
HOUSE BILL 1999

State of Washington

68th Legislature

2024 Regular Session

By Representatives Orwall, Leavitt, Ryu, Duerr, Ramos, Morgan, Taylor, Ormsby, Graham, Callan, Rule, Street, Lekanoff, Reeves, Shavers, and Davis

Prefiled 12/20/23. Read first time 01/08/24. Referred to Committee on Community Safety, Justice, & Reentry.

1 AN ACT Relating to fabricated intimate or sexually explicit
2 images and depictions; amending RCW 9.68A.011, 9.68A.055, 9.68A.080,
3 9.68A.107, 9.68A.110, 9.68A.120, 9.68A.170, 9.68A.180, 9.68A.190,
4 9A.86.010, 9A.86.020, 7.110.010, 7.110.020, 7.110.030, 7.110.050, and
5 7.110.060; reenacting and amending RCW 9.94A.515; adding new sections
6 to chapter 9.68A RCW; adding a new section to chapter 9A.86 RCW;
7 adding a new section to chapter 7.110 RCW; and prescribing penalties.

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

9 **Sec. 1.** RCW 9.68A.011 and 2010 c 227 s 3 are each amended to
10 read as follows:

11 Unless the context clearly indicates otherwise, the definitions
12 in this section apply throughout this chapter.

13 (1) An "internet session" means a period of time during which an
14 internet user, using a specific internet protocol address, visits or
15 is logged into an internet site for an uninterrupted period of time.

16 (2) To "photograph" means to make a print, negative, slide,
17 digital image, motion picture, or videotape. A "photograph" means
18 anything tangible or intangible produced by photographing.

19 (3) "Visual or printed matter" means any photograph or other
20 material that contains a reproduction of a photograph.

21 (4) "Sexually explicit conduct" means actual or simulated:

1 (a) Sexual intercourse, including genital-genital, oral-genital,
2 anal-genital, or oral-anal, whether between persons of the same or
3 opposite sex or between humans and animals;

4 (b) Penetration of the vagina or rectum by any object;

5 (c) Masturbation;

6 (d) Sadomasochistic abuse;

7 (e) Defecation or urination for the purpose of sexual stimulation
8 of the viewer;

9 (f) Depiction of the genitals or unclothed pubic or rectal areas
10 of any minor, or the unclothed breast of a female minor, for the
11 purpose of sexual stimulation of the viewer. For the purposes of this
12 subsection (4)(f), it is not necessary that the minor know that he or
13 she is participating in the described conduct, or any aspect of it;
14 and

15 (g) Touching of a person's clothed or unclothed genitals, pubic
16 area, buttocks, or breast area for the purpose of sexual stimulation
17 of the viewer.

18 (5) "Minor" means any person under eighteen years of age.

19 (6) "Live performance" means any play, show, skit, dance, or
20 other exhibition performed or presented to or before an audience of
21 one or more, with or without consideration.

22 (7) "Fabricated depiction of a minor" and "fabricated depiction"
23 mean any visual or printed matter that depicts a minor who is
24 identifiable from the matter itself or from information displayed
25 with or otherwise connected to the matter, and that was created or
26 altered by digitization to depict the minor engaging in sexually
27 explicit conduct in which the minor did not actually engage.

28 (8) "Digitization" means creating or altering any visual or
29 printed matter depicting a minor in a realistic manner utilizing
30 images of another person or computer-generated images, regardless of
31 whether such creation or alteration is accomplished manually or
32 through an automated process. "Digitization" includes, but is not
33 limited to, creation or alteration of any visual or printed matter by
34 using artificial intelligence software.

35 NEW SECTION. Sec. 2. A new section is added to chapter 9.68A
36 RCW to read as follows:

37 (1)(a) A person 18 years of age or older commits the crime of
38 dealing in fabricated depictions of a minor engaged in sexually
39 explicit conduct in the first degree when he or she:

1 (i) Knowingly develops, duplicates, publishes, prints,
2 disseminates, exchanges, finances, attempts to finance, or sells a
3 fabricated depiction of a minor engaged in an act of sexually
4 explicit conduct as defined in RCW 9.68A.011(4) (a) through (e); or

5 (ii) Possesses with intent to develop, duplicate, publish, print,
6 disseminate, exchange, or sell any fabricated depiction of a minor
7 engaged in an act of sexually explicit conduct as defined in RCW
8 9.68A.011(4) (a) through (e).

9 (b) Dealing in fabricated depictions of a minor engaged in
10 sexually explicit conduct in the first degree is a class B felony
11 punishable under chapter 9A.20 RCW.

12 (c) For the purposes of determining the unit of prosecution under
13 this subsection, each depiction or image of visual or printed matter
14 constitutes a separate offense.

15 (2)(a) A person 18 years of age or older commits the crime of
16 dealing in fabricated depictions of a minor engaged in sexually
17 explicit conduct in the second degree when he or she:

18 (i) Knowingly develops, duplicates, publishes, prints,
19 disseminates, exchanges, finances, attempts to finance, or sells any
20 fabricated depiction of a minor engaged in an act of sexually
21 explicit conduct as defined in RCW 9.68A.011(4) (f) or (g); or

22 (ii) Possesses with intent to develop, duplicate, publish, print,
23 disseminate, exchange, or sell any fabricated depiction of a minor
24 engaged in an act of sexually explicit conduct as defined in RCW
25 9.68A.011(4) (f) or (g).

26 (b) Dealing in fabricated depictions of a minor engaged in
27 sexually explicit conduct in the second degree is a class B felony
28 punishable under chapter 9A.20 RCW.

29 (c) For the purposes of determining the unit of prosecution under
30 this subsection, each incident of dealing in one or more depictions
31 or images of visual or printed matter constitutes a separate offense.

32 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.68A
33 RCW to read as follows:

34 (1)(a)(i) A person under the age of 18 commits the crime of a
35 minor dealing in fabricated depictions of another minor 13 years of
36 age or older engaged in sexually explicit conduct in the first degree
37 when he or she knowingly distributes, publishes, transfers,
38 disseminates, or exchanges a fabricated depiction of another minor 13

1 years of age or older engaged in an act of sexually explicit conduct
2 as defined in RCW 9.68A.011(4) (a) through (e).

3 (ii) Minor dealing in fabricated depictions of another minor 13
4 years of age or older engaged in sexually explicit conduct in the
5 first degree is a gross misdemeanor.

6 (b)(i) A person under the age of 18 commits the crime of a minor
7 dealing in fabricated depictions of another minor 13 years of age or
8 older engaged in sexually explicit conduct in the second degree when
9 he or she knowingly distributes, publishes, transfers, disseminates,
10 or exchanges a fabricated depiction of another minor 13 years of age
11 or older engaged in an act of sexually explicit conduct as defined in
12 RCW 9.68A.011(4) (f) or (g).

13 (ii) Minor dealing in fabricated depictions of another minor 13
14 years of age or older engaged in sexually explicit conduct in the
15 second degree is a misdemeanor.

16 (2)(a) A person under age 18 commits the crime of minor dealing
17 in fabricated depictions of another minor 12 years of age or younger
18 engaged in sexually explicit conduct in the first degree when he or
19 she:

20 (i) Knowingly develops, duplicates, publishes, prints,
21 disseminates, exchanges, finances, attempts to finance, or sells a
22 fabricated depiction of another minor 12 years of age or younger
23 engaged in an act of sexually explicit conduct as defined in RCW
24 9.68A.011(4) (a) through (e); or

25 (ii) Possesses with intent to develop, duplicate, publish, print,
26 disseminate, exchange, or sell any fabricated depiction of another
27 minor 12 years of age or younger engaged in an act of sexually
28 explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

29 (b) Minor dealing in fabricated depictions of another minor 12
30 years of age or younger engaged in sexually explicit conduct in the
31 first degree is a class B felony punishable under chapter 9A.20 RCW.

32 (3)(a) A person under age 18 commits the crime of minor dealing
33 in fabricated depictions of another minor 12 years of age or younger
34 engaged in sexually explicit conduct in the second degree when he or
35 she:

36 (i) Knowingly develops, duplicates, publishes, prints,
37 disseminates, exchanges, finances, attempts to finance, or sells any
38 fabricated depiction of another minor 12 years of age or younger
39 engaged in an act of sexually explicit conduct as defined in RCW
40 9.68A.011(4) (f) or (g); or

1 (ii) Possesses with intent to develop, duplicate, publish, print,
2 disseminate, exchange, or sell any fabricated depiction of another
3 minor 12 years of age or younger engaged in an act of sexually
4 explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

5 (b) Minor dealing in fabricated depictions of a minor 12 years of
6 age or younger engaged in sexually explicit conduct in the second
7 degree is a class B felony punishable under chapter 9A.20 RCW.

8 (4)(a) Any person under the age of 18 commits the crime of minor
9 financing or selling fabricated depictions of another minor engaged
10 in sexually explicit conduct when he or she finances, attempts to
11 finance, or sells a fabricated depiction of another minor engaged in
12 an act of sexually explicit conduct as defined in RCW 9.68A.011(4)
13 (a) through (g).

14 (b) Minor financing or selling fabricated depictions of another
15 minor engaged in sexually explicit conduct is a class B felony
16 punishable under chapter 9A.20 RCW.

17 (5)(a) A person under the age of 18 commits the crime of minor
18 selling fabricated depictions of himself or herself engaged in
19 sexually explicit conduct when he or she sells a fabricated depiction
20 of himself or herself engaged in an act of sexually explicit conduct
21 as defined in RCW 9.68A.011(4) (a) through (g).

22 (b) Minor selling fabricated depictions of himself or herself
23 engaged in sexually explicit conduct is a misdemeanor.

24 (6) This section does not apply to a person under 18 years of age
25 who finances, attempts to finance, develops, duplicates, publishes,
26 prints, disseminates, exchanges, or possesses a fabricated depiction
27 of himself or herself engaged in an act of sexually explicit conduct
28 as defined in RCW 9.68A.011(4).

29 (7) For the purposes of determining the unit of prosecution under
30 this section, each depiction or image of visual or printed matter
31 constitutes a separate offense.

32 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.68A
33 RCW to read as follows:

34 (1)(a) Except as provided in subsections (3) and (4) of this
35 section, a person commits the crime of sending or bringing into the
36 state fabricated depictions of a minor engaged in sexually explicit
37 conduct in the first degree when he or she knowingly sends or causes
38 to be sent, or brings or causes to be brought, into this state for
39 sale or distribution, a fabricated depiction of a minor engaged in

1 sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through
2 (e).

3 (b) Sending or bringing into the state fabricated depictions of a
4 minor engaged in sexually explicit conduct in the first degree is a
5 class B felony punishable under chapter 9A.20 RCW.

6 (c) For the purposes of determining the unit of prosecution under
7 this subsection, each depiction or image of visual or printed matter
8 constitutes a separate offense.

9 (2)(a) Except as provided in subsections (3) and (4) of this
10 section, a person commits the crime of sending or bringing into the
11 state fabricated depictions of a minor engaged in sexually explicit
12 conduct in the second degree when he or she knowingly sends or causes
13 to be sent, or brings or causes to be brought, into this state for
14 sale or distribution, any fabricated depiction of a minor engaged in
15 sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

16 (b) Sending or bringing into the state fabricated depictions of a
17 minor engaged in sexually explicit conduct in the second degree is a
18 class B felony punishable under chapter 9A.20 RCW.

19 (c) For the purposes of determining the unit of prosecution under
20 this subsection, each incident of sending or bringing into the state
21 one or more depictions or images of visual or printed matter
22 constitutes a separate offense.

23 (3) This section does not apply to a minor who knowingly sends or
24 causes to be sent, or brings or causes to be brought, into this state
25 for distribution, fabricated depictions of any minor 13 years of age
26 or older engaged in sexually explicit conduct.

27 (4) This section does not apply to a person under 13 years of age
28 who knowingly sends or causes to be sent, or brings or causes to be
29 brought, into this state for distribution, fabricated depictions of
30 himself or herself engaged in sexually explicit conduct.

31 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.68A
32 RCW to read as follows:

33 (1)(a) Except as provided in subsections (3) and (4) of this
34 section, a person commits the crime of possession of fabricated
35 depictions of a minor engaged in sexually explicit conduct in the
36 first degree when he or she knowingly possesses a fabricated
37 depiction of a minor engaged in sexually explicit conduct as defined
38 in RCW 9.68A.011(4) (a) through (e).

1 (b) Possession of fabricated depictions of a minor engaged in
2 sexually explicit conduct in the first degree is a class B felony
3 punishable under chapter 9A.20 RCW.

4 (c) For the purposes of determining the unit of prosecution under
5 this subsection, each depiction or image of visual or printed matter
6 constitutes a separate offense.

7 (2)(a) Except as provided in subsections (3) and (4) of this
8 section, a person commits the crime of possession of fabricated
9 depictions of a minor engaged in sexually explicit conduct in the
10 second degree when he or she knowingly possesses any fabricated
11 depiction of a minor engaged in sexually explicit conduct as defined
12 in RCW 9.68A.011(4) (f) or (g).

13 (b) Possession of fabricated depictions of a minor engaged in
14 sexually explicit conduct in the second degree is a class B felony
15 punishable under chapter 9A.20 RCW.

16 (c) For the purposes of determining the unit of prosecution under
17 this subsection, each incident of possession of one or more
18 depictions or images of visual or printed matter constitutes a
19 separate offense.

20 (3) This section does not apply to a minor's possession of
21 fabricated depictions of any minor 13 years of age or older engaged
22 in sexually explicit conduct.

23 (4) This section does not apply to a person under 13 years of age
24 in possession of fabricated depictions of himself or herself engaged
25 in sexually explicit conduct.

26 NEW SECTION. **Sec. 6.** A new section is added to chapter 9.68A
27 RCW to read as follows:

28 (1) Except as provided in subsections (5) and (6) of this
29 section, a person who intentionally views over the internet
30 fabricated depictions of a minor engaged in sexually explicit conduct
31 as defined in RCW 9.68A.011(4) (a) through (e) is guilty of viewing
32 fabricated depictions of a minor engaged in sexually explicit conduct
33 in the first degree, a class B felony punishable under chapter 9A.20
34 RCW.

35 (2) Except as provided in subsections (5) and (6) of this
36 section, a person who intentionally views over the internet visual or
37 printed matter depicting a minor engaged in sexually explicit conduct
38 as defined in RCW 9.68A.011(4) (f) or (g) is guilty of viewing

1 depictions of a minor engaged in sexually explicit conduct in the
2 second degree, a class C felony punishable under chapter 9A.20 RCW.

3 (3) For the purposes of determining whether a person
4 intentionally viewed over the internet a fabricated depiction of a
5 minor engaged in sexually explicit conduct in subsection (1) or (2)
6 of this section, the trier of fact shall consider the title, text,
7 and content of the visual or printed matter, as well as the internet
8 history, search terms, thumbnail images, downloading activity, expert
9 computer forensic testimony, number of fabricated depictions of
10 minors engaged in sexually explicit conduct, defendant's access to
11 and control over the electronic device and its contents upon which
12 the visual or printed matter was found, or any other relevant
13 evidence. The state must prove beyond a reasonable doubt that the
14 viewing was initiated by the user of the computer where the viewing
15 occurred.

16 (4) For the purposes of this section, each separate internet
17 session of intentionally viewing over the internet fabricated
18 depictions of a minor engaged in sexually explicit conduct
19 constitutes a separate offense.

20 (5) This section does not apply to a minor who intentionally
21 views over the internet fabricated depictions of a minor 13 years of
22 age or older engaged in sexually explicit conduct.

23 (6) This section does not apply to a person under 13 years of age
24 who intentionally views over the internet fabricated depictions of
25 himself or herself engaged in sexually explicit conduct.

26 **Sec. 7.** RCW 9.68A.055 and 2019 c 128 s 9 are each amended to
27 read as follows:

28 A minor who possesses any depiction or depictions of any other
29 minor engaged in an act of sexually explicit conduct, including any
30 fabricated depiction or depictions of any other minor engaged in
31 sexually explicit conduct, as defined in RCW 9.68A.011 forfeits any
32 right to continued possession of the depiction or depictions and any
33 court exercising jurisdiction over such depiction or depictions shall
34 order forfeiture of the depiction or depictions to the custody of law
35 enforcement.

36 **Sec. 8.** RCW 9.68A.080 and 2002 c 70 s 2 are each amended to read
37 as follows:

1 (1) A person who, in the course of processing or producing visual
2 or printed matter either privately or commercially, has reasonable
3 cause to believe that the visual or printed matter submitted for
4 processing or producing depicts a minor engaged in sexually explicit
5 conduct, including any fabricated depictions, shall immediately
6 report such incident, or cause a report to be made, to the proper law
7 enforcement agency. Persons failing to do so are guilty of a gross
8 misdemeanor.

9 (2) If, in the course of repairing, modifying, or maintaining a
10 computer that has been submitted either privately or commercially for
11 repair, modification, or maintenance, a person has reasonable cause
12 to believe that the computer stores visual or printed matter that
13 depicts a minor engaged in sexually explicit conduct, including any
14 fabricated depictions, the person performing the repair,
15 modification, or maintenance may report such incident, or cause a
16 report to be made, to the proper law enforcement agency.

17 (3) A person who makes a report in good faith under this section
18 is immune from civil liability resulting from the report.

19 **Sec. 9.** RCW 9.68A.107 and 2015 c 279 s 2 are each amended to
20 read as follows:

21 (1) In addition to penalties set forth in RCW 9.68A.070 and
22 section 5 of this act, a person who is convicted of violating RCW
23 9.68A.070 or section 5 of this act shall be assessed a fee of one
24 thousand dollars for each depiction or image of visual or printed
25 matter that constitutes a separate conviction.

26 (2) Fees assessed under this section shall be collected by the
27 clerk of the court and remitted to the state treasurer for deposit
28 into the child rescue fund created in RCW 9.68A.200.

29 **Sec. 10.** RCW 9.68A.110 and 2011 c 241 s 4 are each amended to
30 read as follows:

31 (1) In a prosecution under RCW 9.68A.040, it is not a defense
32 that the defendant was involved in activities of law enforcement and
33 prosecution agencies in the investigation and prosecution of criminal
34 offenses. Law enforcement and prosecution agencies shall not employ
35 minors to aid in the investigation of a violation of RCW 9.68A.090 or
36 9.68A.100 through 9.68A.102, except for the purpose of facilitating
37 an investigation where the minor is also the alleged victim and the:

1 (a) Investigation is authorized pursuant to RCW
2 9.73.230(1)(b)(ii) or 9.73.210(1)(b); or

3 (b) Minor's aid in the investigation involves only telephone or
4 electronic communication with the defendant.

5 (2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070,
6 (~~(e)~~) 9.68A.080, or section 2, 4, or 5 of this act, it is not a
7 defense that the defendant did not know the age of the child depicted
8 in the visual or printed matter. It is a defense, which the defendant
9 must prove by a preponderance of the evidence, that at the time of
10 the offense the defendant was not in possession of any facts on the
11 basis of which he or she should reasonably have known that the person
12 depicted was a minor.

13 (3) In a prosecution under RCW 9.68A.040, 9.68A.090, 9.68A.100,
14 9.68A.101, or 9.68A.102, it is not a defense that the defendant did
15 not know the alleged victim's age. It is a defense, which the
16 defendant must prove by a preponderance of the evidence, that at the
17 time of the offense, the defendant made a reasonable bona fide
18 attempt to ascertain the true age of the minor by requiring
19 production of a driver's license, marriage license, birth
20 certificate, or other governmental or educational identification card
21 or paper and did not rely solely on the oral allegations or apparent
22 age of the minor.

23 (4) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070,
24 (~~(e)~~) 9.68A.075, or section 2, 4, 5, or 6 of this act, it shall be
25 an affirmative defense that the defendant was a law enforcement
26 officer or a person specifically authorized, in writing, to assist a
27 law enforcement officer and acting at the direction of a law
28 enforcement officer in the process of conducting an official
29 investigation of a sex-related crime against a minor, or that the
30 defendant was providing individual case treatment as a recognized
31 medical facility or as a psychiatrist or psychologist licensed under
32 Title 18 RCW. Nothing in chapter 227, Laws of 2010 is intended to in
33 any way affect or diminish the immunity afforded an electronic
34 communication service provider, remote computing service provider, or
35 domain name registrar acting in the performance of its reporting or
36 preservation responsibilities under 18 U.S.C. Secs. 2258a, 2258b, or
37 2258c.

38 (5) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070,
39 or 9.68A.075, the state is not required to establish the identity of
40 the alleged victim.

1 (6) In a prosecution under RCW 9.68A.070 (~~(e)~~), 9.68A.075, or
2 section 5 or 6 of this act, it shall be an affirmative defense that:

3 (a) The defendant was employed at or conducting research in
4 partnership or in cooperation with any institution of higher
5 education as defined in RCW 28B.07.020 or 28B.10.016, and:

6 (i) He or she was engaged in a research activity;

7 (ii) The research activity was specifically approved prior to the
8 possession or viewing activity being conducted in writing by a
9 person, or other such entity vested with the authority to grant such
10 approval by the institution of higher education; and

11 (iii) Viewing or possessing the visual or printed matter is an
12 essential component of the authorized research; or

13 (b) The defendant was an employee of the Washington state
14 legislature engaged in research at the request of a member of the
15 legislature and:

16 (i) The request for research is made prior to the possession or
17 viewing activity being conducted in writing by a member of the
18 legislature;

19 (ii) The research is directly related to a legislative activity;
20 and

21 (iii) Viewing or possessing the visual or printed matter is an
22 essential component of the requested research and legislative
23 activity.

24 (7) In a prosecution under sections 2 through 6 of this act, it
25 is not a defense that the defendant lacked knowledge of whether the
26 fabricated depiction had been created or altered by digitization.

27 (8) Nothing in this section authorizes otherwise unlawful viewing
28 or possession of visual or printed matter depicting a minor engaged
29 in sexually explicit conduct.

30 **Sec. 11.** RCW 9.68A.120 and 2022 c 162 s 4 are each amended to
31 read as follows:

32 The following are subject to seizure and forfeiture:

33 (1) All visual or printed matter that depicts a minor engaged in
34 sexually explicit conduct.

35 (2) All raw materials, equipment, and other tangible personal
36 property of any kind used or intended to be used to manufacture or
37 process any visual or printed matter that depicts a minor engaged in
38 sexually explicit conduct, and all conveyances, including aircraft,
39 vehicles, or vessels that are used or intended for use to transport,

1 or in any manner to facilitate the transportation of, visual or
2 printed matter in violation of RCW 9.68A.050 (~~(e)~~), 9.68A.060, or
3 section 2 or 4 of this act, but:

4 (a) No conveyance used by any person as a common carrier in the
5 transaction of business as a common carrier is subject to forfeiture
6 under this section unless it appears that the owner or other person
7 in charge of the conveyance is a consenting party or privy to a
8 violation of this chapter;

9 (b) No property is subject to forfeiture under this section by
10 reason of any act or omission established by the owner of the
11 property to have been committed or omitted without the owner's
12 knowledge or consent;

13 (c) A forfeiture of property encumbered by a bona fide security
14 interest is subject to the interest of the secured party if the
15 secured party neither had knowledge of nor consented to the act or
16 omission; and

17 (d) When the owner of a conveyance has been arrested under this
18 chapter the conveyance may not be subject to forfeiture unless it is
19 seized or process is issued for its seizure within ten days of the
20 owner's arrest.

21 (3) All personal property, moneys, negotiable instruments,
22 securities, or other tangible or intangible property furnished or
23 intended to be furnished by any person in exchange for visual or
24 printed matter depicting a minor engaged in sexually explicit
25 conduct, or constituting proceeds traceable to any violation of this
26 chapter.

27 (4) Property subject to forfeiture under this chapter may be
28 seized by any law enforcement officer of this state upon process
29 issued by any superior court having jurisdiction over the property.
30 Seizure without process may be made if:

31 (a) The seizure is incident to an arrest or a search under a
32 search warrant or an inspection under an administrative inspection
33 warrant;

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

37 (c) A law enforcement officer has probable cause to believe that
38 the property is directly or indirectly dangerous to health or safety;
39 or

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

4 (5) In the event of seizure under subsection (4) of this section,
5 proceedings for forfeiture shall be deemed commenced by the seizure.
6 The law enforcement agency under whose authority the seizure was made
7 shall cause notice to be served within fifteen days following the
8 seizure on the owner of the property seized and the person in charge
9 thereof and any person having any known right or interest therein, of
10 the seizure and intended forfeiture of the seized property. The
11 notice may be served by any method authorized by law or court rule
12 including but not limited to service by certified mail with return
13 receipt requested. Service by mail shall be deemed complete upon
14 mailing within the fifteen day period following the seizure.

15 (6) If no person notifies the seizing law enforcement agency in
16 writing of the person's claim of ownership or right to possession of
17 seized items within (~~forty-five~~) 45 days of the seizure, the item
18 seized shall be deemed forfeited.

19 (7) If any person notifies the seizing law enforcement agency in
20 writing of the person's claim of ownership or right to possession of
21 seized items within (~~forty-five~~) 45 days of the seizure, the person
22 or persons shall be afforded a reasonable opportunity to be heard as
23 to the claim or right. The hearing shall be before an administrative
24 law judge appointed under chapter 34.12 RCW, except that any person
25 asserting a claim or right may remove the matter to a court of
26 competent jurisdiction if the aggregate value of the article or
27 articles involved is more than five hundred dollars. The hearing
28 before an administrative law judge and any appeal therefrom shall be
29 under Title 34 RCW. In a court hearing between two or more claimants
30 to the article or articles involved, the prevailing party shall be
31 entitled to a judgment for costs and reasonable attorney's fees. The
32 burden of producing evidence shall be upon the person claiming to be
33 the lawful owner or the person claiming to have the lawful right to
34 possession of the seized items. The seizing law enforcement agency
35 shall promptly return the article or articles to the claimant upon a
36 determination by the administrative law judge or court that the
37 claimant is lawfully entitled to possession thereof of the seized
38 items.

39 (8) If property is sought to be forfeited on the ground that it
40 constitutes proceeds traceable to a violation of this chapter, the

1 seizing law enforcement agency must prove by a preponderance of the
2 evidence that the property constitutes proceeds traceable to a
3 violation of this chapter.

4 (9) When property is forfeited under this chapter the seizing law
5 enforcement agency may:

6 (a) Retain it for official use or upon application by any law
7 enforcement agency of this state release the property to that agency
8 for the exclusive use of enforcing this chapter or chapter 9A.88 RCW;

9 (b) Sell that which is not required to be destroyed by law and
10 which is not harmful to the public; or

11 (c) Request the appropriate sheriff or director of public safety
12 to take custody of the property and remove it for disposition in
13 accordance with law.

14 (10)(a) By January 31st of each year, each seizing agency shall
15 remit to the state an amount equal to ten percent of the net proceeds
16 of any property forfeited during the preceding calendar year. Money
17 remitted shall be deposited in the prostitution prevention and
18 intervention account under RCW 43.63A.740.

19 (b) The net proceeds of forfeited property is the value of the
20 forfeitable interest in the property after deducting the cost of
21 satisfying any bona fide security interest to which the property is
22 subject at the time of seizure; and in the case of sold property,
23 after deducting the cost of sale, including reasonable fees or
24 commissions paid to an independent selling agency.

25 (c) The value of sold forfeited property is the sale price. The
26 value of retained forfeited property is the fair market value of the
27 property at the time of seizure determined when possible by reference
28 to an applicable commonly used index. A seizing agency may use, but
29 need not use, an independent qualified appraiser to determine the
30 value of retained property. If an appraiser is used, the value of the
31 property appraised is net of the cost of the appraisal. The value of
32 destroyed property and retained firearms or illegal property is zero.

33 (11) Forfeited property and net proceeds not required to be
34 remitted to the state under this chapter shall be used for payment of
35 all proper expenses of the investigation leading to the seizure,
36 including any money delivered to the subject of the investigation by
37 the law enforcement agency, and of the proceedings for forfeiture and
38 sale, including expenses of seizure, maintenance of custody,
39 advertising, actual costs of the prosecuting or city attorney, and
40 court costs. Money remaining after payment of these expenses shall be

1 retained by the seizing law enforcement agency for the exclusive use
2 of enforcing the provisions of this chapter or chapter 9A.88 RCW.

3 **Sec. 12.** RCW 9.68A.170 and 2012 c 135 s 2 are each amended to
4 read as follows:

5 (1) In any criminal proceeding, any property or material that
6 constitutes a depiction of a minor engaged in sexually explicit
7 conduct, including any fabricated depictions, shall remain in the
8 care, custody, and control of either a law enforcement agency or the
9 court.

10 (2) Despite any request by the defendant or prosecution, any
11 property or material that constitutes a depiction of a minor engaged
12 in sexually explicit conduct, including any fabricated depictions,
13 shall not be copied, photographed, duplicated, or otherwise
14 reproduced, so long as the property or material is made reasonably
15 available to the parties. Such property or material shall be deemed
16 to be reasonably available to the parties if the prosecution, defense
17 counsel, or any individual sought to be qualified to furnish expert
18 testimony at trial has ample opportunity for inspection, viewing, and
19 examination of the property or material at a law enforcement facility
20 or a neutral facility approved by the court upon petition by the
21 defense.

22 (3) The defendant may view and examine the property and materials
23 only while in the presence of his or her attorney. If the defendant
24 is proceeding pro se, the court will appoint an individual to
25 supervise the defendant while he or she examines the materials.

26 (4) The court may direct that a mirror image of a computer hard
27 drive containing such depictions be produced for use by an expert
28 only upon a showing that an expert has been retained and is prepared
29 to conduct a forensic examination while the mirror imaged hard drive
30 remains in the care, custody, and control of a law enforcement agency
31 or the court. Upon a substantial showing that the expert's analysis
32 cannot be accomplished while the mirror imaged hard drive is kept
33 within the care, custody, and control of a law enforcement agency or
34 the court, the court may order its release to the expert for analysis
35 for a limited time. If release is granted, the court shall issue a
36 protective order setting forth such terms and conditions as are
37 necessary to protect the rights of the victims, to document the chain
38 of custody, and to protect physical evidence.

1 **Sec. 13.** RCW 9.68A.180 and 2012 c 135 s 3 are each amended to
2 read as follows:

3 (1) Whenever a depiction of a minor engaged in sexually explicit
4 conduct, regardless of its format and whether it is a fabricated
5 depiction, is marked as an exhibit in a criminal proceeding, the
6 prosecutor shall seek an order sealing the exhibit at the close of
7 the trial. Any exhibits sealed under this section shall be sealed
8 with evidence tape in a manner that prevents access to, or viewing
9 of, the depiction of a minor engaged in sexually explicit conduct and
10 shall be labeled so as to identify its contents. Anyone seeking to
11 view such an exhibit must obtain permission from the superior court
12 after providing at least ten days notice to the prosecuting attorney.
13 Appellate attorneys for the defendant and the state shall be given
14 access to the exhibit, which must remain in the care and custody of
15 either a law enforcement agency or the court. Any other person moving
16 to view such an exhibit must demonstrate to the court that his or her
17 reason for viewing the exhibit is of sufficient importance to justify
18 another violation of the victim's privacy.

19 (2) Whenever the clerk of the court receives an exhibit of a
20 depiction of a minor engaged in sexually explicit conduct, he or she
21 shall store the exhibit in a secure location, such as a safe. The
22 clerk may arrange for the transfer of such exhibits to a law
23 enforcement agency evidence room for safekeeping provided the agency
24 agrees not to destroy or dispose of the exhibits without an order of
25 the court.

26 (3) If the criminal proceeding ends in a conviction, the clerk of
27 the court shall destroy any exhibit containing a depiction of a minor
28 engaged in sexually explicit conduct, including any fabricated
29 depictions, five years after the judgment is final, as determined by
30 the provisions of RCW 10.73.090(3). Before any destruction, the clerk
31 shall contact the prosecuting attorney and verify that there is no
32 collateral attack on the judgment pending in any court. If the
33 criminal proceeding ends in a mistrial, the clerk shall either
34 maintain the exhibit or return it to the law enforcement agency that
35 investigated the criminal charges for safekeeping until the matter is
36 set for retrial. If the criminal proceeding ends in an acquittal, the
37 clerk shall return the exhibit to the law enforcement agency that
38 investigated the criminal charges for either safekeeping or
39 destruction.

1 **Sec. 14.** RCW 9.68A.190 and 2012 c 135 s 4 are each amended to
2 read as follows:

3 Any depiction of a minor engaged in sexually explicit conduct, in
4 any format and including any fabricated depictions, distributed as
5 discovery to defense counsel or an expert witness prior to June 7,
6 2012, shall either be returned to the law enforcement agency that
7 investigated the criminal charges or destroyed, if the case is no
8 longer pending in superior court. If the case is still pending, the
9 depiction shall be returned to the superior court judge assigned to
10 the case or the presiding judge. The court shall order either the
11 destruction of the depiction or the safekeeping of the depiction if
12 it will be used at trial.

13 It is not a defense to violations of this chapter for crimes
14 committed after December 31, 2012, that the initial receipt of the
15 depictions was done under the color of law through the discovery
16 process.

17 NEW SECTION. **Sec. 15.** A new section is added to chapter 9A.86
18 RCW to read as follows:

19 (1) A person commits the crime of disclosing fabricated intimate
20 images when the person knowingly discloses a fabricated intimate
21 image of another person and the person disclosing the image:

22 (a) Knows or should have known that the depicted person has not
23 consented to the disclosure; and

24 (b) Knows or reasonably should know that disclosure would cause
25 harm to the depicted person.

26 (2) A person who is under the age of 18 is not guilty of the
27 crime of disclosing fabricated intimate images unless the person:

28 (a) Intentionally and maliciously disclosed a fabricated intimate
29 image of another person; and

30 (b) Knows or should have known that the depicted person has not
31 consented to the disclosure.

32 (3) This section does not apply to:

33 (a) Disclosures made in the public interest including, but not
34 limited to, the reporting of unlawful conduct, or the lawful and
35 common practices of law enforcement, criminal reporting, legal
36 proceedings, or medical treatment; or

37 (b) Images that constitute commentary, criticism, or disclosure
38 protected by the Washington state Constitution or the United States
39 Constitution.

1 (4) This section does not impose liability upon the following
2 entities solely as a result of content provided by another person:

3 (a) An interactive computer service, as defined in Title 47
4 U.S.C. Sec. 230(f)(2);

5 (b) A mobile telecommunications service provider, as defined in
6 RCW 82.04.065; or

7 (c) A telecommunications network or broadband provider.

8 (5) In any prosecution for a violation of this section, it is not
9 a defense that:

10 (a) The perpetrator lacked knowledge of whether the disclosed
11 image had been created or altered by digitization; or

12 (b) The depicted person consented to the creation or alteration
13 of the image.

14 (6) For purposes of this section:

15 (a) "Digitization" means creating or altering an image of a
16 person in a realistic manner utilizing images of another person or
17 computer-generated images, regardless of whether such creation or
18 alteration is accomplished manually or through an automated process.
19 "Digitization" includes, but is not limited to, creation or
20 alteration of an image by using artificial intelligence software.

21 (b) "Disclosing" includes transferring, publishing, or
22 disseminating, as well as making a digital depiction available for
23 distribution or downloading through the facilities of a
24 telecommunications network or through any other means of transferring
25 computer programs or data to a computer.

26 (c) "Fabricated intimate image" means any photograph, motion
27 picture film, videotape, digital image, or any other recording or
28 transmission of another person who is identifiable from the image
29 itself or from information displayed with or otherwise connected to
30 the image, and that was created or altered by digitization to depict:

31 (i) Computer-generated intimate body parts or the intimate body
32 parts of another person as the intimate body parts of the depicted
33 person, whether nude or visible through less than opaque clothing and
34 including the genitals, pubic area, anus, or postpubescent female
35 nipple; or

36 (ii) The depicted person engaging in sexual activity, including
37 masturbation, sexual contact, or sexual intercourse, as those terms
38 are defined in RCW 9A.44.010, in which the depicted person did not
39 actually engage.

40 (7) The crime of disclosing fabricated intimate images:

- 1 (a) Is a gross misdemeanor on the first offense; or
- 2 (b) Is a class C felony if the defendant has one or more prior
- 3 convictions for a violation of this section or RCW 9A.86.010.
- 4 (8) Nothing in this section is construed to:
- 5 (a) Alter or negate any rights, obligations, or immunities of an
- 6 interactive service provider under Title 47 U.S.C. Sec. 230; or
- 7 (b) Limit or preclude a plaintiff from securing or recovering any
- 8 other available remedy.

9 **Sec. 16.** RCW 9A.86.010 and 2016 c 91 s 1 are each amended to
10 read as follows:

11 (1) A person commits the crime of disclosing intimate images when
12 the person knowingly discloses an intimate image of another person
13 and the person disclosing the image:

14 (a) Obtained it under circumstances in which a reasonable person
15 would know or understand that the image was to remain private;

16 (b) Knows or should have known that the depicted person has not
17 consented to the disclosure; and

18 (c) Knows or reasonably should know that disclosure would cause
19 harm to the depicted person.

20 (2) A person who is under the age of eighteen is not guilty of
21 the crime of disclosing intimate images unless the person:

22 (a) Intentionally and maliciously disclosed an intimate image of
23 another person;

24 (b) Obtained it under circumstances in which a reasonable person
25 would know or understand that the image was to remain private; and

26 (c) Knows or should have known that the depicted person has not
27 consented to the disclosure.

28 (3) This section does not apply to:

29 (a) Images involving voluntary exposure in public or commercial
30 settings; or

31 (b) Disclosures made in the public interest including, but not
32 limited to, the reporting of unlawful conduct, or the lawful and
33 common practices of law enforcement, criminal reporting, legal
34 proceedings, or medical treatment.

35 (4) This section does not impose liability upon the following
36 entities solely as a result of content provided by another person:

37 (a) An interactive computer service, as defined in 47 U.S.C. Sec.
38 230(f)(2);

1 (b) A mobile telecommunications service provider, as defined in
2 RCW 82.04.065; or

3 (c) A telecommunications network or broadband provider.

4 (5) It shall be an affirmative defense to a violation of this
5 section that the defendant is a family member of a minor and did not
6 intend any harm or harassment in disclosing the images of the minor
7 to other family or friends of the defendant. This affirmative defense
8 shall not apply to matters defined under RCW 9.68A.011.

9 (6) For purposes of this section:

10 (a) "Disclosing" includes transferring, publishing, or
11 disseminating, as well as making a digital depiction available for
12 distribution or downloading through the facilities of a
13 telecommunications network or through any other means of transferring
14 computer programs or data to a computer;

15 (b) "Intimate image" means any photograph, motion picture film,
16 videotape, digital image, or any other recording or transmission of
17 another person who is identifiable from the image itself or from
18 information displayed with or otherwise connected to the image, and
19 that was taken in a private setting, is not a matter of public
20 concern, and depicts:

21 (i) Sexual activity, including sexual intercourse as defined in
22 RCW 9A.44.010 and masturbation; or

23 (ii) A person's intimate body parts, whether nude or visible
24 through less than opaque clothing, including the genitals, pubic
25 area, anus, or postpubescent female nipple.

26 (7) The crime of disclosing intimate images:

27 (a) Is a gross misdemeanor on the first offense; or

28 (b) Is a class C felony if the defendant has one or more prior
29 convictions for (~~disclosing intimate images~~) a violation of this
30 section or section 15 of this act.

31 (8) Nothing in this section is construed to:

32 (a) Alter or negate any rights, obligations, or immunities of an
33 interactive service provider under 47 U.S.C. Sec. 230; or

34 (b) Limit or preclude a plaintiff from securing or recovering any
35 other available remedy.

36 **Sec. 17.** RCW 9A.86.020 and 2019 c 128 s 10 are each amended to
37 read as follows:

38 A minor who possesses any image of any other minor which
39 constitutes an intimate image as defined in RCW 9A.86.010 or a

1 fabricated intimate image as defined in section 15 of this act
2 forfeits any right to continued possession of the image and any court
3 exercising jurisdiction over such image shall order forfeiture of the
4 image.

5 **Sec. 18.** RCW 9.94A.515 and 2023 c 196 s 3 and 2023 c 7 s 3 are
6 each reenacted and amended to read as follows:

7 TABLE 2

8 CRIMES INCLUDED WITHIN EACH
9 SERIOUSNESS LEVEL

10	XVI	Aggravated Murder 1 (RCW 10.95.020)
11	XV	Homicide by abuse (RCW 9A.32.055)
12		Malicious explosion 1 (RCW
13		70.74.280(1))
14		Murder 1 (RCW 9A.32.030)
15	XIV	Murder 2 (RCW 9A.32.050)
16		Trafficking 1 (RCW 9A.40.100(1))
17	XIII	Malicious explosion 2 (RCW
18		70.74.280(2))
19		Malicious placement of an explosive 1
20		(RCW 70.74.270(1))
21	XII	Assault 1 (RCW 9A.36.011)
22		Assault of a Child 1 (RCW 9A.36.120)
23		Malicious placement of an imitation
24		device 1 (RCW 70.74.272(1)(a))
25		Promoting Commercial Sexual Abuse of
26		a Minor (RCW 9.68A.101)
27		Rape 1 (RCW 9A.44.040)
28		Rape of a Child 1 (RCW 9A.44.073)
29		Trafficking 2 (RCW 9A.40.100(3))
30	XI	Manslaughter 1 (RCW 9A.32.060)
31		Rape 2 (RCW 9A.44.050)
32		Rape of a Child 2 (RCW 9A.44.076)

1 Vehicular Homicide, by being under the
2 influence of intoxicating liquor or
3 any drug (RCW 46.61.520)
4 Vehicular Homicide, by the operation of
5 any vehicle in a reckless manner
6 (RCW 46.61.520)
7 X Child Molestation 1 (RCW 9A.44.083)
8 Criminal Mistreatment 1 (RCW
9 9A.42.020)
10 Indecent Liberties (with forcible
11 compulsion) (RCW
12 9A.44.100(1)(a))
13 Kidnapping 1 (RCW 9A.40.020)
14 Leading Organized Crime (RCW
15 9A.82.060(1)(a))
16 Malicious explosion 3 (RCW
17 70.74.280(3))
18 Sexually Violent Predator Escape (RCW
19 9A.76.115)
20 IX Abandonment of Dependent Person 1
21 (RCW 9A.42.060)
22 Assault of a Child 2 (RCW 9A.36.130)
23 Explosive devices prohibited (RCW
24 70.74.180)
25 Hit and Run—Death (RCW
26 46.52.020(4)(a))
27 Homicide by Watercraft, by being under
28 the influence of intoxicating liquor
29 or any drug (RCW 79A.60.050)
30 Inciting Criminal Profiteering (RCW
31 9A.82.060(1)(b))
32 Malicious placement of an explosive 2
33 (RCW 70.74.270(2))
34 Robbery 1 (RCW 9A.56.200)
35 Sexual Exploitation (RCW 9.68A.040)

1 VIII Arson 1 (RCW 9A.48.020)
2 Commercial Sexual Abuse of a Minor
3 (RCW 9.68A.100)
4 Homicide by Watercraft, by the
5 operation of any vessel in a reckless
6 manner (RCW 79A.60.050)
7 Manslaughter 2 (RCW 9A.32.070)
8 Promoting Prostitution 1 (RCW
9 9A.88.070)
10 Theft of Ammonia (RCW 69.55.010)
11 VII Air bag diagnostic systems (causing
12 bodily injury or death) (RCW
13 46.37.660(2)(b))
14 Air bag replacement requirements
15 (causing bodily injury or death)
16 (RCW 46.37.660(1)(b))
17 Burglary 1 (RCW 9A.52.020)
18 Child Molestation 2 (RCW 9A.44.086)
19 Civil Disorder Training (RCW
20 9A.48.120)
21 Custodial Sexual Misconduct 1 (RCW
22 9A.44.160)
23 Dealing in depictions of minor engaged
24 in sexually explicit conduct 1
25 (RCW 9.68A.050(1))
26 Dealing in fabricated depictions of
27 minor engaged in sexually explicit
28 conduct 1 (section 2(1) of this act)
29 Drive-by Shooting (RCW 9A.36.045)
30 False Reporting 1 (RCW
31 9A.84.040(2)(a))
32 Homicide by Watercraft, by disregard
33 for the safety of others (RCW
34 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 Manufacture or import counterfeit,
9 nonfunctional, damaged, or
10 previously deployed air bag
11 (causing bodily injury or death)
12 (RCW 46.37.650(1)(b))
13 Negligently Causing Death By Use of a
14 Signal Preemption Device (RCW
15 46.37.675)
16 Sell, install, or reinstall counterfeit,
17 nonfunctional, damaged, or
18 previously deployed airbag (RCW
19 46.37.650(2)(b))
20 Sending, bringing into state depictions
21 of minor engaged in sexually
22 explicit conduct 1 (RCW
23 9.68A.060(1))
24 Sending, bringing into state fabricated
25 depictions of minor engaged in
26 sexually explicit conduct 1 (section
27 4(1) of this act)
28 Unlawful Possession of a Firearm in the
29 first degree (RCW 9.41.040(1))
30 Use of a Machine Gun or Bump-fire
31 Stock in Commission of a Felony
32 (RCW 9.41.225)
33 Vehicular Homicide, by disregard for
34 the safety of others (RCW
35 46.61.520)
36 VI Bail Jumping with Murder 1 (RCW
37 9A.76.170(3)(a))

1 Bribery (RCW 9A.68.010)
2 Incest 1 (RCW 9A.64.020(1))
3 Intimidating a Judge (RCW 9A.72.160)
4 Intimidating a Juror/Witness (RCW
5 9A.72.110, 9A.72.130)
6 Malicious placement of an imitation
7 device 2 (RCW 70.74.272(1)(b))
8 Possession of Depictions of a Minor
9 Engaged in Sexually Explicit
10 Conduct 1 (RCW 9.68A.070(1))
11 Possession of Fabricated Depictions of a
12 Minor Engaged in Sexually Explicit
13 Conduct 1 (section 5(1) of this act)
14 Rape of a Child 3 (RCW 9A.44.079)
15 Theft of a Firearm (RCW 9A.56.300)
16 Theft from a Vulnerable Adult 1 (RCW
17 9A.56.400(1))
18 Unlawful Storage of Ammonia (RCW
19 69.55.020)
20 V Abandonment of Dependent Person 2
21 (RCW 9A.42.070)
22 Advancing money or property for
23 extortionate extension of credit
24 (RCW 9A.82.030)
25 Air bag diagnostic systems (RCW
26 46.37.660(2)(c))
27 Air bag replacement requirements
28 (RCW 46.37.660(1)(c))
29 Bail Jumping with class A Felony
30 (RCW 9A.76.170(3)(b))
31 Child Molestation 3 (RCW 9A.44.089)
32 Criminal Mistreatment 2 (RCW
33 9A.42.030)
34 Custodial Sexual Misconduct 2 (RCW
35 9A.44.170)

1 Dealing in Depictions of Minor
2 Engaged in Sexually Explicit
3 Conduct 2 (RCW 9.68A.050(2))
4 Dealing in Fabricated Depictions of
5 Minor Engaged in Sexually Explicit
6 Conduct 2 (section 2(2) of this act)
7 Domestic Violence Court Order
8 Violation (RCW 7.105.450,
9 10.99.040, 10.99.050, 26.09.300,
10 26.26B.050, or 26.52.070)
11 Extortion 1 (RCW 9A.56.120)
12 Extortionate Extension of Credit (RCW
13 9A.82.020)
14 Extortionate Means to Collect
15 Extensions of Credit (RCW
16 9A.82.040)
17 Incest 2 (RCW 9A.64.020(2))
18 Kidnapping 2 (RCW 9A.40.030)
19 Manufacture or import counterfeit,
20 nonfunctional, damaged, or
21 previously deployed air bag (RCW
22 46.37.650(1)(c))
23 Perjury 1 (RCW 9A.72.020)
24 Persistent prison misbehavior (RCW
25 9.94.070)
26 Possession of a Stolen Firearm (RCW
27 9A.56.310)
28 Rape 3 (RCW 9A.44.060)
29 Rendering Criminal Assistance 1 (RCW
30 9A.76.070)
31 Sell, install, or reinstall counterfeit,
32 nonfunctional, damaged, or
33 previously deployed airbag (RCW
34 46.37.650(2)(c))

1 Sending, Bringing into State Depictions
2 of Minor Engaged in Sexually
3 Explicit Conduct 2 (RCW
4 9.68A.060(2))
5 Sending, Bringing into State Fabricated
6 Depictions of Minor Engaged in
7 Sexually Explicit Conduct 2
8 (section 4(2) of this act)
9 Sexual Misconduct with a Minor 1
10 (RCW 9A.44.093)
11 Sexually Violating Human Remains
12 (RCW 9A.44.105)
13 Stalking (RCW 9A.46.110)
14 Taking Motor Vehicle Without
15 Permission 1 (RCW 9A.56.070)
16 IV Arson 2 (RCW 9A.48.030)
17 Assault 2 (RCW 9A.36.021)
18 Assault 3 (of a Peace Officer with a
19 Projectile Stun Gun) (RCW
20 9A.36.031(1)(h))
21 Assault 4 (third domestic violence
22 offense) (RCW 9A.36.041(3))
23 Assault by Watercraft (RCW
24 79A.60.060)
25 Bribing a Witness/Bribe Received by
26 Witness (RCW 9A.72.090,
27 9A.72.100)
28 Cheating 1 (RCW 9.46.1961)
29 Commercial Bribery (RCW 9A.68.060)
30 Counterfeiting (RCW 9.16.035(4))
31 Driving While Under the Influence
32 (RCW 46.61.502(6))
33 Endangerment with a Controlled
34 Substance (RCW 9A.42.100)
35 Escape 1 (RCW 9A.76.110)

1 Hate Crime (RCW 9A.36.080)
2 Hit and Run—Injury (RCW
3 46.52.020(4)(b))
4 Hit and Run with Vessel—Injury
5 Accident (RCW 79A.60.200(3))
6 Identity Theft 1 (RCW 9.35.020(2))
7 Indecent Exposure to Person Under Age
8 14 (subsequent sex offense) (RCW
9 9A.88.010)
10 Influencing Outcome of Sporting Event
11 (RCW 9A.82.070)
12 Physical Control of a Vehicle While
13 Under the Influence (RCW
14 46.61.504(6))
15 Possession of Depictions of a Minor
16 Engaged in Sexually Explicit
17 Conduct 2 (RCW 9.68A.070(2))
18 Possession of Fabricated Depictions of a
19 Minor Engaged in Sexually Explicit
20 Conduct 2 (section 5(2) of this act)
21 Residential Burglary (RCW 9A.52.025)
22 Robbery 2 (RCW 9A.56.210)
23 Theft of Livestock 1 (RCW 9A.56.080)
24 Threats to Bomb (RCW 9.61.160)
25 Trafficking in Stolen Property 1 (RCW
26 9A.82.050)
27 Unlawful factoring of a credit card or
28 payment card transaction (RCW
29 9A.56.290(4)(b))
30 Unlawful transaction of health coverage
31 as a health care service contractor
32 (RCW 48.44.016(3))
33 Unlawful transaction of health coverage
34 as a health maintenance
35 organization (RCW 48.46.033(3))

1 Unlawful transaction of insurance
2 business (RCW 48.15.023(3))
3 Unlicensed practice as an insurance
4 professional (RCW 48.17.063(2))
5 Use of Proceeds of Criminal
6 Profiteering (RCW 9A.82.080 (1)
7 and (2))
8 Vehicle Prowling 2 (third or subsequent
9 offense) (RCW 9A.52.100(3))
10 Vehicular Assault, by being under the
11 influence of intoxicating liquor or
12 any drug, or by the operation or
13 driving of a vehicle in a reckless
14 manner (RCW 46.61.522)
15 Viewing of Depictions of a Minor
16 Engaged in Sexually Explicit
17 Conduct 1 (RCW 9.68A.075(1))
18 Viewing of Fabricated Depictions of a
19 Minor Engaged in Sexually Explicit
20 Conduct 1 (section 6(1) of this act)
21 III Animal Cruelty 1 (Sexual Conduct or
22 Contact) (RCW 16.52.205(3))
23 Assault 3 (Except Assault 3 of a Peace
24 Officer With a Projectile Stun Gun)
25 (RCW 9A.36.031 except subsection
26 (1)(h))
27 Assault of a Child 3 (RCW 9A.36.140)
28 Bail Jumping with class B or C Felony
29 (RCW 9A.76.170(3)(c))
30 Burglary 2 (RCW 9A.52.030)
31 Communication with a Minor for
32 Immoral Purposes (RCW
33 9.68A.090)
34 Criminal Gang Intimidation (RCW
35 9A.46.120)
36 Custodial Assault (RCW 9A.36.100)

1 Cyber Harassment (RCW
2 9A.90.120(2)(b))
3 Escape 2 (RCW 9A.76.120)
4 Extortion 2 (RCW 9A.56.130)
5 False Reporting 2 (RCW
6 9A.84.040(2)(b))
7 Harassment (RCW 9A.46.020)
8 Hazing (RCW 28B.10.901(2)(b))
9 Intimidating a Public Servant (RCW
10 9A.76.180)
11 Introducing Contraband 2 (RCW
12 9A.76.150)
13 Malicious Injury to Railroad Property
14 (RCW 81.60.070)
15 Manufacture of Untraceable Firearm
16 with Intent to Sell (RCW 9.41.190)
17 Manufacture or Assembly of an
18 Undetectable Firearm or
19 Untraceable Firearm (RCW
20 9.41.325)
21 Mortgage Fraud (RCW 19.144.080)
22 Negligently Causing Substantial Bodily
23 Harm By Use of a Signal
24 Preemption Device (RCW
25 46.37.674)
26 Organized Retail Theft 1 (RCW
27 9A.56.350(2))
28 Perjury 2 (RCW 9A.72.030)
29 Possession of Incendiary Device (RCW
30 9.40.120)
31 Possession of Machine Gun, Bump-Fire
32 Stock, Undetectable Firearm, or
33 Short-Barreled Shotgun or Rifle
34 (RCW 9.41.190)
35 Promoting Prostitution 2 (RCW
36 9A.88.080)

1 Retail Theft with Special Circumstances
2 1 (RCW 9A.56.360(2))
3 Securities Act violation (RCW
4 21.20.400)
5 Tampering with a Witness (RCW
6 9A.72.120)
7 Telephone Harassment (subsequent
8 conviction or threat of death) (RCW
9 9.61.230(2))
10 Theft of Livestock 2 (RCW 9A.56.083)
11 Theft with the Intent to Resell 1 (RCW
12 9A.56.340(2))
13 Trafficking in Stolen Property 2 (RCW
14 9A.82.055)
15 Unlawful Hunting of Big Game 1 (RCW
16 77.15.410(3)(b))
17 Unlawful Imprisonment (RCW
18 9A.40.040)
19 Unlawful Misbranding of Fish or
20 Shellfish 1 (RCW 77.140.060(3))
21 Unlawful possession of firearm in the
22 second degree (RCW 9.41.040(2))
23 Unlawful Taking of Endangered Fish or
24 Wildlife 1 (RCW 77.15.120(3)(b))
25 Unlawful Trafficking in Fish, Shellfish,
26 or Wildlife 1 (RCW
27 77.15.260(3)(b))
28 Unlawful Use of a Nondesignated
29 Vessel (RCW 77.15.530(4))
30 Vehicular Assault, by the operation or
31 driving of a vehicle with disregard
32 for the safety of others (RCW
33 46.61.522)
34 II Commercial Fishing Without a License
35 1 (RCW 77.15.500(3)(b))
36 Computer Trespass 1 (RCW 9A.90.040)

1 Counterfeiting (RCW 9.16.035(3))
2 Electronic Data Service Interference
3 (RCW 9A.90.060)
4 Electronic Data Tampering 1 (RCW
5 9A.90.080)
6 Electronic Data Theft (RCW 9A.90.100)
7 Engaging in Fish Dealing Activity
8 Unlicensed 1 (RCW 77.15.620(3))
9 Escape from Community Custody
10 (RCW 72.09.310)
11 Failure to Register as a Sex Offender
12 (second or subsequent offense)
13 (RCW 9A.44.130 prior to June 10,
14 2010, and RCW 9A.44.132)
15 Health Care False Claims (RCW
16 48.80.030)
17 Identity Theft 2 (RCW 9.35.020(3))
18 Improperly Obtaining Financial
19 Information (RCW 9.35.010)
20 Malicious Mischief 1 (RCW 9A.48.070)
21 Organized Retail Theft 2 (RCW
22 9A.56.350(3))
23 Possession of Stolen Property 1 (RCW
24 9A.56.150)
25 Possession of a Stolen Vehicle (RCW
26 9A.56.068)
27 Retail Theft with Special Circumstances
28 2 (RCW 9A.56.360(3))
29 Scrap Processing, Recycling, or
30 Supplying Without a License
31 (second or subsequent offense)
32 (RCW 19.290.100)
33 Theft 1 (RCW 9A.56.030)
34 Theft of a Motor Vehicle (RCW
35 9A.56.065)

1 Theft of Rental, Leased, Lease-
2 purchased, or Loaned Property
3 (valued at \$5,000 or more) (RCW
4 9A.56.096(5)(a))
5 Theft with the Intent to Resell 2 (RCW
6 9A.56.340(3))
7 Trafficking in Insurance Claims (RCW
8 48.30A.015)
9 Unlawful factoring of a credit card or
10 payment card transaction (RCW
11 9A.56.290(4)(a))
12 Unlawful Participation of Non-Indians
13 in Indian Fishery (RCW
14 77.15.570(2))
15 Unlawful Practice of Law (RCW
16 2.48.180)
17 Unlawful Purchase or Use of a License
18 (RCW 77.15.650(3)(b))
19 Unlawful Trafficking in Fish, Shellfish,
20 or Wildlife 2 (RCW
21 77.15.260(3)(a))
22 Unlicensed Practice of a Profession or
23 Business (RCW 18.130.190(7))
24 Voyeurism 1 (RCW 9A.44.115)
25 I Attempting to Elude a Pursuing Police
26 Vehicle (RCW 46.61.024)
27 False Verification for Welfare (RCW
28 74.08.055)
29 Forgery (RCW 9A.60.020)
30 Fraudulent Creation or Revocation of a
31 Mental Health Advance Directive
32 (RCW 9A.60.060)
33 Malicious Mischief 2 (RCW 9A.48.080)
34 Mineral Trespass (RCW 78.44.330)
35 Possession of Stolen Property 2 (RCW
36 9A.56.160)

1 Reckless Burning 1 (RCW 9A.48.040)
2 Spotlighting Big Game 1 (RCW
3 77.15.450(3)(b))
4 Suspension of Department Privileges 1
5 (RCW 77.15.670(3)(b))
6 Taking Motor Vehicle Without
7 Permission 2 (RCW 9A.56.075)
8 Theft 2 (RCW 9A.56.040)
9 Theft from a Vulnerable Adult 2 (RCW
10 9A.56.400(2))
11 Theft of Rental, Leased, Lease-
12 purchased, or Loaned Property
13 (valued at \$750 or more but less
14 than \$5,000) (RCW
15 9A.56.096(5)(b))
16 Transaction of insurance business
17 beyond the scope of licensure
18 (RCW 48.17.063)
19 Unlawful Fish and Shellfish Catch
20 Accounting (RCW 77.15.630(3)(b))
21 Unlawful Issuance of Checks or Drafts
22 (RCW 9A.56.060)
23 Unlawful Possession of Fictitious
24 Identification (RCW 9A.56.320)
25 Unlawful Possession of Instruments of
26 Financial Fraud (RCW 9A.56.320)
27 Unlawful Possession of Payment
28 Instruments (RCW 9A.56.320)
29 Unlawful Possession of a Personal
30 Identification Device (RCW
31 9A.56.320)
32 Unlawful Production of Payment
33 Instruments (RCW 9A.56.320)

1 Unlawful Releasing, Planting,
2 Possessing, or Placing Deleterious
3 Exotic Wildlife (RCW
4 77.15.250(2)(b))
5 Unlawful Trafficking in Food Stamps
6 (RCW 9.91.142)
7 Unlawful Use of Food Stamps (RCW
8 9.91.144)
9 Unlawful Use of Net to Take Fish 1
10 (RCW 77.15.580(3)(b))
11 Vehicle Prowl 1 (RCW 9A.52.095)
12 Violating Commercial Fishing Area or
13 Time 1 (RCW 77.15.550(3)(b))

14 **Sec. 19.** RCW 7.110.010 and 2023 c 65 s 2 are each amended to
15 read as follows:

16 The definitions in this section apply throughout this chapter
17 unless the context clearly requires otherwise.

18 (1) "Child" means an unemancipated individual who is less than 18
19 years of age.

20 (2) "Consent" means affirmative, conscious, and voluntary
21 authorization by an individual with legal capacity to give
22 authorization.

23 (~~(2)~~) (3) "Depicted individual" means an individual whose body
24 is shown in whole or in part in an intimate image or a fabricated
25 intimate image.

26 (4) "Digitization" means creating or altering an image of a
27 person in a realistic manner by utilizing images of another person or
28 computer-generated images, regardless of whether such creation or
29 alteration is accomplished manually or through an automated process.
30 "Digitization" includes, but is not limited to, creating or altering
31 an image with the use of artificial intelligence software.

32 (~~(3)~~) (5) "Disclosing" has the same meaning as provided in RCW
33 9A.86.010. "Disclosure" has the same meaning as "disclosing."

34 (~~(4)~~) (6) "Fabricated intimate image" means any photograph,
35 motion picture film, videotape, digital image or video, or any other
36 recording or visual depiction of an identifiable depicted individual
37 that was created or altered by digitization and that depicts:

1 (a) Computer-generated intimate body parts or the intimate body
2 parts of another human being as the intimate body parts of the
3 depicted individual, whether nude or visible through less than opaque
4 clothing and including the genitals, pubic area, anus, or
5 postpubescent female nipple; or

6 (b) The depicted individual engaging in sexual activity,
7 including masturbation, sexual contact, or sexual intercourse, as
8 those terms are defined in RCW 9A.44.010, in which the depicted
9 individual did not engage.

10 (7) "Harm" includes physical harm, economic harm, and emotional
11 distress whether or not accompanied by physical or economic harm.

12 (8) "Identifiable" means recognizable by a person other than the
13 depicted individual:

14 (a) From an intimate image or fabricated intimate image itself;
15 or

16 (b) From an intimate image or fabricated intimate image and
17 identifying characteristic displayed in connection with the intimate
18 image.

19 ~~((+5))~~ (9) "Identifying characteristic" means information that
20 may be used to identify a depicted individual.

21 ~~((+6))~~ (10) "Individual" means a human being.

22 ~~((+7))~~ (11) "Intimate image" has the same meaning as provided in
23 RCW 9A.86.010.

24 ~~((+8))~~ (12) "Parent" has the same meaning as provided in RCW
25 26.26A.010.

26 (13) "Person" means an individual, estate, business or nonprofit
27 entity, public corporation, government or governmental subdivision,
28 agency or instrumentality, or other legal entity.

29 (14) "Private" means:

30 (a) Created or obtained under circumstances in which a depicted
31 individual had a reasonable expectation of privacy; or

32 (b) Made accessible through theft, bribery, extortion, fraud,
33 false pretenses, voyeurism, or exceeding authorized access to an
34 account, message, file, device, resource, or property.

35 **Sec. 20.** RCW 7.110.020 and 2023 c 65 s 3 are each amended to
36 read as follows:

37 (1) ~~((For the purposes of this section:~~

38 ~~(a) "Harm" includes physical harm, economic harm, and emotional~~
39 ~~distress whether or not accompanied by physical or economic harm.~~

1 ~~(b) "Private" means:~~

2 ~~(i) Created or obtained under circumstances in which a depicted~~
3 ~~individual had a reasonable expectation of privacy; or~~

4 ~~(ii) Made accessible through theft, bribery, extortion, fraud,~~
5 ~~false pretenses, voyeurism, or exceeding authorized access to an~~
6 ~~account, message, file, device, resource, or property.~~

7 ~~(2))~~ Except as otherwise provided in RCW 7.110.030, a depicted
8 individual who is identifiable and who suffers harm from a person's
9 intentional disclosure or threatened disclosure of an intimate image
10 that was private without the depicted individual's consent has a
11 cause of action against the person if the person knew or acted with
12 reckless disregard for whether:

13 (a) The depicted individual did not consent to the disclosure;

14 (b) The intimate image was private; and

15 (c) The depicted individual was identifiable.

16 ~~((3))~~ (2) The following conduct by a depicted individual does
17 not establish by itself that the individual consented to the
18 disclosure of the intimate image which is the subject of an action
19 under this chapter or that the individual lacked a reasonable
20 expectation of privacy:

21 (a) Consent to creation of the image; or

22 (b) Previous consensual disclosure of the image.

23 ~~((4))~~ (3) A depicted individual who does not consent to the
24 uncovering of the part of the body depicted in an intimate image of
25 the individual retains a reasonable expectation of privacy even if
26 the image was created when the individual was in a public place.

27 NEW SECTION. Sec. 21. A new section is added to chapter 7.110
28 RCW to read as follows:

29 (1) A depicted individual who is identifiable and who suffers
30 harm from a person's intentional disclosure or threatened disclosure
31 of a fabricated intimate image without the depicted individual's
32 consent has a cause of action against the person if the person knew
33 or acted with reckless disregard for whether:

34 (a) The depicted individual did not consent to the disclosure;
35 and

36 (b) The depicted individual was identifiable.

37 (2)(a) A depicted individual's consent to the creation of the
38 fabricated intimate image does not by itself establish that the
39 depicted individual consented to its disclosure.

1 (b) Consent is deemed validly given only if:
2 (i) It is set forth in an agreement written in plain language
3 signed knowingly and voluntarily by the depicted individual; and
4 (ii) It includes a general description of the fabricated intimate
5 image and, if applicable, the audiovisual work into which it will be
6 incorporated.
7 (3) It is not a defense to an action under this section that
8 there is a disclaimer stating that the fabricated intimate image of
9 the depicted individual was unauthorized or that the depicted
10 individual did not participate in the creation or development of the
11 fabricated intimate image.

12 **Sec. 22.** RCW 7.110.030 and 2023 c 65 s 4 are each amended to
13 read as follows:

14 (1) ~~((For the purposes of this section:~~
15 ~~(a) "Child" means an unemancipated individual who is less than 18~~
16 ~~years of age.~~

17 ~~(b) "Parent" has the same meaning as provided in RCW 26.26A.010.~~

18 ~~(2))~~ A person is not liable under this chapter if the person
19 proves that disclosure of, or a threat to disclose, an intimate image
20 or fabricated intimate image was:

21 (a) Made in good faith in:

22 (i) Law enforcement activities;

23 (ii) A legal proceeding; or

24 (iii) Medical education or treatment;

25 (b) Made in good faith in the reporting or investigation of:

26 (i) Unlawful conduct; or

27 (ii) Unsolicited and unwelcome conduct;

28 (c) Related to a matter of public concern or public interest; or

29 (d) Reasonably intended to assist the depicted individual.

30 ~~((3) Subject))~~ (2) In an action brought under RCW 7.110.020 and
31 subject to subsection ~~((4))~~ (3) of this section, a defendant who is
32 a parent, legal guardian, or individual with legal custody of a child
33 is not liable under this chapter for a disclosure or threatened
34 disclosure of an intimate image, as defined in RCW 7.110.010~~((7))~~
35 (11), of the child.

36 ~~((4))~~ (3) If a defendant asserts an exception to liability
37 under subsection ~~((3))~~ (2) of this section, the exception does not
38 apply if the plaintiff proves the disclosure was:

39 (a) Prohibited by law other than this chapter; or

1 (b) Made for the purpose of sexual arousal, sexual gratification,
2 humiliation, degradation, or monetary or commercial gain.

3 ~~((5))~~ (4) Disclosure of, or a threat to disclose, an intimate
4 image or fabricated intimate image is not a matter of public concern
5 or public interest solely because the depicted individual is a public
6 figure.

7 (5) A person is not liable in an action brought under section 21
8 of this act if the fabricated intimate image is commentary,
9 criticism, or disclosure protected by the Washington state
10 Constitution or the United States Constitution.

11 **Sec. 23.** RCW 7.110.050 and 2023 c 65 s 6 are each amended to
12 read as follows:

13 (1) In an action under this chapter, a prevailing plaintiff may
14 recover:

15 (a) The greater of:

16 (i) Economic and noneconomic damages proximately caused by the
17 defendant's disclosure or threatened disclosure, including damages
18 for emotional distress whether or not accompanied by other
19 damages; or

20 (ii) Statutory damages not to exceed \$10,000 against each
21 defendant found liable under this chapter for all disclosures and
22 threatened disclosures by the defendant of which the plaintiff knew
23 or reasonably should have known when filing the action or which
24 became known during the pendency of the action. In determining the
25 amount of statutory damages under this subsection (1)(a)(ii),
26 consideration must be given to the age of the parties at the time of
27 the disclosure or threatened disclosure, the number of disclosures or
28 threatened disclosures made by the defendant, the breadth of
29 distribution of the intimate image or fabricated intimate image by
30 the defendant, and other exacerbating or mitigating factors;

31 (b) An amount equal to any monetary gain made by the defendant
32 from disclosure of the intimate image or fabricated intimate image;
33 and

34 (c) Punitive damages in an amount not to exceed three times the
35 amount of damages under (a) of this subsection.

36 (2) In an action under this chapter, the court may award a
37 prevailing plaintiff:

38 (a) Reasonable attorneys' fees and costs; and

39 (b) Additional relief, including injunctive relief.

1 (3) This chapter does not affect a right or remedy available
2 under law of this state other than this chapter.

3 **Sec. 24.** RCW 7.110.060 and 2023 c 65 s 7 are each amended to
4 read as follows:

5 (1) An action under RCW 7.110.020(~~((2))~~) or section 21 of this
6 act for:

7 (a) An unauthorized disclosure may not be brought later than four
8 years from the date the disclosure was discovered or should have been
9 discovered with the exercise of reasonable diligence; and

10 (b) A threat to disclose may not be brought later than four years
11 from the date of the threat to disclose.

12 (2) Except as otherwise provided in subsection (3) of this
13 section, this section is subject to the tolling statutes of this
14 state.

15 (3) In an action under RCW 7.110.020(~~((2))~~) or section 21 of this
16 act by a depicted individual who was a minor on the date of the
17 disclosure or threat to disclose, the time specified in subsection
18 (1)(~~((a))~~) of this section does not begin to run until the depicted
19 individual attains the age of majority.

--- END ---