

## Washington State Report State Ratings 2014

The Polaris annual state ratings process tracks the presence or absence of 10 categories of state statutes that Polaris believes are critical to a comprehensive anti-trafficking legal framework. It is important to note that these 10 categories are not exhaustive of all the important legislation that helps combat human trafficking in a given state. Moreover, the ratings do not assess the effectiveness or implementation of these laws, nor the anti-trafficking efforts of task forces, law enforcement, prosecutors, judges, service providers, and advocates in the state. The purpose of the annual state ratings process is to document laws on the books, to motivate legislators and policy advocates, and to focus the attention of states on the statutes that still need to be enacted in order to achieve a strong anti-trafficking legal framework.

### **Recognition: Perfect Score**

**Rating:** Tier One (green)

**Total Points:** 12

**Credited Categories:** 1 Sex Trafficking; 2 Labor Trafficking; 3(a) Asset Forfeiture; 3(b) Investigative Tools; 4(a) Training for Law Enforcement; 4(b) Human Trafficking Task Force; 5 Lower Burden of Proof for Sex Trafficking of Minors; 6 Posting of a Hotline; 7 Safe Harbor for Minors; 8 Victim Assistance; 9 Civil Remedy; and 10 Vacating Convictions.

**Categories Still Needed:** None.

**Category By Category Break-Down:**

### **Category 1: Sex Trafficking Statute**

#### **§ 9A.40.100. Trafficking**

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

(i) Such person:

- (A) Recruits, harbors, transports, transfers, provides, obtains, buys purchases or receives by any means another person knowing or in reckless disregard of the fact, that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act, or a commercial sex act; or that the person has not attained the age of eighteen years and is caused to engage in a sexually explicit act or a commercial sex act;
- (B) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i)(A) of this subsection; and

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

- (A) Involve committing or attempting to commit kidnapping;
- (B) Involve a finding of sexual motivation under RCW 9.94A.835;
- (C) Involve the illegal harvesting or sale of human organs; or



(D) Result in a death.

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

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

- (i) Recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person knowing that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act, or a commercial sex act; or
- (ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection.

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

(3)(a) A person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for a violation of a trafficking crime shall be assessed a three thousand dollar fee.

(b) The court shall not reduce, waive, or suspend payment of all or part of the fee assessed in this section unless it finds, on the record, that the offender does not have the ability to pay the fee in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(c) Fees assessed under this section shall be collected by the clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

- (i) At least fifty percent of the revenue from fees imposed under this section must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services, such as mental health and substance abuse counseling, parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.
- (ii) Revenues from these fees are not subject to the distribution 6 requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 7 35.20.220.

(4)(a) A person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for a violation of a trafficking crime shall be assessed a three thousand dollar fee.

(b) The court shall not reduce, waive, or suspend payment of all or part of the fee assessed in this section unless it finds, on the record, that the offender does not have the ability to pay the fee in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(c) Fees assessed under this section shall be collected by the clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

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(ii) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

## **Category 2: Labor Trafficking Statute**

Yes. See § 9A.40.100.

## **Category 3(a): Asset Forfeiture**

### **§ 9A.88.150. Seizure and forfeiture.**

- (1) The following are subject to seizure and forfeiture and no property right exists in them:
- (a) Any property or other interest acquired or maintained in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of the investment of funds, and any appreciation or income attributable to the investment, from a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;
  - (b) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, except that:
    - (i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;
    - (ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;
    - (iii) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and
    - (iv) When the owner of a conveyance has been arrested for a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;
  - (c) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;
  - (d) All proceeds traceable to or derived from an offense defined in RCW 9.68A.100, 9.68A.101, or 9A.88.070 and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense;
  - (e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;



- (f) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(f), to the extent of the interest of an owner, by reason of any act or omission, which that owner establishes was committed or omitted without the owner's knowledge or consent; and
- (g) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, if a substantial nexus exists between the violation and the real property. However:
- (i) No property may be forfeited pursuant to this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;
  - (ii) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

### **Category 3(b): Investigative Tools**

#### **§ 9.73.230. Intercepting, transmitting, or recording conversations concerning controlled substances or commercial sexual abuse of a minor--Conditions--Written reports required--Judicial review--Notice--Admissibility--Penalties**

(1) As part of a bona fide criminal investigation, the chief law enforcement officer of a law enforcement agency or his or her designee above the rank of first line supervisor may authorize the interception, transmission, or recording of a conversation or communication by officers under the following circumstances:

- (a) At least one party to the conversation or communication has consented to the interception, transmission, or recording;
- (b) Probable cause exists to believe that the conversation or communication involves:
  - (i) The unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW; or
  - (ii) A party engaging in the commercial sexual abuse of a minor under RCW 9.68A.100, or promoting commercial sexual abuse of a minor under RCW



9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102; and

(c) A written report has been completed as required by subsection (2) of this section.

#### **Category 4(a): Training for Law Enforcement**

##### **SB 6476 (2010)**

##### **NEW SECTION. Sec. 16.**

If funds are appropriated specifically for this purpose, the criminal justice training commission, in consultation with the Washington association of sheriffs and police chiefs, shall, by December 1, 2010, develop a model policy on law enforcement officer implementation of the procedures provided in this act relating to contact with a minor who is a "sexually exploited child" as defined in this act or who is a victim of offenses related to commercial sexual abuse of a minor as defined in chapter 9.68A RCW. The commission shall develop a curriculum based on the model policy for inclusion in its basic training academy by January 1, 2011.

#### **Category 4(b): Human Trafficking Task Force**

##### **§ 43.280.091. Statewide coordinating committee on sex trafficking.**

(1) The statewide coordinating committee on sex trafficking is established to address the issues of sex trafficking, to examine the practices of local and regional entities involved in addressing sex trafficking, and to develop a statewide plan to address sex trafficking.

(2) The committee is administered by the department of commerce and consists of the following members:

- (a) Two members of the house of representatives, one from each caucus, and Two members of the senate, one from each caucus, To be appointed by the speaker of the house of representatives and the president of the senate, respectively;
- (b) A representative of the Washington Attorney General's office;
- (c) The president or corporate executive officer of the center for children and youth justice or his or her designee;
- (d) The secretary of the children's administration or his or her designee;
- (e) The secretary of the juvenile rehabilitation administration or his or her designee;
- (f) The superintendent of public instruction or his or her designee;
- (g) A representative of the administrative office of the courts appointed by the administrative office of the courts;
- (h) The executive director of the Washington Association of Sheriffs and Police Chiefs or his or her designee;
- (i) The executive director of the Washington state criminal justice training commission or his or her designee;
- (j) Representatives of community advocacy groups that work to address the issues of human trafficking, to be appointed by the department of commerce's office of crime victims advocacy;
- (k) A representative of the Washington association of prosecuting attorneys appointed by the association;
- (l) Representatives of community service providers that serve victims of human trafficking, to be appointed by the department of commerce's office of crime victims advocacy;
- (m) The Executive director of Washington Engage or his or her designee;



- (n) A representative from shared hope international or his or her designee;
  - (o) The Executive director of the Washington Coalition of crime victim advocates or his or her designee;
  - (p) The Executive Director of the Washington coalition of sexual assault programs or his or her designee;
  - (q) The Executive director of the Washington State coalition against domestic violence or his or her designee;
  - (r) The executive director of the Washington association of cities or his or her designee;
  - (s) The Executive director of the Washington Association of counties or his or her designee; and
  - (t) The Director or a representative from the crime victims compensation program.
- (3) The duties of the committee include, but are not limited to:
- (a) Gathering and assessing service practices from diverse sources regarding service demand and delivery;
  - (b) Analyzing data regarding the implementation of sex trafficking legislation passed in recent years by the legislature, including reports submitted to the department of commerce pursuant to RCW 9.68A.105, 9A.88.120, and 9A.88.140, and assessing the efficacy of such legislation in addressing sex trafficking, as well as any obstacles to the impact of legislation on the commercial sex trade;
  - (c) Receiving and reviewing reports, recommendations, and statewide protocols as implemented in the pilot sites selected by the center for children and youth justice regarding commercially sexually exploited youth submitted to the committee by organizations that coordinate local community response practices and regional entities concerned with commercially sexually exploited youth; and
  - (d) Gathering and reviewing existing data, research, and literature to help shape a plan of action to address human trafficking in Washington to include:
    - (i) Strategies for Washington to undertake to end sex trafficking; and
    - (ii) Necessary data collection improvements.
- (4) The committee shall meet twice and, by December 2014, produce a report on its activities, together with a statewide plan to address sex trafficking in Washington, to the governor's office and the legislature.
- (5) All expenses of the committee shall come from the prostitution prevention and intervention account created in RCW 43.63A.740.
- (6) The members of the committee shall serve without compensation, but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060, within available resources.
- (7) The committee expires June 30, 2015.

### **Category 5: Lower Burden of Proof for Sex Trafficking of Minors**

Yes – See § 9A.40.100 (1)(a)(i)(A).

### **Category 6: Posting of a Human Trafficking Hotline**

#### **§ 47.38.080. Human trafficking informational posters at rest areas**

The department may work with human trafficking victim advocates in developing informational posters for placement in rest areas. The department may adopt policies for the placement of these posters in rest areas and these policies must address, at a minimum, placement of the





posters in bathroom stalls. The posters may be in a variety of languages and include toll-free telephone numbers a person may call for assistance, including the number for the national human trafficking resource center at (888) 373-7888 and the number for the Washington state office of crime victims advocacy at (800)822-1067.

## **Category 7: Safe Harbor; Protecting Sex Trafficked Minors**

### **§ 13.32A.030. Definitions--Regulating leave from semi-secure facility**

- (5) “Child in need of services” means a juvenile:
  - (a) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or other person;
  - (b) Who has been reported to law enforcement as absent without consent for at least twenty-four consecutive hours on two or more separate occasions from the home of either parent, a crisis residential center, an out-of-home placement, or a court-ordered placement; and
  - (i) Has exhibited a serious substance abuse problem; or
  - (ii) Has exhibited behaviors that create a serious risk of harm to the health, safety, or welfare of the child or any other person;
  - (c)(i) Who is in need of: (A) Necessary services, including food, shelter, health care, clothing, or education; or (B) services designed to maintain or reunite the family;
  - (ii) Who lacks access to, or has declined to utilize, these services; and
  - (iii) Whose parents have evidenced continuing but unsuccessful efforts to maintain the family structure or are unable or unwilling to continue efforts to maintain the family structure; or
  - (d) Who is a “sexually exploited child”
- (17) “Sexually exploited child” means any person under the age of eighteen who is a victim of the crime of commercial sex abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102.

### **§ 13.40.219. Arrest for prostitution or prostitution loitering--Alleged offender--Victim of severe form of trafficking, commercial sex abuse of a minor**

In any proceeding under this chapter related to an arrest for prostitution or prostitution loitering, there is a presumption that the alleged offender meets the criteria for a certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United States code, and that the alleged offender is also a victim of commercial sex abuse of a minor.

### **§ 13.32A.270. Youth who have been diverted--Alleged prostitution or prostitution loitering offenses--Services and treatment**

Within available funding, when a youth who has been diverted under RCW 13.40.070 for an alleged offense of prostitution or prostitution loitering is referred to the department, the department shall connect that child with the services and treatment specified in RCW 74.14B.060 and 74.14B.070.

### **§ 13.40.070. Complaints — Screening — Filing information — Diversion — Modification of community supervision — Notice to parent or guardian —**



**Probation counselor acting for prosecutor — Referral to mediation or reconciliation programs.**

(1) Complaints referred to the juvenile court alleging the commission of an offense shall be referred directly to the prosecutor. The prosecutor, upon receipt of a complaint, shall screen the complaint to determine whether:

(a) The alleged facts bring the case within the jurisdiction of the court; and

(b) On a basis of available evidence there is probable cause to believe that the juvenile did commit the offense.

(2) If the identical alleged acts constitute an offense under both the law of this state and an ordinance of any city or county of this state, state law shall govern the prosecutor's screening and charging decision for both filed and diverted cases.

(3) If the requirements of subsections (1)(a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections (5), (6), and (8) of this section. If the prosecutor finds that the requirements of subsection (1)(a) and (b) of this section are not met, the prosecutor shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision.

(4) An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.

(5) Except as provided in RCW 13.40.213 and subsection (7) of this section, where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, a class C felony listed in RCW 9.94A.411(2) as a crime against persons or listed in RCW 9A.46.060 as a crime of harassment, or a class C felony that is a violation of RCW 9.41.080 or 9.41.040(2)(a)(iii); or

(b) An alleged offender is accused of a felony and has a criminal history of any felony, or at least two gross misdemeanors, or at least two misdemeanors; or

(c) An alleged offender has previously been committed to the department; or

(d) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion; or

(e) An alleged offender has two or more diversion agreements on the alleged offender's criminal history; or

(f) A special allegation has been filed that the offender or an accomplice was armed with a firearm when the offense was committed.

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense is the offender's first offense or violation. If the alleged offender is charged with a related offense that must or may be filed under subsections (5) and (8) of this section, a case under this subsection may also be filed.

(7) Where a case is legally sufficient to charge an alleged offender with either prostitution or prostitution loitering and the alleged offense is the offender's first prostitution or prostitution loitering offense, the prosecutor shall divert the case.

(8) Where a case is legally sufficient and falls into neither subsection (5) nor (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.





(9) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversion interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile. Where a case involves victims of crimes against persons or victims whose property has not been recovered at the time a juvenile is referred to a diversion unit, the victim shall be notified of the referral and informed how to contact the unit.

(10) The responsibilities of the prosecutor under subsections (1) through (9) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient written notice to the juvenile court that the prosecutor will not review such complaints.

(11) The prosecutor, juvenile court probation counselor, or diversion unit may, in exercising their authority under this section or RCW 13.40.080, refer juveniles to mediation or victim offender reconciliation programs. Such mediation or victim offender reconciliation programs shall be voluntary for victims.

## **Category 8: Victim Assistance**

### **§ 7.68.360. Human trafficking--Coordinated state agency protocols.**

(1) By July 1, 2005, the director of the department of community, trade, and economic development, or the director's designee, shall within existing resources convene and chair a work group to develop written protocols for delivery of services to victims of trafficking of humans. The director shall invite appropriate federal agencies to consult with the work group for the purpose of developing protocols that, to the extent possible, are in concert with federal statutes, regulations, and policies. In addition to the director of the \*department of community, trade, and economic development, the following shall be members of the work group: The secretary of the department of health, the secretary of the department of social and health services, the attorney general, the director of the department of labor and industries, the commissioner of the employment security department, a representative of the Washington association of prosecuting attorneys, the chief of the Washington state patrol, two members selected by the Washington association of sheriffs and police chiefs, and five members, selected by the director of the \*department of community, trade, and economic development from a list submitted by public and private sector organizations that provide assistance to persons who are victims of trafficking. The attorney general, the chief of the Washington state patrol, and the secretaries or directors may designate a person to serve in their place.

Members of the work group shall serve without compensation.

(2) The protocols must meet all of the following minimum standards:

(a) The protocols must apply to the following state agencies: The \*department of community, trade, and economic development, the department of health, the department of social and health services, the attorney general's office, the Washington state patrol, the department of labor and industries, and the employment security department;

(b) The protocols must provide policies and procedures for interagency coordinated operations and cooperation with government agencies and nongovernmental organizations, agencies, and jurisdictions, including law enforcement agencies and prosecuting attorneys;



- (c) The protocols must include the establishment of a database electronically available to all affected agencies which contains the name, address, and telephone numbers of agencies that provide services to victims of human trafficking; and
  - (d) The protocols must provide guidelines for providing for the social service needs of victims of trafficking of humans, including housing, health care, and employment.
- (3) By January 1, 2006, the work group shall finalize the written protocols and submit them with a report to the legislature and the governor.
- (4) The protocols shall be reviewed on a biennial basis by the work group to determine whether revisions are appropriate. The director of the \*department of community, trade, and economic development, or the director's designee, shall within existing resources reconvene and chair the work group for this purpose.

#### **§ 19.320.050. Assistance information**

The department of labor and industries shall integrate information on assisting victims of human trafficking in posters and brochures, as deemed appropriate by the department. The information shall include the toll-free telephone number of the national human trafficking resource center and the Washington state office of crime victims advocacy.

#### **§ 36.22.179. Surcharge for homeless housing and assistance- use.**

- (1) In addition to the surcharge authorized in RCW 36.22.178, and except as provided in subsection (2) of this section, an additional surcharge of ten dollars shall be charged by the county auditor for each document recorded, which will be in addition to any other charge allowed by law. During the 2009-11 and 2011-13 biennia, the surcharge shall be thirty dollars. The funds collected pursuant to this section are to be distributed and used as follows:
  - (a) The auditor shall retain two percent for collection of the fee, and of the remainder shall remit sixty percent to the county to be deposited into a fund that must be used by the county and its cities and towns to accomplish the purposes of chapter 484, Laws of 2005, six percent of which may be used by the county for administrative costs related to its homeless housing plan, and the remainder for programs which directly accomplish the goals of the county's local homeless housing plan, except that for each city in the county which elects as authorized in RCW 43.185C.080 to operate its own local homeless housing program, a percentage of the surcharge assessed under this section equal to the percentage of the city's local portion of the real estate excise tax collected by the county shall be transmitted at least quarterly to the city treasurer, without any deduction for county administrative costs, for use by the city for program costs which directly contribute to the goals of the city's local homeless housing plan; of the funds received by the city, it may use six percent for administrative costs for its homeless housing program.
  - (b) The auditor shall remit the remaining funds to the state treasurer for deposit in the home security fund account. The department may use twelve and one-half percent of this amount for administration of the program established in RCW 43.185C.020, including the costs of creating the statewide homeless housing strategic plan, measuring performance, providing technical assistance to local governments, and managing the homeless housing grant program. The remaining eighty-seven and one-half percent is to be used by the department to:
    - (i) Provide housing and shelter for homeless people including, but not limited to: Grants to operate, repair, and staff shelters; grants to operate transitional housing; partial



- payments for rental assistance; consolidated emergency assistance; overnight youth shelters; grants and vouchers designated for victims of human trafficking and their families; and emergency shelter assistance; and
- (ii) Fund the homeless housing grant program.
- (2) The surcharge imposed in this section does not apply to (a) assignments or substitutions of previously recorded deeds of trust, or (b) documents recording a birth, marriage, divorce, or death or any documents otherwise exempted from a recording fee under state law.

## **Category 9: Access to Civil Damages**

### **§9A.82.100. Remedies and procedures**

- (1)
  - (a) A person who sustains injury to his or her person, business, or property by an act of criminal profiteering that is part of a pattern of criminal profiteering activity, or by an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or by a violation of RCW 9A.82.060 or 9A.82.080 may file an action in superior court for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.
  - (b) The attorney general or county prosecuting attorney may file an action:
    - (i) On behalf of those persons injured or, respectively, on behalf of the state or county if the entity has sustained damages, or
    - (ii) to prevent, restrain, or remedy a pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or a violation of RCW 9A.82.060 or 9A.82.080.
  - (c) An action for damages filed by or on behalf of an injured person, the state, or the county shall be for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.
  - (d) In an action filed to prevent, restrain, or remedy a pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or a violation of RCW 9A.82.060 or 9A.82.080, the court, upon proof of the violation, may impose a civil penalty not exceeding two hundred fifty thousand dollars, in addition to awarding the cost of the suit, including reasonable investigative and attorney's fees.
- (2) The superior court has jurisdiction to prevent, restrain, and remedy a pattern of criminal profiteering, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or a violation of RCW 9A.82.060 or 9A.82.080 after making provision for the rights of all innocent persons affected by the violation and after hearing or trial, as appropriate, by issuing appropriate orders.
- (3) Prior to a determination of liability, orders issued under subsection (2) of this section may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture, or other restraints pursuant to this section as the court deems proper. The orders may also include attachment, receivership, or injunctive relief in regard to personal or real property pursuant to Title 7 RCW. In shaping the reach or scope of receivership, attachment, or injunctive relief, the superior court shall provide for the protection of bona fide interests in property, including community property, of persons who were not involved in the violation of this chapter, except to the extent that such interests or property were acquired or used in such a way as to be subject to forfeiture under RCW 9A.82.100(4)(f).



- (4) Following a determination of liability, orders may include, but are not limited to:
- (a) Ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise.
  - (b) Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the Constitutions of the United States and this state permit.
  - (c) Ordering dissolution or reorganization of any enterprise.
  - (d) Ordering the payment of actual damages sustained to those persons injured by a violation of RCW 9A.82.060 or 9A.82.080, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or an act of criminal profiteering that is part of a pattern of criminal profiteering, and in the court's discretion, increasing the payment to an amount not exceeding three times the actual damages sustained.
  - (e) Ordering the payment of all costs and expenses of the prosecution and investigation of a pattern of criminal profiteering, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, activity or a violation of RCW 9A.82.060 or 9A.82.080, civil and criminal, incurred by the state or county, including any costs of defense provided at public expense, as appropriate to the state general fund or the antiprofitteering revolving fund of the county.
  - (f) Ordering forfeiture first as restitution to any person damaged by an act of criminal profiteering that is part of a pattern of criminal profiteering, or by an offense defined in RCW 9A.40.100, then to the state general fund or antiprofitteering revolving fund of the county, as appropriate, to the extent not already ordered to be paid in other damages, of the following:
    - (i) Any property or other interest acquired or maintained in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds, and any appreciation or income attributable to the investment, from a violation of RCW 9A.82.060 or 9A.82.080.
    - (ii) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.
    - (iii) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense.
  - (g) Ordering payment to the state general fund or antiprofitteering revolving fund of the county, as appropriate, of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of criminal profiteering.
- (5) In addition to or in lieu of an action under this section, the attorney general or county prosecuting attorney may file an action for forfeiture to the state general fund or antiprofitteering revolving fund of the county, as appropriate, to the extent not already ordered paid pursuant to this section, of the following:
- (a) Any interest acquired or maintained by a person in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any appreciation or income attributable to the investment.



- (b) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.
- (c) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate the commission of the offense.
- (6) A defendant convicted in any criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial in which the defendant was convicted. For the purposes of this subsection, a conviction shall be deemed to have occurred upon a verdict, finding, or plea of guilty, notwithstanding the fact that appellate review of the conviction and sentence has been or may be sought. If a subsequent reversal of the conviction occurs, any judgment that was based upon that conviction may be reopened upon motion of the defendant.
- (7) The initiation of civil proceedings under this section shall be commenced within three years after discovery of the pattern of criminal profiteering activity or after the pattern should reasonably have been discovered or, in the case of an offense that is defined in RCW 9A.40.100, within three years after the final disposition of any criminal charges relating to the offense, whichever is later.
- (8) The attorney general or county prosecuting attorney may, in a civil action brought pursuant to this section, file with the clerk of the superior court a certificate stating that the case is of special public importance. A copy of that certificate shall be furnished immediately by the clerk to the presiding chief judge of the superior court in which the action is pending and, upon receipt of the copy, the judge shall immediately designate a judge to hear and determine the action. The judge so designated shall promptly assign the action for hearing, participate in the hearings and determination, and cause the action to be expedited.
- (9) The standard of proof in actions brought pursuant to this section is the preponderance of the evidence test.
- (10) A person other than the attorney general or county prosecuting attorney who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court. The notice shall identify the action, the person, and the person's attorney. Service of the notice does not limit or otherwise affect the right of the state to maintain an action under this section or intervene in a pending action nor does it authorize the person to name the state or the attorney general as a party to the action.
- (11) Except in cases filed by a county prosecuting attorney, the attorney general may, upon timely application, intervene in any civil action or proceeding brought under this section if the attorney general certifies that in the attorney general's opinion the action is of special public importance. Upon intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general had instituted a separate action.
- (12) In addition to the attorney general's right to intervene as a party in any action under this section, the attorney general may appear as amicus curiae in any proceeding in which a claim under this section has been asserted or in which a court is interpreting RCW 9A.82.010, 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.
- (13) A private civil action under this section does not limit any other civil or criminal action under this chapter or any other provision. Private civil remedies provided under this section are supplemental and not mutually exclusive.



- (14) Upon motion by the defendant, the court may authorize the sale or transfer of assets subject to an order or lien authorized by this chapter for the purpose of paying actual attorney's fees and costs of defense. The motion shall specify the assets for which sale or transfer is sought and shall be accompanied by the defendant's sworn statement that the defendant has no other assets available for such purposes. No order authorizing such sale or transfer may be entered unless the court finds that the assets involved are not subject to possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of the motion, the court shall notify the state of the assets sought to be sold or transferred and shall hear argument on the issue of whether the assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a motion may be made from time to time and shall be heard by the court on an expedited basis.
- (15) In an action brought under subsection (1)(a) and (b)(i) of this section, either party has the right to a jury trial.

### **Category 10: Vacating Convictions for Sex Trafficking Victims**

#### **§9.96.060. Misdemeanor offenses--Vacating records**

- (3) Every person convicted of prostitution under RCW 9A.88.030 who committed the offense as a result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq. may apply to the sentencing court for vacation of the applicant's record of conviction for the prostitution offense. An applicant may not have the record of conviction for prostitution vacated if any one of the following is present:
- (a) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court;
  - (b) The offender has been convicted of another crime in this state, another state, or federal court since the date of conviction; or
  - (c) The applicant has ever had the record of another prostitution conviction vacated.

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If you would like assistance in enacting laws to fill in the gaps, please contact the Polaris Policy Program at [policy@polarisproject.org](mailto:policy@polarisproject.org).