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ENGROSSED HOUSE BILL 2791

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State of Washington

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1998 Regular Session

By Representatives Schoesler, Doumit, Sheahan, Ballasiotes, Radcliff, Sump, Sullivan, Mielke, Buck, Alexander, Boldt, Sterk, Crouse, Smith, Van Luven, Hickel, Koster, Mulliken, Johnson, Wensman, D. Sommers, Backlund and DeBolt

Read first time 01/20/98. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to methamphetamine; amending RCW 70.105D.070; and  
2 reenacting and amending RCW 9.94A.030.

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

4 **Sec. 1.** RCW 9.94A.030 and 1997 c 365 s 1, 1997 c 340 s 4, 1997 c  
5 339 s 1, 1997 c 338 s 2, 1997 c 144 s 1, and 1997 c 70 s 1 are each  
6 reenacted and amended to read as follows:

7 Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9 (1) "Collect," or any derivative thereof, "collect and remit," or  
10 "collect and deliver," when used with reference to the department of  
11 corrections, means that the department is responsible for monitoring  
12 and enforcing the offender's sentence with regard to the legal  
13 financial obligation, receiving payment thereof from the offender, and,  
14 consistent with current law, delivering daily the entire payment to the  
15 superior court clerk without depositing it in a departmental account.

16 (2) "Commission" means the sentencing guidelines commission.

17 (3) "Community corrections officer" means an employee of the  
18 department who is responsible for carrying out specific duties in

1 supervision of sentenced offenders and monitoring of sentence  
2 conditions.

3 (4) "Community custody" means that portion of an inmate's sentence  
4 of confinement in lieu of earned early release time or imposed pursuant  
5 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to  
6 controls placed on the inmate's movement and activities by the  
7 department of corrections.

8 (5) "Community placement" means that period during which the  
9 offender is subject to the conditions of community custody and/or  
10 postrelease supervision, which begins either upon completion of the  
11 term of confinement (postrelease supervision) or at such time as the  
12 offender is transferred to community custody in lieu of earned early  
13 release. Community placement may consist of entirely community  
14 custody, entirely postrelease supervision, or a combination of the two.

15 (6) "Community service" means compulsory service, without  
16 compensation, performed for the benefit of the community by the  
17 offender.

18 (7) "Community supervision" means a period of time during which a  
19 convicted offender is subject to crime-related prohibitions and other  
20 sentence conditions imposed by a court pursuant to this chapter or RCW  
21 16.52.200(6) or 46.61.524. For first-time offenders, the supervision  
22 may include crime-related prohibitions and other conditions imposed  
23 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact  
24 for out-of-state supervision of parolees and probationers, RCW  
25 9.95.270, community supervision is the functional equivalent of  
26 probation and should be considered the same as probation by other  
27 states.

28 (8) "Confinement" means total or partial confinement as defined in  
29 this section.

30 (9) "Conviction" means an adjudication of guilt pursuant to Titles  
31 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
32 acceptance of a plea of guilty.

33 (10) "Court-ordered legal financial obligation" means a sum of  
34 money that is ordered by a superior court of the state of Washington  
35 for legal financial obligations which may include restitution to the  
36 victim, statutorily imposed crime victims' compensation fees as  
37 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
38 drug funds, court-appointed attorneys' fees, and costs of defense,  
39 fines, and any other financial obligation that is assessed to the

1 offender as a result of a felony conviction. Upon conviction for  
2 vehicular assault while under the influence of intoxicating liquor or  
3 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the  
4 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),  
5 legal financial obligations may also include payment to a public agency  
6 of the expense of an emergency response to the incident resulting in  
7 the conviction, subject to the provisions in RCW 38.52.430.

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

15 (12) "Criminal history" means the list of a defendant's prior  
16 convictions and juvenile adjudications, whether in this state, in  
17 federal court, or elsewhere. The history shall include, where known,  
18 for each conviction (a) whether the defendant has been placed on  
19 probation and the length and terms thereof; and (b) whether the  
20 defendant has been incarcerated and the length of incarceration.

21 (13) "Day fine" means a fine imposed by the sentencing judge that  
22 equals the difference between the offender's net daily income and the  
23 reasonable obligations that the offender has for the support of the  
24 offender and any dependents.

25 (14) "Day reporting" means a program of enhanced supervision  
26 designed to monitor the defendant's daily activities and compliance  
27 with sentence conditions, and in which the defendant is required to  
28 report daily to a specific location designated by the department or the  
29 sentencing judge.

30 (15) "Department" means the department of corrections.

31 (16) "Determinate sentence" means a sentence that states with  
32 exactitude the number of actual years, months, or days of total  
33 confinement, of partial confinement, of community supervision, the  
34 number of actual hours or days of community service work, or dollars or  
35 terms of a legal financial obligation. The fact that an offender  
36 through "earned early release" can reduce the actual period of  
37 confinement shall not affect the classification of the sentence as a  
38 determinate sentence.

1 (17) "Disposable earnings" means that part of the earnings of an  
2 individual remaining after the deduction from those earnings of any  
3 amount required by law to be withheld. For the purposes of this  
4 definition, "earnings" means compensation paid or payable for personal  
5 services, whether denominated as wages, salary, commission, bonuses, or  
6 otherwise, and, notwithstanding any other provision of law making the  
7 payments exempt from garnishment, attachment, or other process to  
8 satisfy a court-ordered legal financial obligation, specifically  
9 includes periodic payments pursuant to pension or retirement programs,  
10 or insurance policies of any type, but does not include payments made  
11 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
12 or Title 74 RCW.

13 (18) "Drug offense" means:

14 (a) Any felony violation of chapter 69.50 RCW except possession of  
15 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
16 controlled substance (RCW 69.50.403);

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

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

23 (19) "Escape" means:

24 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
25 second degree (RCW 9A.76.120), willful failure to return from furlough  
26 (RCW 72.66.060), willful failure to return from work release (RCW  
27 72.65.070), or willful failure to be available for supervision by the  
28 department while in community custody (RCW 72.09.310); or

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

32 (20) "Felony traffic offense" means:

33 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
34 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
35 and-run injury-accident (RCW 46.52.020(4)); or

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

1 (21) "Fines" means the requirement that the offender pay a specific  
2 sum of money over a specific period of time to the court.

3 (22) "First-time offender" means any person who is convicted of a  
4 felony (a) not classified as a violent offense or a sex offense under  
5 this chapter, or (b) that is not the manufacture, delivery, or  
6 possession with intent to manufacture or deliver a controlled substance  
7 classified in schedule I or II that is a narcotic drug, nor the  
8 manufacture, delivery, or possession with intent to deliver  
9 methamphetamine, its salts, isomers, and salts of its isomers as  
10 defined in RCW 69.50.206(d)(2), nor the selling for profit of any  
11 controlled substance or counterfeit substance classified in schedule I,  
12 RCW 69.50.204, except leaves and flowering tops of marihuana, who  
13 previously has never been convicted of a felony in this state, federal  
14 court, or another state, and who has never participated in a program of  
15 deferred prosecution for a felony offense.

16 (23) "Most serious offense" means any of the following felonies or  
17 a felony attempt to commit any of the following felonies, as now  
18 existing or hereafter amended:

19 (a) Any felony defined under any law as a class A felony or  
20 criminal solicitation of or criminal conspiracy to commit a class A  
21 felony;

22 (b) Assault in the second degree;

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

24 (d) Child molestation in the second degree;

25 (e) Controlled substance homicide;

26 (f) Extortion in the first degree;

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

28 (h) Indecent liberties;

29 (i) Kidnapping in the second degree;

30 (j) Leading organized crime;

31 (k) Manslaughter in the first degree;

32 (l) Manslaughter in the second degree;

33 (m) Manufacture or possession of ephedrine or pseudoephedrine with  
34 intent to manufacture methamphetamine in or near a residence in which  
35 a minor resides;

36 (n) Promoting prostitution in the first degree;

37 (~~(n)~~) (o) Rape in the third degree;

38 (~~(o)~~) (p) Robbery in the second degree;

39 (~~(p)~~) (q) Sexual exploitation;

1       (~~(q)~~) (r) Vehicular assault;

2       (~~(r)~~) (s) Vehicular homicide, when proximately caused by the  
3 driving of any vehicle by any person while under the influence of  
4 intoxicating liquor or any drug as defined by RCW 46.61.502, or by the  
5 operation of any vehicle in a reckless manner;

6       (~~(s)~~) (t) Any other class B felony offense with a finding of  
7 sexual motivation, as "sexual motivation" is defined under this  
8 section;

9       (~~(t)~~) (u) Any other felony with a deadly weapon verdict under RCW  
10 9.94A.125;

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

16       (~~(v)~~) (w)(i) A prior conviction for indecent liberties under RCW  
17 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
18 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
19 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
20 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

21       (ii) A prior conviction for indecent liberties under RCW  
22 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
23 if: (A) The crime was committed against a child under the age of  
24 fourteen; or (B) the relationship between the victim and perpetrator is  
25 included in the definition of indecent liberties under RCW  
26 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
27 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
28 through July 27, 1997.

29       (24) "Nonviolent offense" means an offense which is not a violent  
30 offense.

31       (25) "Offender" means a person who has committed a felony  
32 established by state law and is eighteen years of age or older or is  
33 less than eighteen years of age but whose case is under superior court  
34 jurisdiction under RCW 13.04.030 or has been transferred by the  
35 appropriate juvenile court to a criminal court pursuant to RCW  
36 13.40.110. Throughout this chapter, the terms "offender" and  
37 "defendant" are used interchangeably.

38       (26) "Partial confinement" means confinement for no more than one  
39 year in a facility or institution operated or utilized under contract

1 by the state or any other unit of government, or, if home detention or  
2 work crew has been ordered by the court, in an approved residence, for  
3 a substantial portion of each day with the balance of the day spent in  
4 the community. Partial confinement includes work release, home  
5 detention, work crew, and a combination of work crew and home detention  
6 as defined in this section.

7 (27) "Persistent offender" is an offender who:

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

10 (ii) Has, before the commission of the offense under (a) of this  
11 subsection, been convicted as an offender on at least two separate  
12 occasions, whether in this state or elsewhere, of felonies that under  
13 the laws of this state would be considered most serious offenses and  
14 would be included in the offender score under RCW 9.94A.360; provided  
15 that of the two or more previous convictions, at least one conviction  
16 must have occurred before the commission of any of the other most  
17 serious offenses for which the offender was previously convicted; or

18 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
19 of a child in the first degree, child molestation in the first degree,  
20 rape in the second degree, rape of a child in the second degree, or  
21 indecent liberties by forcible compulsion; (B) murder in the first  
22 degree, murder in the second degree, homicide by abuse, kidnapping in  
23 the first degree, kidnapping in the second degree, assault in the first  
24 degree, assault in the second degree, assault of a child in the first  
25 degree, or burglary in the first degree, with a finding of sexual  
26 motivation; or (C) an attempt to commit any crime listed in this  
27 subsection (27)(b)(i); and

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

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

1 (29) "Restitution" means the requirement that the offender pay a  
2 specific sum of money over a specific period of time to the court as  
3 payment of damages. The sum may include both public and private costs.  
4 The imposition of a restitution order does not preclude civil redress.

5 (30) "Serious traffic offense" means:

6 (a) Driving while under the influence of intoxicating liquor or any  
7 drug (RCW 46.61.502), actual physical control while under the influence  
8 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
9 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
10 or

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

14 (31) "Serious violent offense" is a subcategory of violent offense  
15 and means:

16 (a) Murder in the first degree, homicide by abuse, murder in the  
17 second degree, manslaughter in the first degree, assault in the first  
18 degree, kidnapping in the first degree, or rape in the first degree,  
19 assault of a child in the first degree, or an attempt, criminal  
20 solicitation, or criminal conspiracy to commit one of these felonies;  
21 or

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

25 (32) "Sentence range" means the sentencing court's discretionary  
26 range in imposing a nonappealable sentence.

27 (33) "Sex offense" means:

28 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
29 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a  
30 criminal attempt, criminal solicitation, or criminal conspiracy to  
31 commit such crimes;

32 (b) A felony with a finding of sexual motivation under RCW  
33 9.94A.127 or 13.40.135; or

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

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



1 (35) "Total confinement" means confinement inside the physical  
2 boundaries of a facility or institution operated or utilized under  
3 contract by the state or any other unit of government for twenty-four  
4 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

5 (36) "Transition training" means written and verbal instructions  
6 and assistance provided by the department to the offender during the  
7 two weeks prior to the offender's successful completion of the work  
8 ethic camp program. The transition training shall include instructions  
9 in the offender's requirements and obligations during the offender's  
10 period of community custody.

11 (37) "Victim" means any person who has sustained emotional,  
12 psychological, physical, or financial injury to person or property as  
13 a direct result of the crime charged.

14 (38) "Violent offense" means:

15 (a) Any of the following felonies, as now existing or hereafter  
16 amended: Any felony defined under any law as a class A felony or an  
17 attempt to commit a class A felony, criminal solicitation of or  
18 criminal conspiracy to commit a class A felony, manslaughter in the  
19 first degree, manslaughter in the second degree, indecent liberties if  
20 committed by forcible compulsion, kidnapping in the second degree,  
21 arson in the second degree, assault in the second degree, assault of a  
22 child in the second degree, extortion in the first degree, robbery in  
23 the second degree, drive-by shooting, vehicular assault, and vehicular  
24 homicide, when proximately caused by the driving of any vehicle by any  
25 person while under the influence of intoxicating liquor or any drug as  
26 defined by RCW 46.61.502, or by the operation of any vehicle in a  
27 reckless manner;

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

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

34 (39) "Work crew" means a program of partial confinement consisting  
35 of civic improvement tasks for the benefit of the community of not less  
36 than thirty-five hours per week that complies with RCW 9.94A.135. The  
37 civic improvement tasks shall have minimal negative impact on existing  
38 private industries or the labor force in the county where the service  
39 or labor is performed. The civic improvement tasks shall not affect

1 employment opportunities for people with developmental disabilities  
2 contracted through sheltered workshops as defined in RCW 82.04.385.  
3 Only those offenders sentenced to a facility operated or utilized under  
4 contract by a county or the state are eligible to participate on a work  
5 crew. Offenders sentenced for a sex offense as defined in subsection  
6 (33) of this section are not eligible for the work crew program.

7 (40) "Work ethic camp" means an alternative incarceration program  
8 designed to reduce recidivism and lower the cost of corrections by  
9 requiring offenders to complete a comprehensive array of real-world job  
10 and vocational experiences, character-building work ethics training,  
11 life management skills development, substance abuse rehabilitation,  
12 counseling, literacy training, and basic adult education.

13 (41) "Work release" means a program of partial confinement  
14 available to offenders who are employed or engaged as a student in a  
15 regular course of study at school. Participation in work release shall  
16 be conditioned upon the offender attending work or school at regularly  
17 defined hours and abiding by the rules of the work release facility.

18 (42) "Home detention" means a program of partial confinement  
19 available to offenders wherein the offender is confined in a private  
20 residence subject to electronic surveillance.

21 **Sec. 2.** RCW 70.105D.070 and 1997 c 406 s 5 are each amended to  
22 read as follows:

23 (1) The state toxics control account and the local toxics control  
24 account are hereby created in the state treasury.

25 (2) The following moneys shall be deposited into the state toxics  
26 control account: (a) Those revenues which are raised by the tax  
27 imposed under RCW 82.21.030 and which are attributable to that portion  
28 of the rate equal to thirty-three one-hundredths of one percent; (b)  
29 the costs of remedial actions recovered under this chapter or chapter  
30 70.105A RCW; (c) penalties collected or recovered under this chapter;  
31 and (d) any other money appropriated or transferred to the account by  
32 the legislature. Moneys in the account may be used only to carry out  
33 the purposes of this chapter, including but not limited to the  
34 following activities:

35 (i) The state's responsibility for hazardous waste planning,  
36 management, regulation, enforcement, technical assistance, and public  
37 education required under chapter 70.105 RCW;

1 (ii) The state's responsibility for solid waste planning,  
2 management, regulation, enforcement, technical assistance, and public  
3 education required under chapter 70.95 RCW;

4 (iii) The hazardous waste cleanup program required under this  
5 chapter;

6 (iv) State matching funds required under the federal cleanup law;

7 (v) Financial assistance for local programs in accordance with  
8 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

9 (vi) State government programs for the safe reduction, recycling,  
10 or disposal of hazardous wastes from households, small businesses, and  
11 agriculture;

12 (vii) Hazardous materials emergency response training;

13 (viii) Water and environmental health protection and monitoring  
14 programs;

15 (ix) Programs authorized under chapter 70.146 RCW;

16 (x) A public participation program, including regional citizen  
17 advisory committees;

18 (xi) Public funding to assist potentially liable persons to pay for  
19 the costs of remedial action in compliance with cleanup standards under  
20 RCW 70.105D.030(2)(e) but only when the amount and terms of such  
21 funding are established under a settlement agreement under RCW  
22 70.105D.040(4) and when the director has found that the funding will  
23 achieve both (A) a substantially more expeditious or enhanced cleanup  
24 than would otherwise occur, and (B) the prevention or mitigation of  
25 unfair economic hardship; and

26 (xii) Development and demonstration of alternative management  
27 technologies designed to carry out the top two hazardous waste  
28 management priorities of RCW 70.105.150.

29 (3) The following moneys shall be deposited into the local toxics  
30 control account: Those revenues which are raised by the tax imposed  
31 under RCW 82.21.030 and which are attributable to that portion of the  
32 rate equal to thirty-seven one-hundredths of one percent.

33 (a) Moneys deposited in the local toxics control account shall be  
34 used by the department for grants or loans to local governments for the  
35 following purposes in descending order of priority: (i) Remedial  
36 actions; (ii) hazardous waste plans and programs under chapter 70.105  
37 RCW; and (iii) solid waste plans and programs under chapters 70.95,  
38 70.95C, 70.95I, and 70.105 RCW. Funds for plans and programs shall be

1 allocated consistent with the priorities and matching requirements  
2 established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW.

3 (b) Funds may also be appropriated to the department of health to  
4 implement programs to reduce testing requirements under the federal  
5 safe drinking water act for public water systems. The department of  
6 health shall reimburse the account from fees assessed under RCW  
7 70.119A.115 by June 30, 1995.

8 (c) Funds may also be appropriated to local governments for a  
9 program to assist in the assessment and cleanup of sites of  
10 methamphetamine production. Funds from this program shall not be used  
11 for the initial containment of such a site.

12 (4) Except for unanticipated receipts under RCW 43.79.260 through  
13 43.79.282, moneys in the state and local toxics control accounts may be  
14 spent only after appropriation by statute.

15 (5) One percent of the moneys deposited into the state and local  
16 toxics control accounts shall be allocated only for public  
17 participation grants to persons who may be adversely affected by a  
18 release or threatened release of a hazardous substance and to not-for-  
19 profit public interest organizations. The primary purpose of these  
20 grants is to facilitate the participation by persons and organizations  
21 in the investigation and remedying of releases or threatened releases  
22 of hazardous substances and to implement the state's solid and  
23 hazardous waste management priorities. No grant may exceed sixty  
24 thousand dollars. Grants may be renewed annually. Moneys appropriated  
25 for public participation from either account which are not expended at  
26 the close of any biennium shall revert to the state toxics control  
27 account.

28 (6) No moneys deposited into either the state or local toxics  
29 control account may be used for solid waste incinerator feasibility  
30 studies, construction, maintenance, or operation.

31 (7) The department shall adopt rules for grant or loan issuance and  
32 performance.

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