A.42.070)  
35 Assault 3 (RCW 9A.36.031)  
36 Assault of a Child 3 (RCW 9A.36.140)

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

1 Possession of Incendiary Device (RCW  
2 9.40.120)  
3 Possession of Machine Gun or Short-  
4 Barreled Shotgun or Rifle (RCW  
5 9.41.190)  
6 Promoting Prostitution 2 (RCW  
7 9A.88.080)  
8 Recklessly Trafficking in Stolen  
9 Property (RCW 9A.82.050(1))  
10 Securities Act violation (RCW  
11 21.20.400)  
12 Tampering with a Witness (RCW  
13 9A.72.120)  
14 Telephone Harassment (subsequent  
15 conviction or threat of death)  
16 (RCW 9.61.230)  
17 Theft of Livestock 2 (RCW 9A.56.080)  
18 Unlawful Imprisonment (RCW  
19 9A.40.040)  
20 Unlawful possession of firearm in the  
21 second degree (RCW  
22 9.41.040(1)(b))  
23 Unlawful Use of Building for Drug  
24 Purposes (RCW 69.53.010)  
25 Vehicular Assault, by the operation or  
26 driving of a vehicle with disregard  
27 for the safety of others (RCW  
28 46.61.522)  
29 Willful Failure to Return from Work  
30 Release (RCW 72.65.070)  
31 II Computer Trespass 1 (RCW  
32 9A.52.110)  
33 Counterfeiting (RCW 9.16.035(3))  
34 Create, deliver, or possess a counterfeit  
35 controlled substance (RCW  
36 69.50.401(b))

1 Escape from Community Custody  
2 (RCW 72.09.310)  
3 Health Care False Claims (RCW  
4 48.80.030)  
5 Identity Theft 2 (RCW 9.35.020(2)(b))  
6 Improperly Obtaining Financial  
7 Information (RCW 9.35.010)  
8 Malicious Mischief 1 (RCW  
9 9A.48.070)  
10 Possession of controlled substance that  
11 is either heroin or narcotics from  
12 Schedule I or II or flunitrazepam  
13 from Schedule IV (RCW  
14 69.50.401(d))  
15 Possession of phencyclidine (PCP)  
16 (RCW 69.50.401(d))  
17 Possession of Stolen Property 1 (RCW  
18 9A.56.150)  
19 Theft 1 (RCW 9A.56.030)  
20 Theft of Rental, Leased, or Lease-  
21 purchased Property (valued at one  
22 thousand five hundred dollars or  
23 more) (RCW 9A.56.096(4))  
24 Trafficking in Insurance Claims (RCW  
25 48.30A.015)  
26 Unlawful Practice of Law (RCW  
27 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)

1 Malicious Mischief 2 (RCW  
2 9A.48.080)  
3 Possess Controlled Substance that is a  
4 Narcotic from Schedule III, IV, or  
5 V or Non-narcotic from Schedule  
6 I-V (except phencyclidine or  
7 flunitrazepam) (RCW  
8 69.50.401(d))  
9 Possession of Stolen Property 2 (RCW  
10 9A.56.160)  
11 Reckless Burning 1 (RCW 9A.48.040)  
12 Taking Motor Vehicle Without  
13 Permission 2 (RCW  
14 9A.56.070(2))  
15 Theft 2 (RCW 9A.56.040)  
16 Theft of Rental, Leased, or Lease-  
17 purchased Property (valued at two  
18 hundred fifty dollars or more but  
19 less than one thousand five  
20 hundred dollars) (RCW  
21 9A.56.096(4))  
22 Unlawful Issuance of Checks or Drafts  
23 (RCW 9A.56.060)  
24 Unlawful Use of Food Stamps (RCW  
25 9.91.140 (2) and (3))  
26 Vehicle Prowl 1 (RCW 9A.52.095)

27 **Sec. 3.** RCW 9.94A.515 and 2002 c 340 s 2, 2002 c 324 s 2, 2002 c  
28 290 s 7, 2002 c 253 s 4, 2002 c 229 s 2, 2002 c 134 s 2, and 2002 c 133  
29 s 4 are each reenacted and amended to read as follows:

30 TABLE 2  
31 CRIMES INCLUDED WITHIN  
32 EACH SERIOUSNESS LEVEL

33	XVI	Aggravated Murder 1 (RCW
34		10.95.020)
35	XV	Homicide by abuse (RCW 9A.32.055)

1 Malicious explosion 1 (RCW  
2 70.74.280(1))  
3 Murder 1 (RCW 9A.32.030)  
4 XIV Murder 2 (RCW 9A.32.050)  
5 Trafficking 1 (section 1(1) of this act)  
6 XIII Malicious explosion 2 (RCW  
7 70.74.280(2))  
8 Malicious placement of an explosive 1  
9 (RCW 70.74.270(1))  
10 XII Assault 1 (RCW 9A.36.011)  
11 Assault of a Child 1 (RCW 9A.36.120)  
12 Malicious placement of an imitation  
13 device 1 (RCW 70.74.272(1)(a))  
14 Rape 1 (RCW 9A.44.040)  
15 Rape of a Child 1 (RCW 9A.44.073)  
16 XI Manslaughter 1 (RCW 9A.32.060)  
17 Rape 2 (RCW 9A.44.050)  
18 Rape of a Child 2 (RCW 9A.44.076)  
19 X Child Molestation 1 (RCW 9A.44.083)  
20 Indecent Liberties (with forcible  
21 compulsion) (RCW  
22 9A.44.100(1)(a))  
23 Kidnapping 1 (RCW 9A.40.020)  
24 Leading Organized Crime (RCW  
25 9A.82.060(1)(a))  
26 Malicious explosion 3 (RCW  
27 70.74.280(3))  
28 Sexually Violent Predator Escape  
29 (RCW 9A.76.115)  
30 Trafficking 2 (section 1(2) of this act)  
31 IX Assault of a Child 2 (RCW 9A.36.130)  
32 Explosive devices prohibited (RCW  
33 70.74.180)  
34 Hit and Run--Death (RCW  
35 46.52.020(4)(a))

1 Homicide by Watercraft, by being  
2 under the influence of intoxicating  
3 liquor or any drug (RCW  
4 79A.60.050)  
5 Inciting Criminal Profiteering (RCW  
6 9A.82.060(1)(b))  
7 Malicious placement of an explosive 2  
8 (RCW 70.74.270(2))  
9 Robbery 1 (RCW 9A.56.200)  
10 Sexual Exploitation (RCW 9.68A.040)  
11 Vehicular Homicide, by being under  
12 the influence of intoxicating  
13 liquor or any drug (RCW  
14 46.61.520)  
15 VIII Arson 1 (RCW 9A.48.020)  
16 Homicide by Watercraft, by the  
17 operation of any vessel in a  
18 reckless manner (RCW  
19 79A.60.050)  
20 Manslaughter 2 (RCW 9A.32.070)  
21 Promoting Prostitution 1 (RCW  
22 9A.88.070)  
23 Theft of Ammonia (RCW 69.55.010)  
24 Vehicular Homicide, by the operation  
25 of any vehicle in a reckless  
26 manner (RCW 46.61.520)  
27 VII Burglary 1 (RCW 9A.52.020)  
28 Child Molestation 2 (RCW 9A.44.086)  
29 Civil Disorder Training (RCW  
30 9A.48.120)  
31 Dealing in depictions of minor  
32 engaged in sexually explicit  
33 conduct (RCW 9.68A.050)  
34 Drive-by Shooting (RCW 9A.36.045)  
35 Homicide by Watercraft, by disregard  
36 for the safety of others (RCW  
37 79A.60.050)

1 Indecent Liberties (without forcible  
2 compulsion) (RCW 9A.44.100(1)  
3 (b) and (c))  
4 Introducing Contraband 1 (RCW  
5 9A.76.140)  
6 Malicious placement of an explosive 3  
7 (RCW 70.74.270(3))  
8 Sending, bringing into state depictions  
9 of minor engaged in sexually  
10 explicit conduct (RCW  
11 9.68A.060)  
12 Unlawful Possession of a Firearm in  
13 the first degree (RCW  
14 9.41.040(1)(a))  
15 Use of a Machine Gun in Commission  
16 of a Felony (RCW 9.41.225)  
17 Vehicular Homicide, by disregard for  
18 the safety of others (RCW  
19 46.61.520)  
20 VI Bail Jumping with Murder 1 (RCW  
21 9A.76.170(3)(a))  
22 Bribery (RCW 9A.68.010)  
23 Incest 1 (RCW 9A.64.020(1))  
24 Intimidating a Judge (RCW  
25 9A.72.160)  
26 Intimidating a Juror/Witness (RCW  
27 9A.72.110, 9A.72.130)  
28 Malicious placement of an imitation  
29 device 2 (RCW 70.74.272(1)(b))  
30 Rape of a Child 3 (RCW 9A.44.079)  
31 Theft of a Firearm (RCW 9A.56.300)  
32 Unlawful Storage of Ammonia (RCW  
33 69.55.020)  
34 V Abandonment of dependent person 1  
35 (RCW 9A.42.060)



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

1 Taking Motor Vehicle Without  
2 Permission 1 (RCW  
3 9A.56.070(1))  
4 IV Arson 2 (RCW 9A.48.030)  
5 Assault 2 (RCW 9A.36.021)  
6 Assault by Watercraft (RCW  
7 79A.60.060)  
8 Bribing a Witness/Bribe Received by  
9 Witness (RCW 9A.72.090,  
10 9A.72.100)  
11 Cheating 1 (RCW 9.46.1961)  
12 Commercial Bribery (RCW  
13 9A.68.060)  
14 Counterfeiting (RCW 9.16.035(4))  
15 Endangerment with a Controlled  
16 Substance (RCW 9A.42.100)  
17 Escape 1 (RCW 9A.76.110)  
18 Hit and Run--Injury (RCW  
19 46.52.020(4)(b))  
20 Hit and Run with Vessel--Injury  
21 Accident (RCW 79A.60.200(3))  
22 Identity Theft 1 (RCW 9.35.020(2)(a))  
23 Indecent Exposure to Person Under  
24 Age Fourteen (subsequent sex  
25 offense) (RCW 9A.88.010)  
26 Influencing Outcome of Sporting  
27 Event (RCW 9A.82.070)  
28 Knowingly Trafficking in Stolen  
29 Property (RCW 9A.82.050(2))  
30 Malicious Harassment (RCW  
31 9A.36.080)  
32 Residential Burglary (RCW  
33 9A.52.025)  
34 Robbery 2 (RCW 9A.56.210)  
35 Theft of Livestock 1 (RCW 9A.56.080)  
36 Threats to Bomb (RCW 9.61.160)

1 Use of Proceeds of Criminal  
2 Profiteering (RCW 9A.82.080 (1)  
3 and (2))  
4 Vehicular Assault, by being under the  
5 influence of intoxicating liquor or  
6 any drug, or by the operation or  
7 driving of a vehicle in a reckless  
8 manner (RCW 46.61.522)  
9 Willful Failure to Return from  
10 Furlough (RCW 72.66.060)  
11 III Abandonment of dependent person 2  
12 (RCW 9A.42.070)  
13 Assault 3 (RCW 9A.36.031)  
14 Assault of a Child 3 (RCW 9A.36.140)  
15 Bail Jumping with class B or C Felony  
16 (RCW 9A.76.170(3)(c))  
17 Burglary 2 (RCW 9A.52.030)  
18 Communication with a Minor for  
19 Immoral Purposes (RCW  
20 9.68A.090)  
21 Criminal Gang Intimidation (RCW  
22 9A.46.120)  
23 Criminal Mistreatment 2 (RCW  
24 9A.42.030)  
25 Custodial Assault (RCW 9A.36.100)  
26 Escape 2 (RCW 9A.76.120)  
27 Extortion 2 (RCW 9A.56.130)  
28 Harassment (RCW 9A.46.020)  
29 Intimidating a Public Servant (RCW  
30 9A.76.180)  
31 Introducing Contraband 2 (RCW  
32 9A.76.150)  
33 Malicious Injury to Railroad Property  
34 (RCW 81.60.070)  
35 Patronizing a Juvenile Prostitute  
36 (RCW 9.68A.100)  
37 Perjury 2 (RCW 9A.72.030)

1 Possession of Incendiary Device (RCW  
2 9.40.120)  
3 Possession of Machine Gun or Short-  
4 Barreled Shotgun or Rifle (RCW  
5 9.41.190)  
6 Promoting Prostitution 2 (RCW  
7 9A.88.080)  
8 Recklessly Trafficking in Stolen  
9 Property (RCW 9A.82.050(1))  
10 Securities Act violation (RCW  
11 21.20.400)  
12 Tampering with a Witness (RCW  
13 9A.72.120)  
14 Telephone Harassment (subsequent  
15 conviction or threat of death)  
16 (RCW 9.61.230)  
17 Theft of Livestock 2 (RCW 9A.56.080)  
18 Unlawful Imprisonment (RCW  
19 9A.40.040)  
20 Unlawful possession of firearm in the  
21 second degree (RCW  
22 9.41.040(1)(b))  
23 Vehicular Assault, by the operation or  
24 driving of a vehicle with disregard  
25 for the safety of others (RCW  
26 46.61.522)  
27 Willful Failure to Return from Work  
28 Release (RCW 72.65.070)  
29 II Computer Trespass 1 (RCW  
30 9A.52.110)  
31 Counterfeiting (RCW 9.16.035(3))  
32 Escape from Community Custody  
33 (RCW 72.09.310)  
34 Health Care False Claims (RCW  
35 48.80.030)  
36 Identity Theft 2 (RCW 9.35.020(2)(b))

1 Improperly Obtaining Financial  
2 Information (RCW 9.35.010)  
3 Malicious Mischief 1 (RCW  
4 9A.48.070)  
5 Possession of Stolen Property 1 (RCW  
6 9A.56.150)  
7 Theft 1 (RCW 9A.56.030)  
8 Theft of Rental, Leased, or Lease-  
9 purchased Property (valued at one  
10 thousand five hundred dollars or  
11 more) (RCW 9A.56.096(4))  
12 Trafficking in Insurance Claims (RCW  
13 48.30A.015)  
14 Unlawful Practice of Law (RCW  
15 2.48.180)  
16 Unlicensed Practice of a Profession or  
17 Business (RCW 18.130.190(7))  
18 I Attempting to Elude a Pursuing Police  
19 Vehicle (RCW 46.61.024)  
20 False Verification for Welfare (RCW  
21 74.08.055)  
22 Forgery (RCW 9A.60.020)  
23 Malicious Mischief 2 (RCW  
24 9A.48.080)  
25 Possession of Stolen Property 2 (RCW  
26 9A.56.160)  
27 Reckless Burning 1 (RCW 9A.48.040)  
28 Taking Motor Vehicle Without  
29 Permission 2 (RCW  
30 9A.56.070(2))  
31 Theft 2 (RCW 9A.56.040)  
32 Theft of Rental, Leased, or Lease-  
33 purchased Property (valued at two  
34 hundred fifty dollars or more but  
35 less than one thousand five  
36 hundred dollars) (RCW  
37 9A.56.096(4))

1 Unlawful Issuance of Checks or Drafts  
2 (RCW 9A.56.060)  
3 Unlawful Use of Food Stamps (RCW  
4 9.91.140 (2) and (3))  
5 Vehicle Prowl 1 (RCW 9A.52.095)

6 **Sec. 4.** RCW 9.94A.535 and 2002 c 169 s 1 are each amended to read  
7 as follows:

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

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

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

28 The following are illustrative factors which the court may consider  
29 in the exercise of its discretion to impose an exceptional sentence.  
30 The following are illustrative only and are not intended to be  
31 exclusive reasons for exceptional sentences.

32 (1) Mitigating Circumstances

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

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

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

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

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

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

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

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

19 (2) Aggravating Circumstances

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (i) The operation of the multiple offense policy of RCW 9.94A.589



1 results in a presumptive sentence that is clearly too lenient in light  
2 of the purpose of this chapter, as expressed in RCW 9.94A.010.

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

7 (k) The offense resulted in the pregnancy of a child victim of  
8 rape.

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

13 (m) The offense was committed with the intent to obstruct or impair  
14 human or animal health care or agricultural or forestry research or  
15 commercial production.

16 (n) The current offense is trafficking in the first degree or  
17 trafficking in the second degree and any victim was a minor at the time  
18 of the offense.

19 **Sec. 5.** RCW 9A.82.010 and 2001 c 222 s 3 and 2001 c 217 s 11 are  
20 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

6 (4) "Criminal profiteering" means any act, including any  
7 anticipatory or completed offense, committed for financial gain, or an  
8 offense, including an anticipatory or completed offense, that is  
9 defined in section 1 of this act, whether or not committed for  
10 financial gain, that is chargeable or indictable under the laws of the  
11 state in which the act occurred and, if the act occurred in a state  
12 other than this state, would be chargeable or indictable under the laws  
13 of this state had the act occurred in this state and punishable as a  
14 felony and by imprisonment for more than one year, regardless of  
15 whether the act is 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

1 with intent to deliver or manufacture controlled substances under  
2 chapter 69.50 RCW;

3 (q) Trafficking in stolen property, as defined in RCW 9A.82.050;

4 (r) Leading organized crime, as defined in RCW 9A.82.060;

5 (s) Money laundering, as defined in RCW 9A.83.020;

6 (t) Obstructing criminal investigations or prosecutions in  
7 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,  
8 9A.76.070, or 9A.76.180;

9 (u) Fraud in the purchase or sale of securities, as defined in RCW  
10 21.20.010;

11 (v) Promoting pornography, as defined in RCW 9.68.140;

12 (w) Sexual exploitation of children, as defined in RCW 9.68A.040,  
13 9.68A.050, and 9.68A.060;

14 (x) Promoting prostitution, as defined in RCW 9A.88.070 and  
15 9A.88.080;

16 (y) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

17 (z) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

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

19 (bb) A pattern of equity skimming, as defined in RCW 61.34.020;

20 (cc) Commercial telephone solicitation in violation of RCW  
21 19.158.040(1);

22 (dd) Trafficking in insurance claims, as defined in RCW 48.30A.015;

23 (ee) Unlawful practice of law, as defined in RCW 2.48.180;

24 (ff) Commercial bribery, as defined in RCW 9A.68.060;

25 (gg) Health care false claims, as defined in RCW 48.80.030;

26 (hh) Unlicensed practice of a profession or business, as defined in  
27 RCW 18.130.190(7);

28 (ii) Improperly obtaining financial information, as defined in RCW  
29 9.35.010; (~~(e)~~)

30 (jj) Identity theft, as defined in RCW 9.35.020;

31 (kk) Trafficking, as defined in section 1 of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (ii) A trustee of any testamentary trust;  
2 (iii) A trustee of any indenture of trust under which a bond is  
3 issued; or  
4 (iv) A trustee under a deed of trust.

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

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

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

11 (ii) Chapter 9.46 RCW relating to gambling;

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

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

16 **Sec. 6.** RCW 9A.82.090 and 2001 c 222 s 13 are each amended to read  
17 as follows:

18 During the pendency of any criminal case charging a violation of  
19 RCW 9A.82.060 or (~~a violation of RCW~~) 9A.82.080, or an offense  
20 defined in section 1 of this act whether or not committed for financial  
21 gain, the superior court may, in addition to its other powers, issue an  
22 order pursuant to RCW 9A.82.100 (2) or (3). Upon conviction of a  
23 person for a violation of RCW 9A.82.060 or (~~a violation of RCW~~)  
24 9A.82.080, or an offense defined in section 1 of this act whether or  
25 not committed for financial gain, the superior court may, in addition  
26 to its other powers of disposition, issue an order pursuant to RCW  
27 9A.82.100.

28 **Sec. 7.** RCW 9A.82.100 and 2001 c 222 s 14 are each amended to read  
29 as follows:

30 (1)(a) A person who sustains injury to his or her person, business,  
31 or property by an act of criminal profiteering that is part of a  
32 pattern of criminal profiteering activity, or by an offense defined in  
33 section 1 of this act whether or not committed for financial gain, or  
34 by a violation of RCW 9A.82.060 or 9A.82.080 may file an action in  
35 superior court for the recovery of damages and the costs of the suit,  
36 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 an offense defined in section 1 of this act 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 an offense defined in section 1 of  
14 this act 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 an offense defined in  
21 section 1 of this act 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

1 acquired or used in such a way as to be subject to forfeiture under RCW  
2 9A.82.100(4)(f).

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

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

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

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

13 (d) Ordering the payment of actual damages sustained to those  
14 persons injured by a violation of RCW 9A.82.060 or 9A.82.080, or an  
15 offense defined in section 1 of this act whether or not committed for  
16 financial gain, or an act of criminal profiteering that is part of a  
17 pattern of criminal profiteering, and in the court's discretion,  
18 increasing the payment to an amount not exceeding three times the  
19 actual damages sustained.

20 (e) Ordering the payment of all costs and expenses of the  
21 prosecution and investigation of a pattern of criminal profiteering, or  
22 an offense defined in section 1 of this act whether or not committed  
23 for financial gain, activity or a violation of RCW 9A.82.060 or  
24 9A.82.080, civil and criminal, incurred by the state or county,  
25 including any costs of defense provided at public expense, as  
26 appropriate to the state general fund or the antiprofitteering revolving  
27 fund of the county.

28 (f) Ordering forfeiture first as restitution to any person damaged  
29 by an act of criminal profiteering that is part of a pattern of  
30 criminal profiteering, or by an offense defined in section 1 of this  
31 act whether or not committed for financial gain, then to the state  
32 general fund or antiprofitteering revolving fund of the county, as  
33 appropriate, to the extent not already ordered to be paid in other  
34 damages, of the following:

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



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

5 (iii) All proceeds traceable to or derived from an offense included  
6 in the pattern of criminal profiteering activity, or an offense defined  
7 in section 1 of this act whether or not committed for financial gain,  
8 and all moneys, negotiable instruments, securities, and other things of  
9 value significantly used or intended to be used significantly to  
10 facilitate commission of the offense.

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

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

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

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

28 (c) All proceeds traceable to or derived from an offense included  
29 in the pattern of criminal profiteering activity, or an offense defined  
30 in section 1 of this act whether or not committed for financial gain,  
31 and all moneys, negotiable instruments, securities, and other things of  
32 value significantly used or intended to be used significantly to  
33 facilitate the commission of the offense.

34 (6) A defendant convicted in any criminal proceeding is precluded  
35 in any civil proceeding from denying the essential allegations of the  
36 criminal offense proven in the criminal trial in which the defendant  
37 was convicted. For the purposes of this subsection, a conviction shall  
38 be deemed to have occurred upon a verdict, finding, or plea of guilty,

1 notwithstanding the fact that appellate review of the conviction and  
2 sentence has been or may be sought. If a subsequent reversal of the  
3 conviction occurs, any judgment that was based upon that conviction may  
4 be reopened upon motion of the defendant.

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

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

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

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

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

1 (12) In addition to the attorney general's right to intervene as a  
2 party in any action under this section, the attorney general may appear  
3 as amicus curiae in any proceeding in which a claim under this section  
4 has been asserted or in which a court is interpreting RCW 9A.82.010,  
5 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

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

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

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

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

28 (1) The state, upon filing a criminal action under RCW 9A.82.060 or  
29 9A.82.080 or for an offense defined in section 1 of this act whether or  
30 not committed for financial gain, or a civil action under RCW  
31 9A.82.100, may file in accordance with this section a criminal  
32 profiteering lien. A filing fee or other charge is not required for  
33 filing a criminal profiteering lien.

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

- 1 (a) The name of the defendant whose property or other interests are  
2 to be subject to the lien;
- 3 (b) In the discretion of the attorney general or county prosecuting  
4 attorney filing the lien, any aliases or fictitious names of the  
5 defendant named in the lien;
- 6 (c) If known to the attorney general or county prosecuting attorney  
7 filing the lien, the present residence or principal place of business  
8 of the person named in the lien;
- 9 (d) A reference to the proceeding pursuant to which the lien is  
10 filed, including the name of the court, the title of the action, and  
11 the court's file number for the proceeding;
- 12 (e) The name and address of the attorney representing the state in  
13 the proceeding pursuant to which the lien is filed;
- 14 (f) A statement that the notice is being filed pursuant to this  
15 section;
- 16 (g) The amount that the state claims in the action or, with respect  
17 to property or other interests that the state has requested forfeiture  
18 to the state or county, a description of the property or interests  
19 sought to be paid or forfeited;
- 20 (h) If known to the attorney general or county prosecuting attorney  
21 filing the lien, a description of property that is subject to  
22 forfeiture to the state or property in which the defendant has an  
23 interest that is available to satisfy a judgment entered in favor of  
24 the state; and
- 25 (i) Such other information as the attorney general or county  
26 prosecuting attorney filing the lien deems appropriate.
- 27 (3) The attorney general or the county prosecuting attorney filing  
28 the lien may amend a lien filed under this section at any time by  
29 filing an amended criminal profiteering lien in accordance with this  
30 section that identifies the prior lien amended.
- 31 (4) The attorney general or the county prosecuting attorney filing  
32 the lien shall, as soon as practical after filing a criminal  
33 profiteering lien, furnish to any person named in the lien a notice of  
34 the filing of the lien. Failure to furnish notice under this  
35 subsection does not invalidate or otherwise affect a criminal  
36 profiteering lien filed in accordance with this section.
- 37 (5)(a) A criminal profiteering lien is perfected against interests  
38 in personal property in the same manner as a security interest in like

1 property pursuant to RCW ((~~62A.9-302, 62A.9-303, 62A.9-304, 62A.9-305,~~  
2 ~~and 62A.9-306~~) 62A.9A-301 through 62A.9A-316 or as otherwise required  
3 to perfect a security interest in like property under applicable law.  
4 In the case of perfection by filing, the state shall file, in lieu of  
5 a financing statement in the form prescribed by RCW ((~~62A.9-402~~)  
6 62A.9A-502, a notice of lien in substantially the following form:

7 NOTICE OF LIEN

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

11 Name: .....  
12 Address: .....  
13 .....  
14 State of Washington  
15 .....  
16 By (authorized signature)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 NEW SECTION. **Sec. 9.** Section 2 of this act expires July 1, 2004.

10 NEW SECTION. **Sec. 10.** Section 3 of this act takes effect July 1,  
11 2004.

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