
HOUSE BILL 2712

State of Washington

59th Legislature

2006 Regular Session

By Representatives O'Brien, Pearson, Lovick, McCoy and Simpson; by request of Attorney General

Read first time 01/12/2006. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to reducing crime; amending RCW 2.28.170,
2 74.34.020, 64.44.010, 64.44.020, 64.44.030, 64.44.040, 64.44.050,
3 64.44.060, 64.44.070, 70.105D.020, 9.94A.533, 9.94A.728, and 9.94A.500;
4 adding a new section to chapter 13.40 RCW; adding new sections to
5 chapter 64.44 RCW; adding a new chapter to Title 49 RCW; creating new
6 sections; and prescribing penalties.

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

8 PART I

9 SUBSTANCE ABUSE REDUCTION

10 NEW SECTION. **Sec. 101.** A new section is added to chapter 13.40
11 RCW to read as follows:

12 (1)(a) The department of social and health services division of
13 alcohol and substance abuse shall establish a substance abuse and
14 mental health treatment pilot program that awards grants to counties on
15 a competitive basis for substance abuse and mental health treatment for
16 users of methamphetamine, subject to the availability of amounts
17 appropriated for this specific purpose.

1 (b) The department of social and health services division of
2 alcohol and substance abuse shall review county applications for
3 funding through the substance abuse and mental health treatment program
4 and shall select the counties that will be awarded grants with funds
5 appropriated to implement this program. The department, in
6 consultation with the Washington state institute for public policy,
7 shall develop guidelines to determine which counties will be awarded
8 funding in accordance with the substance abuse and mental health
9 treatment program. At a minimum, counties must meet the following
10 criteria in order to participate in the substance abuse and mental
11 health treatment program:

12 (i) Counties must have imposed the sales and use tax authorized by
13 RCW 82.14.460;

14 (ii) Counties must demonstrate that state funds allocated pursuant
15 to this section are used only for the purposes authorized in RCW
16 82.14.460;

17 (iii) Counties that submit joint applications must submit for
18 approval by the department of social and health services division of
19 alcohol and substance abuse multicounty plans for efficient program
20 delivery.

21 (2)(a) Effective July 1, 2006, and continuing through June 30,
22 2008, a substance abuse and mental health treatment pilot program shall
23 be established. The pilot program shall be for the purpose of
24 exploring methods of providing new or expanded chemical dependency or
25 mental health treatment services and for the operation of new or
26 expanded therapeutic court programs for crimes involving substance
27 abuse.

28 (b) Counties that participate in the pilot program shall have a
29 portion of their costs paid for with moneys from the substance abuse
30 and mental health treatment account established pursuant to subsection
31 (3) of this section. The total amount allocated for pilot program
32 grants established in this section is limited to amounts appropriated
33 for this specific purpose.

34 (3)(a) The substance abuse and mental health treatment account is
35 created in the state treasury. Moneys in the account shall be spent
36 only after appropriation. Expenditures from the account may be used to
37 reimburse local governments for the implementation of the substance
38 abuse and mental health treatment program established in this section.

1 (b) Revenues to the substance abuse and mental health treatment
2 account consist of revenues appropriated to or deposited in the
3 account.

4 (c) The department of social and health services division of
5 alcohol and substance abuse shall review and monitor the expenditures
6 made by any county or group of counties that is funded, in whole or in
7 part, with funds provided through the substance abuse and mental health
8 treatment account. Counties shall repay any funds that are not spent
9 in accordance with this section.

10 (4) The department of social and health services division of
11 alcohol and substance abuse shall provide a preliminary report to the
12 legislature on the pilot project on or before October 1, 2007, and a
13 final report on or before October 1, 2008.

14 NEW SECTION. **Sec. 102.** It is the intent of the legislature to
15 provide an annual combined level of state and federal funding for
16 multijurisdictional drug task forces and local government drug
17 prosecution assistance at a minimum of four million dollars.

18 NEW SECTION. **Sec. 103.** (1) It is the intent of the legislature to
19 provide assistance for jurisdictions enforcing illegal-drug laws who
20 have historically been underserved by federally funded state narcotics
21 task forces and are considered to be major transport areas of narcotics
22 traffickers.

23 (2) Three pilot enforcement areas shall be established for a period
24 of four fiscal years, beginning on July 1, 2006, and ending on June 30,
25 2010, with one in the southwestern region of the state, comprising of
26 Pacific and Wahkiakum counties; one in the southeastern region of the
27 state, comprising of Walla Walla, Columbia, Garfield, and Asotin
28 counties; and one in the northeastern part of the state, comprising of
29 Stevens, Ferry, and Pend Oreille counties.

30 (3) It is the legislature's intent to provide funding of no less
31 than 1.125 million dollars annually. The funding is to be divided
32 equally between the three pilot enforcement areas. This funding is
33 intended to provide a minimum of three additional sheriff deputies for
34 each pilot area, a deputy prosecutor who will support the counties who
35 are included in the pilot area, and court clerk and clerical staff to
36 serve the pilot area. Counties are encouraged to utilize drug courts

1 and treatment programs and to share resources that operate in the
2 region through the use of interlocal agreements. The funding
3 appropriated for this purpose must not be used to supplant existing
4 funding and cannot be used for any purpose other than the enforcement
5 of illegal-drug laws.

6 The criminal justice training commission shall allocate funds to
7 the Washington association of prosecuting attorneys and the Washington
8 association of sheriffs and police chiefs. The Washington association
9 of prosecuting attorneys is responsible for administration of the
10 funding and programs for the prosecution of crimes and court
11 proceedings and the Washington association of sheriffs and police
12 chiefs shall administer the funds provided for law enforcement.

13 (4) The Washington association of sheriffs and police chiefs, the
14 Washington association of prosecuting attorneys, and the Washington
15 association of county officials shall jointly develop measures to
16 determine the efficacy of the programs in the pilot area. These
17 measures will include comparison of arrest rates before the
18 implementation of this act and after, reduction of recidivism, and any
19 other factors that are determined to be relevant to evaluation of the
20 programs. The organizations named in this section shall present their
21 findings to the legislature by December 1, 2008.

22 NEW SECTION. **Sec. 104.** It is the intent of the legislature to
23 promote drug-free workplaces to improve the safety of the workplace,
24 protect the health of workers, and afford employers in this state the
25 opportunity to maximize their levels of productivity, enhance their
26 competitive positions in the marketplace, and reach their desired
27 levels of success without experiencing the costs, delays, and tragedies
28 associated with work-related accidents resulting from substance abuse
29 by employees.

30 NEW SECTION. **Sec. 105.** Unless the context clearly requires
31 otherwise, the definitions in this section apply throughout this
32 chapter.

33 (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or
34 spirits of wine, from whatever source or by whatever process produced.

35 (2) "Alcohol test" means a chemical, biological, or physical

1 instrumental analysis administered for the purpose of determining the
2 presence or absence of alcohol within an individual's body systems.

3 (3) "Chain of custody" means the methodology of tracking specimens
4 for the purpose of maintaining control and accountability from initial
5 collection to final disposition for all specimens and providing for
6 accountability at each stage in handling, testing, and storing
7 specimens and reporting test results.

8 (4) "Collection site" means a place where individuals present
9 themselves for the purpose of providing a urine, breath, or other
10 specimen to be analyzed for the presence of drugs or alcohol.

11 (5) "Confirmation test" or "confirmed test" means a second
12 analytical procedure used to identify the presence of a specific drug
13 or metabolic in a specimen. Drug tests must be confirmed as specified
14 in section 109(5) of this act. Alcohol tests must be confirmed by a
15 second breath test or as specified for drug tests.

16 (6) "Department" means the department of social and health
17 services.

18 (7) "Drug" means amphetamines, cannabinoids, cocaine, phencyclidine
19 (PCP), methadone, methaqualone, opiates, barbiturates, benzodiazepines,
20 propoxyphene, or a metabolite of any such substances.

21 (8) "Drug test" means a chemical, biological, or physical
22 instrumental analysis administered on a specimen sample for the purpose
23 of determining the presence or absence of a drug or its metabolites
24 within the sample.

25 (9) "Employee" means a person who is employed for salary, wages, or
26 other remuneration by an employer.

27 (10) "Employee assistance program" means a program designed to
28 assist in the identification and resolution of job performance problems
29 associated with employees impaired by personal concerns. A minimum
30 level of core services must include: Consultation and professional,
31 confidential, appropriate, and timely problem assessment services;
32 short-term problem resolution; referrals for appropriate diagnosis,
33 treatment, and assistance; follow-up and monitoring; employee
34 education; and supervisory training.

35 (11) "Employer" means an employer subject to Title 51 RCW but does
36 not include the state or any department, agency, or instrumentality of
37 the state; any county; any city; any school district or educational
38 service district; or any municipal corporation.

1 (12) "Initial test" means a sensitive, rapid, and reliable
2 procedure to identify negative and presumptive positive specimens. An
3 initial drug test must use an immunoassay procedure or an equivalent
4 procedure or must use a more accurate scientifically accepted method
5 approved by the national institute on drug abuse as more accurate
6 technology becomes available in a cost-effective form.

7 (13) "Injury" means a sudden and tangible happening, of a traumatic
8 nature, producing an immediate or prompt result and occurring from
9 without, and such physical conditions as result therefrom.

10 (14) "Job applicant" means a person who has applied for employment
11 with an employer and has been offered employment conditioned upon
12 successfully passing a drug test and may have begun work pending the
13 results of the drug test.

14 (15) "Last-chance agreement" means a notice to an employee who is
15 referred to the employee assistance program due to a verified positive
16 alcohol or drug test or for violating an alcohol or drug-related
17 employer rule that states the terms and conditions of continued
18 employment with which the employee must comply.

19 (16) "Medical review officer" means a licensed physician trained in
20 the field of drug testing who provides medical assessment of positive
21 test results, requests reanalysis if necessary, and makes a
22 determination whether or not drug misuse has occurred.

23 (17) "Nonprescription medication" means a drug or medication
24 authorized under federal or state law for general distribution and use
25 without a prescription in the treatment of human disease, ailments, or
26 injuries.

27 (18) "Prescription medication" means a drug or medication lawfully
28 prescribed by a physician, or other health care provider licensed to
29 prescribe medication, for an individual and taken in accordance with
30 the prescription.

31 (19) "Rehabilitation program" means a program approved by the
32 department that is capable of providing expert identification,
33 assessment, and resolution of employee drug or alcohol abuse in a
34 confidential and timely service. Any rehabilitation program under this
35 chapter must contain a two-year continuing care component.

36 (20) "Specimen" means breath or urine. "Specimen" may include
37 other products of the human body capable of revealing the presence of

1 drugs or their metabolites or of alcohol, if approved by the United
2 States department of health and human services and permitted by rules
3 adopted under section 116 of this act.

4 (21) "Substance" means drugs or alcohol.

5 (22) "Substance abuse test" or "test" means a chemical, biological,
6 or physical instrumental analysis administered on a specimen sample for
7 the purpose of determining the presence or absence of a drug or its
8 metabolites or of alcohol within the sample.

9 (23) "Threshold detection level" means the level at which the
10 presence of a drug or alcohol can be reasonably expected to be detected
11 by an initial and confirmation test performed by a laboratory meeting
12 the standards specified in this chapter. The threshold detection level
13 indicates the level at which a valid conclusion can be drawn that the
14 drug or alcohol is present in the employee's specimen.

15 (24) "Verified positive test result" means a confirmed positive
16 test result obtained by a laboratory meeting the standards specified in
17 this chapter that has been reviewed and verified by a medical review
18 officer in accordance with medical review officer guidelines
19 promulgated by the United States department of health and human
20 services.

21 (25) "Workers' compensation premium" means the medical aid fund
22 premium and the accident fund premium under Title 51 RCW.

23 NEW SECTION. **Sec. 106.** (1) An employer, except an employer that
24 is self-insured for the purposes of Title 51 RCW, implementing a drug-
25 free workplace program in accordance with section 107 of this act shall
26 qualify for a five percent workers' compensation premium discount under
27 Title 51 RCW if the employer:

28 (a) Is certified by the division of alcohol and substance abuse of
29 the department as provided in section 116 of this act. The employer
30 must maintain an alcohol and drug-free workplace program in accordance
31 with the standards, procedures, and rules established in or under this
32 chapter. If the employer fails to maintain the program as required,
33 the employer shall not qualify for the premium discount provided under
34 this section;

35 (b) Is in good standing and remains in good standing with the
36 department of labor and industries with respect to the employer's

1 workers' compensation premium obligations and any other premiums and
2 assessments under Title 51 RCW; and

3 (c) Has medical insurance available to its full-time employees
4 through an employer, union, or jointly sponsored medical plan.

5 (2) The premium discount must remain in effect as long as the
6 employer is certified under section 116 of this act, up to a maximum of
7 three years from the date of initial certification.

8 (3) A certified employer may discontinue operating a drug-free
9 workplace program at any time. The qualification for a premium
10 discount shall expire in accordance with decertification rules adopted
11 by the department under section 116 of this act.

12 (4) An employer whose substance abuse testing program reasonably
13 meets, as of July 1, 2006, the requirements for the premium discount
14 provided in this section is not eligible for certification.

15 (5) Nothing in this chapter creates or alters an obligation on the
16 part of an employer seeking to participate in this program to bargain
17 with a collective bargaining representative of its employees.

18 (6) An employer may not receive premium discounts from the
19 department of labor and industries under more than one premium discount
20 program. An employer participating in and meeting all of the
21 requirements for the discount provided in this section and also
22 participating in another premium discount program offered by the
23 department of labor and industries is only entitled to the premium
24 discount that is the highest.

25 (7) The department of labor and industries will notify self-insured
26 employers of the value of drug-free workplace programs and encourage
27 them to implement programs that are in accord with section 107 of this
28 act.

29 NEW SECTION. **Sec. 107.** (1) A drug-free workplace program
30 established under this chapter must contain all of the following
31 elements:

32 (a) A written policy statement in compliance with section 108 of
33 this act;

34 (b) Substance abuse testing in compliance with section 109 of this
35 act;

36 (c) An employee assistance program in compliance with section 110
37 of this act;

1 (d) Employee education in compliance with section 112 of this act;
2 and

3 (e) Supervisor training in compliance with section 113 of this act.

4 (2) In addition to the requirements of subsection (1) of this
5 section, a drug-free workplace program established under this chapter
6 must be implemented in compliance with the confidentiality standards
7 provided in section 115 of this act.

8 NEW SECTION. **Sec. 108.** (1) An alcohol and drug-free workplace
9 program established under this chapter must contain a written substance
10 abuse policy statement in order to qualify for the premium discount
11 provided under section 106 of this act. The policy must:

12 (a) Notify employees that the use or being under any influence of
13 alcohol during working hours is prohibited;

14 (b) Notify employees that the use, purchase, possession, or
15 transfer of drugs or having illegal drugs in their system is prohibited
16 and that prescription or nonprescription medications are not prohibited
17 when taken in accordance with a lawful prescription or consistent with
18 standard dosage recommendations;

19 (c) Identify the types of testing an employee or job applicant may
20 be required to submit to or other basis used to determine when such a
21 test will be required;

22 (d) Identify the actions the employer may take against an employee
23 or job applicant on the basis of a verified positive test result;

24 (e) Contain a statement advising an employee or job applicant of
25 the existence of this chapter;

26 (f) Contain a general statement concerning confidentiality;

27 (g) Identify the consequences of refusing to submit to a drug test;

28 (h) Contain a statement advising an employee of the employee
29 assistance program;

30 (i) Contain a statement that an employee or job applicant who
31 receives a verified positive test result may contest or explain the
32 result to the employer within five working days after receiving written
33 notification of the positive test result;

34 (j) Contain a statement informing an employee of the provisions of
35 the federal drug-free workplace act, if applicable to the employer; and

36 (k) Notify employees that the employer may discipline an employee
37 for failure to report an injury in the workplace.

1 (2) An employer not having a substance abuse testing program in
2 effect on July 1, 2006, shall ensure that at least sixty days elapse
3 between a general one-time notice to all employees that a substance
4 abuse testing program is being implemented and the beginning of the
5 actual testing. An employer having a substance abuse testing program
6 in place before July 1, 2006, is not required to provide a sixty-day
7 notice period.

8 (3) An employer shall include notice of substance abuse testing to
9 all job applicants. A notice of the employer's substance abuse testing
10 policy must also be posted in an appropriate and conspicuous location
11 on the employer's premises, and copies of the policy must be made
12 available for inspection by the employees or job applicants of the
13 employer during regular business hours in the employer's personnel
14 office or other suitable locations. An employer with employees or job
15 applicants who have trouble communicating in English shall make
16 reasonable efforts to help the employees understand the policy
17 statement.

18 NEW SECTION. **Sec. 109.** (1) In conducting substance abuse testing
19 under this chapter, the employer must comply with the standards and
20 procedures established in this chapter and all applicable rules adopted
21 by the department under this chapter and must:

22 (a) Require job applicants to submit to a drug test after extending
23 an offer of employment. The employer may use a refusal to submit to a
24 drug test or a verified positive test as a basis for not hiring the job
25 applicant;

26 (b) Investigate each workplace injury that results in a worker
27 needing off-site medical attention and require an employee to submit to
28 drug and alcohol tests if the employer reasonably believes the employee
29 has caused or contributed to an injury which resulted in the need for
30 off-site medical attention. An employer need not require that an
31 employee submit to drug and alcohol tests if a supervisor, trained in
32 accordance with section 113 of this act, reasonably believes that the
33 injury was due to the inexperience of the employee or due to a
34 defective or unsafe product or working condition, or other
35 circumstances beyond the control of the employee. Under this chapter,
36 a first-time verified positive test result may not be used as a basis

1 to terminate an employee's employment. However, nothing in this
2 section prohibits an employee from being terminated for reasons other
3 than the positive test result;

4 (c) If the employee in the course of employment is referred to the
5 employee assistance program by the employer as a result of a verified
6 positive drug or alcohol test or an alcohol or drug-related incident in
7 violation of employer rules, require the employee to submit to drug and
8 alcohol testing in conjunction with any recommended rehabilitation
9 program. If the employee assistance program determines that the
10 employee does not require treatment services, the employee must still
11 be required to participate in follow-up testing. However, if an
12 employee voluntarily enters an employee assistance program, without a
13 verified positive drug or alcohol test or a violation of any drug or
14 alcohol related employer rule, follow-up testing is not required. If
15 follow-up testing is conducted, the frequency of the testing shall be
16 at least four times a year for a two-year period after completion of
17 the rehabilitation program and advance notice of the testing date may
18 not be given. A verified positive follow-up test result shall normally
19 require termination of employment.

20 (2) This section does not prohibit an employer from conducting
21 other drug or alcohol testing, such as upon reasonable suspicion or a
22 random basis.

23 (3) Specimen collection and substance abuse testing under this
24 section must be performed in accordance with regulations and procedures
25 approved by the United States department of health and human services
26 and the United States department of transportation regulations for
27 alcohol and drug testing and must include testing for marijuana,
28 cocaine, amphetamines, opiates, and phencyclidine. Employers may test
29 for any drug listed in section 105(7) of this act.

30 (a) A specimen must be collected with due regard to the privacy of
31 the individual providing the specimen and in a manner reasonably
32 calculated to prevent substitution or contamination of the specimen.

33 (b) Specimen collection and analysis must be documented. The
34 documentation procedures must include:

35 (i) Labeling of specimen containers so as to reasonably preclude
36 the likelihood of erroneous identification of test results; and

37 (ii) An opportunity for the employee or job applicant to provide to
38 a medical review officer information the employee or applicant

1 considers relevant to the drug test, including identification of
2 currently or recently used prescription or nonprescription medication
3 or other relevant medical information.

4 (c) Specimen collection, storage, and transportation to the testing
5 site must be performed in a manner that reasonably precludes specimen
6 contamination or adulteration.

7 (d) An initial and confirmation test conducted under this section,
8 not including the taking or collecting of a specimen to be tested, must
9 be conducted by a laboratory as described in subsection (4) of this
10 section.

11 (e) A specimen for a test may be taken or collected by any of the
12 following persons:

13 (i) A physician, a physician's assistant, a registered professional
14 nurse, a licensed practical nurse, a nurse practitioner, or a certified
15 paramedic who is present at the scene of an accident for the purpose of
16 rendering emergency medical service or treatment;

17 (ii) A qualified person certified or employed by a laboratory
18 certified by the substance abuse and mental health administration or
19 the college of American pathologists; or

20 (iii) A qualified person certified or employed by a collection
21 company using collection procedures adopted by the United States
22 department of health and human services and the United States
23 department of transportation for alcohol collection.

24 (f) Within five working days after receipt of a verified positive
25 test result from the laboratory, an employer shall inform an employee
26 or job applicant in writing of the positive test result, the
27 consequences of the result, and the options available to the employee
28 or job applicant.

29 (g) The employer shall provide to the employee or job applicant,
30 upon request, a copy of the test results.

31 (h) An initial test having a positive result must be verified by a
32 confirmation test.

33 (i) An employer who performs drug testing or specimen collection
34 shall use chain of custody procedures to ensure proper recordkeeping,
35 handling, labeling, and identification of all specimens to be tested.

36 (j) An employer shall pay the cost of all drug or alcohol tests,
37 initial and confirmation, that the employer requires of employees.

1 (k) An employee or job applicant shall pay the cost of additional
2 tests not required by the employer.

3 (4)(a) A laboratory may not analyze initial or confirmation drug
4 specimens unless:

5 (i) The laboratory is approved by the substance abuse and mental
6 health administration or the college of American pathologists;

7 (ii) The laboratory has written procedures to ensure the chain of
8 custody; and

9 (iii) The laboratory follows proper quality control procedures
10 including, but not limited to:

11 (A) The use of internal quality controls including the use of
12 samples of known concentrations that are used to check the performance
13 and calibration of testing equipment, and periodic use of blind samples
14 for overall accuracy;

15 (B) An internal review and certification process for test results,
16 conducted by a person qualified to perform that function in the testing
17 laboratory;

18 (C) Security measures implemented by the testing laboratory to
19 preclude adulteration of specimens and test results; and

20 (D) Other necessary and proper actions taken to ensure reliable and
21 accurate drug test results.

22 (b) A laboratory shall disclose to the employer a written test
23 result report within seven working days after receipt of the sample.
24 A laboratory report of a substance abuse test result must, at a
25 minimum, state:

26 (i) The name and address of the laboratory that performed the test
27 and the positive identification of the person tested;

28 (ii) Positive results on confirmation tests only, or negative
29 results, as applicable;

30 (iii) A list of the drugs for which the drug analyses were
31 conducted; and

32 (iv) The type of tests conducted for both initial and confirmation
33 tests and the threshold detection levels of the tests.

34 A report may not disclose the presence or absence of a drug other
35 than a specific drug and its metabolites listed under this chapter.

36 (c) A laboratory shall provide technical assistance through the use
37 of a medical review officer to the employer, employee, or job applicant
38 for the purpose of interpreting a positive confirmed drug test result

1 that could have been caused by prescription or nonprescription
2 medication taken by the employee or job applicant. The medical review
3 officer shall interpret and evaluate the laboratory's positive drug
4 test result and eliminate test results that could have been caused by
5 prescription medication or other medically documented sources in
6 accordance with the United States department of health and human
7 services medical review officer manual.

8 (5) A positive initial drug test must be confirmed using the gas
9 chromatography/mass spectrometry method or an equivalent or more
10 accurate scientifically accepted method approved by the substance abuse
11 and mental health administration as the technology becomes available in
12 a cost-effective form.

13 NEW SECTION. **Sec. 110.** (1) The employee assistance program
14 required under this chapter shall provide the employer with a system
15 for dealing with employees whose job performances are declining due to
16 unresolved problems, including alcohol or other drug-related problems,
17 marital problems, or legal or financial problems.

18 (2) To ensure appropriate assessment and referral to treatment:

19 (a) The employer must notify the employees of the benefits and
20 services of the employee assistance program;

21 (b) The employer shall publish notice of the employee assistance
22 program in conspicuous places and explore alternative routine and
23 reinforcing means of publicizing the services; and

24 (c) The employer shall provide the employee with notice of the
25 policies and procedures regarding access to and use of the employee
26 assistance program.

27 (3) A list of approved employee assistance programs must be
28 provided by the department according to recognized program standards.

29 NEW SECTION. **Sec. 111.** (1)(a) Rehabilitation of employees
30 suffering from either or both alcohol or drug addiction shall be a
31 primary focus of an employee assistance program.

32 (b) Under any program under this chapter, the employer may not use
33 a first-time verified positive drug or alcohol test as the basis for
34 termination of an employee. After a first-time verified positive test
35 result, the employee must be given an opportunity to keep his or her

1 job through the use of a last-chance agreement. The last-chance
2 agreement shall require an employee to:

3 (i) Submit to an employee assistance program evaluation for
4 chemical dependency;

5 (ii) Comply with any treatment recommendations;

6 (iii) Be subject to follow-up drug and alcohol testing for two
7 years;

8 (iv) Meet the same standards of performance and conduct that are
9 set for other employees; and

10 (v) Authorize the employer to receive all relevant information
11 regarding the employee's progress in treatment, if applicable.

12 Failure to comply with all the terms of this agreement normally
13 will result in termination of employment.

14 (2) When substance abuse treatment is necessary, employees must use
15 treatment services approved by the department, which include a
16 continuing care component lasting for two years.

17 (a) The employee assistance program shall monitor the employee's
18 progress while in treatment, including the two-year continuing care
19 component, and notify the employer when an employee is not complying
20 with the programs's treatment recommendations.

21 (b) The employer shall monitor job performance and conduct follow-
22 up testing.

23 (3) An employer may terminate an employee for the following
24 reasons:

25 (a) Refusal to submit to a drug or alcohol test;

26 (b) Refusal to agree to or failure to comply with the conditions of
27 a last-chance agreement;

28 (c) A second verified positive drug or alcohol test result; or

29 (d) After the first verified positive drug or alcohol test, any
30 violation of employer rules pertaining to alcohol and drugs.

31 (4) Nothing in this chapter limits the right of any employer who
32 participates in the worker's compensation premium discount program
33 under this chapter to terminate employment for any other reason.

34 NEW SECTION. **Sec. 112.** As part of a program established under
35 this chapter, an employer shall provide all employees with an annual
36 education program on substance abuse, in general, and its effects on
37 the workplace, specifically. An employer with employees who have

1 difficulty communicating in English shall make reasonable efforts to
2 help the employees understand the substance of the education program.
3 An education program for a minimum of one hour should include but is
4 not limited to the following information:

5 (1) The explanation of the disease model of addiction for alcohol
6 and drugs;

7 (2) The effects and dangers of the commonly abused substances in
8 the workplace; and

9 (3) The employer's policies and procedures regarding substance
10 abuse in the workplace and how employees who wish to obtain substance
11 abuse treatment can do so.

12 NEW SECTION. **Sec. 113.** In addition to the education program
13 provided in section 112 of this act, an employer shall provide all
14 supervisory personnel with a minimum of two hours of supervisor
15 training, that should include but is not limited to the following
16 information:

17 (1) How to recognize signs of employee substance abuse;

18 (2) How to document and collaborate signs of employee substance
19 abuse;

20 (3) How to refer employees to the employee assistance program or
21 proper treatment providers; and

22 (4) Circumstances and procedures for postinjury testing.

23 NEW SECTION. **Sec. 114.** (1) A physician-patient relationship is
24 not created between an employee or job applicant and an employer,
25 medical review officer, or person performing or evaluating a drug or
26 alcohol test solely by the establishment, implementation, or
27 administration of a drug or alcohol testing program.

28 (2) This chapter may not be construed to prevent an employer from
29 establishing reasonable work rules related to employee possession, use,
30 sale, or solicitation of drugs, including convictions for drug-related
31 offenses, and taking action based upon a violation of any of those
32 rules.

33 (3) This chapter may not be construed to operate retroactively.
34 This chapter does not abrogate the right of an employer under state or
35 federal law to conduct drug or alcohol tests or implement employee drug

1 or alcohol testing programs. However, only those programs that meet
2 the criteria outlined in this chapter qualify for workers' compensation
3 insurance premiums discounts.

4 (4) This chapter may not be construed to prohibit an employer from
5 conducting medical screening or other tests required, permitted, or not
6 disallowed by a statute or rule for the purpose of monitoring exposure
7 of employees to toxic or other unhealthy materials in the workplace or
8 in the performance of job responsibilities. The screening or tests
9 must be limited to testing for the specific material expressly
10 identified in the statute or rule, unless prior written consent of the
11 employee is obtained for other tests.

12 (5) This chapter does not establish a legal duty for employers to
13 conduct alcohol or drug tests of employees or job applicants. A cause
14 of action may not arise in favor of a person based upon the failure of
15 an employer to establish or conduct a program or policy for substance
16 abuse testing or to conduct a program or policy in conformance with the
17 standards and procedures established in this chapter. This chapter
18 does not create individual rights of action and may be enforced only by
19 the department by denial of the workers' compensation premium discount
20 provided in section 106 of this act.

21 NEW SECTION. **Sec. 115.** Confidentiality standards that apply to
22 substance abuse testing programs implemented under this chapter include
23 the following:

24 (1) Information, interviews, reports, statements, memoranda, and
25 test results, written or otherwise, received through a substance abuse
26 testing program are confidential communications, and may not be used or
27 received in evidence, obtained in discovery, or disclosed in a civil or
28 administrative proceeding, except as provided in subsection (5) of this
29 section.

30 (2) An employer, laboratory, medical review officer, employee
31 assistance program, drug or alcohol rehabilitation program, and their
32 agents who receive or have access to information concerning test
33 results shall keep the information confidential, except as provided in
34 subsection (5) of this section.

35 (3) Any release of the information must be pursuant to a written
36 consent form that complies with RCW 70.02.030 and is signed voluntarily
37 by the person tested, unless the release is compelled by the division

1 of alcohol and substance abuse of the department or a court of
2 competent jurisdiction in accordance with state and federal
3 confidentiality laws, or unless required by a professional or
4 occupational licensing board in a related disciplinary proceeding. Any
5 disclosure by any agency approved by the department must be in
6 accordance with RCW 70.96A.150. The consent form must contain at a
7 minimum:

8 (a) The name of the person who is authorized to obtain the
9 information;

10 (b) The purpose of the disclosure;

11 (c) The precise information to be disclosed;

12 (d) The duration of the consent; and

13 (e) The signature of the person authorizing release of the
14 information.

15 (4) Information on test results may not be released or used in a
16 criminal proceeding against the employee or job applicant. Information
17 released contrary to this subsection is inadmissible as evidence in a
18 criminal proceeding.

19 (5) Nothing in this chapter prohibits:

20 (a) An employer from using information concerning an employee or
21 job applicant's substance abuse test results in a lawful manner with
22 respect to that employee or applicant; or

23 (b) An entity that obtains the information from disclosing or using
24 the information in a lawful manner as part of a matter relating to the
25 substance abuse test, the test result, or an employer action with
26 respect to the job applicant or employee.

27 NEW SECTION. **Sec. 116.** The department shall adopt by rule
28 procedures and forms for the certification of employers who establish
29 and maintain a drug-free workplace that complies with this chapter.
30 The department shall adopt by rule procedures for the decertification
31 of employers formally certified for the workers' compensation premium
32 discount provided under this chapter. The department may charge a fee
33 for the certification of a drug-free workplace program in an amount
34 that must approximate its administrative costs related to the
35 certification. Certification of an employer is required for each year
36 in which a premium discount is granted. The department may adopt any
37 other rules necessary for the implementation of this chapter.

1 NEW SECTION. **Sec. 117.** (1) The department of labor and industries
2 may adopt rules necessary for the implementation of this chapter
3 including but not limited to provisions for penalties and repayment of
4 premium discounts by employers that are decertified by the department
5 of social and health services under section 116 of this act.

6 (2) The department of labor and industries shall conduct an
7 evaluation of the effect of the premium discount provided for under
8 section 106 of this act on workplace safety and the state of Washington
9 industrial insurance fund. The department of labor and industries
10 shall report its preliminary findings to the appropriate committees of
11 the legislature on September 1st of 2007 and 2008 and shall issue a
12 comprehensive final report on December 1, 2009.

13 NEW SECTION. **Sec. 118.** The department shall conduct an evaluation
14 to determine the costs and benefits of the program under this chapter.
15 If the department contracts for the performance of any or all of the
16 evaluation, no more than ten percent of the contract amount may be used
17 to cover indirect expenses. The department shall report its
18 preliminary findings to the legislature on September 1st of 2007 and
19 2008 and shall issue a comprehensive final report on December 1, 2009.

20 NEW SECTION. **Sec. 119.** Notwithstanding any other provisions of
21 this chapter, the total premium discounts available under section 106
22 of this act shall not exceed five million dollars during any fiscal
23 year.

24 NEW SECTION. **Sec. 120.** Sections 102 through 119 of this act
25 constitute a new chapter in Title 49 RCW.

26 **Sec. 121.** RCW 2.28.170 and 2005 c 504 s 504 are each amended to
27 read as follows:

28 (1) Counties may establish and operate drug courts.

29 (2) For the purposes of this section, "drug court" means a court
30 that has special calendars or dockets designed to achieve a reduction
31 in recidivism and substance abuse among nonviolent, substance abusing
32 felony and nonfelony offenders by increasing their likelihood for
33 successful rehabilitation through early, continuous, and intense

1 judicially supervised treatment; mandatory periodic drug testing; and
2 the use of appropriate sanctions and other rehabilitation services.

3 "Drug court" also includes, but is not limited to, courts whose
4 jurisdiction is conferred over juvenile offenders pursuant to chapter
5 13.40 RCW.

6 (3)(a) Any jurisdiction that seeks a state appropriation to fund a
7 drug court program must first:

8 (i) Exhaust all federal funding that is available to support the
9 operations of its drug court and associated services; and

10 (ii) Match, on a dollar-for-dollar basis, state moneys allocated
11 for drug court programs with local cash or in-kind resources. Moneys
12 allocated by the state must be used to supplement, not supplant, other
13 federal, state, and local funds for drug court operations and
14 associated services.

15 (b) Any county that establishes a drug court pursuant to this
16 section shall establish minimum requirements for the participation of
17 offenders in the program. The drug court may adopt local requirements
18 that are more stringent than the minimum. The minimum requirements
19 are:

20 (i) The offender would benefit from substance abuse treatment;

21 (ii) The offender has not previously been convicted of a serious
22 violent offense or sex offense as defined in RCW 9.94A.030; and

23 (iii) Without regard to whether proof of any of these elements is
24 required to convict, the offender is not currently charged with or
25 convicted of an offense:

26 (A) That is a sex offense;

27 (B) That is a serious violent offense;

28 (C) During which the defendant used a firearm; or

29 (D) During which the defendant caused substantial or great bodily
30 harm or death to another person.

31 **Sec. 122.** RCW 74.34.020 and 2003 c 230 s 1 are each amended to
32 read as follows:

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

35 (1) "Abandonment" means action or inaction by a person or entity
36 with a duty of care for a vulnerable adult that leaves the vulnerable

1 person without the means or ability to obtain necessary food, clothing,
2 shelter, or health care.

3 (2) "Abuse" means the willful action or inaction that inflicts
4 injury, unreasonable confinement, intimidation, or punishment on a
5 vulnerable adult. In instances of abuse of a vulnerable adult who is
6 unable to express or demonstrate physical harm, pain, or mental
7 anguish, the abuse is presumed to cause physical harm, pain, or mental
8 anguish. Abuse includes sexual abuse, mental abuse, physical abuse,
9 and exploitation of a vulnerable adult, which have the following
10 meanings:

11 (a) "Sexual abuse" means any form of nonconsensual sexual contact,
12 including but not limited to unwanted or inappropriate touching, rape,
13 sodomy, sexual coercion, sexually explicit photographing, and sexual
14 harassment. Sexual abuse includes any sexual contact between a staff
15 person, who is not also a resident or client, of a facility or a staff
16 person of a program authorized under chapter 71A.12 RCW, and a
17 vulnerable adult living in that facility or receiving service from a
18 program authorized under chapter 71A.12 RCW, whether or not it is
19 consensual.

20 (b) "Physical abuse" means the willful action of inflicting bodily
21 injury or physical mistreatment. Physical abuse includes, but is not
22 limited to, striking with or without an object, slapping, pinching,
23 choking, kicking, shoving, prodding, exposure to manufacture of
24 methamphetamine or exposure to chemicals used in the manufacture of
25 methamphetamine, or the use of chemical restraints or physical
26 restraints unless the restraints are consistent with licensing
27 requirements, and includes restraints that are otherwise being used
28 inappropriately.

29 (c) "Mental abuse" means any willful action or inaction of mental
30 or verbal abuse. Mental abuse includes, but is not limited to,
31 coercion, harassment, inappropriately isolating a vulnerable adult from
32 family, friends, or regular activity, and verbal assault that includes
33 ridiculing, intimidating, yelling, or swearing.

34 (d) "Exploitation" means an act of forcing, compelling, or exerting
35 undue influence over a vulnerable adult causing the vulnerable adult to
36 act in a way that is inconsistent with relevant past behavior, or
37 causing the vulnerable adult to perform services for the benefit of
38 another.

1 (3) "Consent" means express written consent granted after the
2 vulnerable adult or his or her legal representative has been fully
3 informed of the nature of the services to be offered and that the
4 receipt of services is voluntary.

5 (4) "Department" means the department of social and health
6 services.

7 (5) "Facility" means a residence licensed or required to be
8 licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW,
9 nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36
10 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation
11 centers; or any other facility licensed by the department.

12 (6) "Financial exploitation" means the illegal or improper use of
13 the property, income, resources, or trust funds of the vulnerable adult
14 by any person for any person's profit or advantage.

15 (7) "Individual provider" means a person under contract with the
16 department to provide services in the home under chapter 74.09 or
17 74.39A RCW.

18 (8) "Mandated reporter" is an employee of the department; law
19 enforcement officer; social worker; professional school personnel;
20 individual provider; an employee of a facility; an operator of a
21 facility; an employee of a social service, welfare, mental health,
22 adult day health, adult day care, home health, home care, or hospice
23 agency; county coroner or medical examiner; Christian Science
24 practitioner; or health care provider subject to chapter 18.130 RCW.

25 (9) "Neglect" means (a) a pattern of conduct or inaction by a
26 person or entity with a duty of care that fails to provide the goods
27 and services that maintain physical or mental health of a vulnerable
28 adult, or that fails to avoid or prevent physical or mental harm or
29 pain to a vulnerable adult; or (b) an act or omission that demonstrates
30 a serious disregard of consequences of such a magnitude as to
31 constitute a clear and present danger to the vulnerable adult's health,
32 welfare, or safety.

33 (10) "Permissive reporter" means any person, employee of a
34 financial institution, attorney, or volunteer in a facility or program
35 providing services for vulnerable adults.

36 (11) "Protective services" means any services provided by the
37 department to a vulnerable adult with the consent of the vulnerable
38 adult, or the legal representative of the vulnerable adult, who has

1 been abandoned, abused, financially exploited, neglected, or in a state
2 of self-neglect. These services may include, but are not limited to
3 case management, social casework, home care, placement, arranging for
4 medical evaluations, psychological evaluations, day care, or referral
5 for legal assistance.

6 (12) "Self-neglect" means the failure of a vulnerable adult, not
7 living in a facility, to provide for himself or herself the goods and
8 services necessary for the vulnerable adult's physical or mental
9 health, and the absence of which impairs or threatens the vulnerable
10 adult's well-being. This definition may include a vulnerable adult who
11 is receiving services through home health, hospice, or a home care
12 agency, or an individual provider when the neglect is not a result of
13 inaction by that agency or individual provider.

14 (13) "Vulnerable adult" includes a person:

15 (a) Sixty years of age or older who has the functional, mental, or
16 physical inability to care for himself or herself; or

17 (b) Found incapacitated under chapter 11.88 RCW; or

18 (c) Who has a developmental disability as defined under RCW
19 71A.10.020; or

20 (d) Admitted to any facility; or

21 (e) Receiving services from home health, hospice, or home care
22 agencies licensed or required to be licensed under chapter 70.127 RCW;
23 or

24 (f) Receiving services from an individual provider.

25 NEW SECTION. **Sec. 123.** The department of community, trade, and
26 economic development shall review federal, state, and local funding
27 sources and funding levels available to local meth action teams through
28 the Washington state methamphetamine initiative to determine whether
29 funding is adequate to accomplish the mission of the meth action teams.
30 The department shall also review the funding levels for drug task
31 forces in the state of Washington to determine whether they may require
32 additional resources to successfully interdict drug trafficking
33 organizations and clandestine labs statewide. The department shall
34 report findings and recommendations to the legislature by November 1,
35 2006.

1 (2) "Contaminated" or "contamination" means polluted by hazardous
2 chemicals so that the property is unfit for human habitation or use due
3 to immediate or long-term hazards. Property that at one time was
4 contaminated but has been satisfactorily decontaminated according to
5 procedures established by the state board of health is not
6 "contaminated."

7 (3) "Department" means the department of health.

8 (4) "Hazardous chemicals" means the following substances (~~used~~
9 ~~in~~) associated with the manufacture of illegal drugs: (a) Hazardous
10 substances as defined in RCW 70.105D.020(~~(, and)~~); (b) precursor
11 substances as defined in RCW 69.43.010 which the state board of health,
12 in consultation with the state board of pharmacy, has determined
13 present an immediate or long-term health hazard to humans; and (c) the
14 controlled substance or substances being manufactured, as defined in
15 RCW 69.50.101.

16 (~~(4)~~) (5) "Officer" means a local health officer authorized under
17 chapters 70.05, 70.08, and 70.46 RCW.

18 (~~(5)~~) (6) "Property" means any real or personal property, (~~(site,~~
19 ~~structure, or part of a structure which)~~) or segregable part thereof,
20 that is involved in or affected by the unauthorized manufacture,
21 distribution, or storage of hazardous chemicals. This includes but is
22 not limited to single-family residences, units of multiplexes,
23 condominiums, apartment buildings, motels, hotels, boats, motor
24 vehicles, trailers, manufactured housing, (~~(or)~~) any shop, booth,
25 (~~(or)~~) garden, or storage shed, and all contents of the items
26 referenced in this subsection.

27 **Sec. 202.** RCW 64.44.020 and 1999 c 292 s 3 are each amended to
28 read as follows:

29 Whenever a law enforcement agency becomes aware that property has
30 been contaminated by hazardous chemicals, that agency shall report the
31 contamination to the local health officer. The local health officer
32 shall (~~(post)~~) cause a posting of a written warning on the premises
33 within one working day of notification of the contamination and shall
34 inspect the property within fourteen days after receiving the notice of
35 contamination. The warning shall inform the potential occupants that
36 hazardous chemicals may exist on, or have been removed from, the
37 premises and that entry is unsafe. If a property owner believes that

1 a tenant has contaminated property that was being leased or rented, and
2 the property is vacated or abandoned, then the property owner shall
3 contact the local health officer about the possible contamination.
4 Local health officers or boards may charge property owners reasonable
5 fees for inspections of suspected contaminated property requested by
6 property owners.

7 A local health officer may enter, inspect, and survey at reasonable
8 times any properties for which there are reasonable grounds to believe
9 that the property has become contaminated. If the property is
10 contaminated, the local health officer shall post a written notice
11 declaring that the officer intends to issue an order prohibiting use of
12 the property as long as the property is contaminated.

13 If access to the property is denied, a superior, district, or
14 municipal court within the jurisdiction of the property may, based upon
15 cause to believe that the property is contaminated, issue warrants for
16 the purpose of conducting administrative inspections and seizure of
17 property appropriate to the inspections.

18 Local health officers must report all cases of contaminated
19 property to the state department of health. The department may make
20 the list of contaminated properties available to health associations,
21 landlord and realtor organizations, prosecutors, and other interested
22 groups. The department shall promptly update the list of contaminated
23 properties to remove those which have been decontaminated according to
24 provisions of this chapter.

25 The local health officer may determine when the services of an
26 authorized contractor are necessary.

27 **Sec. 203.** RCW 64.44.030 and 1999 c 292 s 4 are each amended to
28 read as follows:

29 (1) If after the inspection of the property, the local health
30 officer finds that it is contaminated, then the ((property shall be
31 found unfit for)) local health officer shall issue an order declaring
32 the property unfit and prohibiting its use. The local health officer
33 shall cause the order to be served ((an order prohibiting use)) either
34 personally or by certified mail, with return receipt requested, upon
35 all occupants and persons having any interest therein as shown upon the
36 records of the auditor's office of the county in which such property is
37 located. The local health officer shall also ((post)) cause the order

1 (~~prohibiting use~~) to be posted in a conspicuous place on the
2 property. If the whereabouts of such persons is unknown and the same
3 cannot be ascertained by the local health officer in the exercise of
4 reasonable diligence, and the health officer makes an affidavit to that
5 effect, then the serving of the order upon such persons may be made
6 either by personal service or by mailing a copy of the order by
7 certified mail, postage prepaid, return receipt requested, to each
8 person at the address appearing on the last equalized tax assessment
9 roll of the county where the property is located or at the address
10 known to the county assessor, and the order shall be posted
11 conspicuously at the residence. A copy of the order shall also be
12 mailed, addressed to each person or party having a recorded right,
13 title, estate, lien, or interest in the property. The order shall
14 contain a notice that a hearing before the local health board or
15 officer shall be held upon the request of a person required to be
16 notified of the order under this section. The request for a hearing
17 must be made within ten days of serving the order. The hearing shall
18 then be held within not less than twenty days nor more than thirty days
19 after the serving of the order. The officer shall prohibit use as long
20 as the property is found to be contaminated. A copy of the order shall
21 also be filed with the auditor of the county in which the property is
22 located, where the order pertains to real property, and such filing of
23 the complaint or order shall have the same force and effect as other
24 lis pendens notices provided by law. In any hearing concerning whether
25 property is fit for use, the property owner has the burden of showing
26 that the property is decontaminated or fit for use. The owner or any
27 person having an interest in the property may file an appeal on any
28 order issued by the local health board or officer within thirty days
29 from the date of service of the order with the appeals commission
30 established pursuant to RCW 35.80.030. All proceedings before the
31 appeals commission, including any subsequent appeals to superior court,
32 shall be governed by the procedures established in chapter 35.80 RCW.

33 (2) If the local health officer determines immediate action is
34 necessary to protect public health, safety, or the environment, the
35 officer may issue or cause to be issued an emergency order, and any
36 person to whom such an order is directed shall comply immediately.
37 Emergency orders issued pursuant to this section shall expire no later

1 than seventy-two hours after issuance and shall not impair the health
2 officer from seeking an order under subsection (1) of this section.

3 **Sec. 204.** RCW 64.44.040 and 1999 c 292 s 5 are each amended to
4 read as follows:

5 (1) Upon issuance of an order declaring property unfit and
6 prohibiting its use, the city or county in which the contaminated
7 property is located may take action to prohibit use, occupancy, or
8 removal of such property; condemn, decontaminate, or demolish the
9 property; or ((to)) require that the property be vacated or the
10 contents removed from the property. The city or county may use an
11 authorized contractor if property is demolished, decontaminated, or
12 removed under this section. The city, county, or contractor shall
13 comply with all orders of the health officer during these processes.
14 No city or county may condemn, decontaminate, or demolish property
15 pursuant to this section until all procedures granting the right of
16 notice and the opportunity to appeal in RCW 64.44.030 have been
17 exhausted, but may prohibit use, occupancy, or removal of contaminated
18 property pending appeal of the order.

19 (2)(a) It is unlawful for any person to enter upon any property, or
20 to remove any property, that has been found unfit for use by a local
21 health officer pursuant to RCW 64.44.030.

22 (b) This section does not apply to: (i) Health officials, law
23 enforcement officials, or other government agents performing their
24 official duties; (ii) authorized contractors or owners performing
25 decontamination pursuant to authorization by the local health officer;
26 and (iii) any person acting with permission of a local health officer,
27 or of a superior court hearing examiner following an appeal of a
28 decision of the local health officer.

29 (c) Any person who violates this section is guilty of a
30 misdemeanor.

31 **Sec. 205.** RCW 64.44.050 and 1999 c 292 s 6 are each amended to
32 read as follows:

33 (1) An owner of contaminated property who desires to have the
34 property decontaminated, demolished, or disposed of shall use the
35 services of an authorized contractor unless otherwise authorized by the
36 local health officer. The contractor and property owner shall prepare

1 and submit a written work plan for decontamination, demolishing, or
2 disposal to the local health officer. The local health officer may
3 charge a reasonable fee for review of the work plan. If the work plan
4 is approved and the decontamination, demolishing, or disposal is
5 completed and the property is retested according to the plan and
6 properly documented, then the health officer shall allow reuse of the
7 property. A release for reuse document shall be recorded in the real
8 property records indicating the property has been decontaminated,
9 demolished, or disposed of in accordance with rules of the state
10 department of health. The property owner is responsible for: (a) The
11 costs of any property testing which may be required to demonstrate the
12 presence or absence of hazardous chemicals; and (b) the costs of the
13 property's decontamination, demolishing, and disposal expenses, as well
14 as costs incurred by the local health officer resulting from the
15 enforcement of this chapter.

16 (2) The local health officer may establish a time period in which
17 decontamination, demolishing, and disposal shall be completed. The
18 local health officer, city, or county may assess a fine or institute
19 appropriate action upon failure to meet the decontamination,
20 demolishing, and disposal deadline.

21 **Sec. 206.** RCW 64.44.060 and 1999 c 292 s 7 are each amended to
22 read as follows:

23 (1) A contractor, supervisor, or worker may not perform
24 decontamination, demolition, or disposal work unless issued a
25 certificate by the state department of health. The department shall
26 establish performance standards for contractors, supervisors, and
27 workers by rule in accordance with chapter 34.05 RCW, the
28 administrative procedure act. The department shall train and test, or
29 may approve courses to train and test, contractors, supervisors, and
30 ~~((their employees))~~ workers on the essential elements in assessing
31 property used as an illegal drug manufacturing or storage site to
32 determine hazard reduction measures needed, techniques for adequately
33 reducing contaminants, use of personal protective equipment, methods
34 for proper decontamination, demolition, removal, and disposal of
35 contaminated property, and relevant federal and state regulations.
36 Upon successful completion of the training, and after a background

1 check, the contractor, supervisor, or ((employee)) worker shall be
2 certified.

3 (2) The department may require the successful completion of annual
4 refresher courses provided or approved by the department for the
5 continued certification of the contractor or employee.

6 (3) The department shall provide for reciprocal certification of
7 any individual trained to engage in decontamination, demolition, or
8 disposal work in another state when the prior training is shown to be
9 substantially similar to the training required by the department. The
10 department may require such individuals to take an examination or
11 refresher course before certification.

12 (4) The department may deny, suspend, ~~((or))~~ revoke, or place
13 restrictions on a certificate for failure to comply with the
14 requirements of this chapter or any rule adopted pursuant to this
15 chapter. A certificate may be denied, suspended, ~~((or))~~ revoked, or
16 have restrictions placed on it on any of the following grounds:

17 (a) Failing to perform decontamination, demolition, or disposal
18 work under the supervision of trained personnel;

19 (b) Failing to perform decontamination, demolition, or disposal
20 work using department of health certified decontamination personnel;

21 (c) Failing to file a work plan;

22 ~~((e))~~ (d) Failing to perform work pursuant to the work plan;

23 ~~((d))~~ (e) Failing to perform work that meets the requirements of
24 the department and the requirements of the local health officers;

25 ~~((e) The certificate was obtained by error, misrepresentation, or~~
26 ~~fraud; or))~~

27 (f) Failing to properly dispose of contaminated property;

28 (g) Committing fraud or misrepresentation in: (i) Applying for or
29 obtaining a certification, recertification, or reinstatement; (ii)
30 seeking approval of a work plan; and (iii) documenting completion of
31 work to the department or local health officer;

32 (h) Failing to cooperate with the department or the local health
33 officer;

34 (i) Failing the evaluation and inspection of decontamination
35 projects pursuant to section 208 of this act;

36 (j) Conviction of any gross misdemeanor or felony. For purposes of
37 this subsection, "conviction" is intended to apply to all instances in

1 which an adjudication of guilt has occurred, whether or not a deferred
2 or alternative sentence has been imposed; or

3 (k) If the person has been certified pursuant to RCW 74.20A.320 by
4 the department of social and health services as a person who is not in
5 compliance with a support order or a residential or visitation order.
6 If the person has continued to meet all other requirements for
7 reinstatement during the suspension, reissuance of the license or
8 certificate shall be automatic upon the department's receipt of a
9 release issued by the department of social and health services stating
10 that the person is in compliance with the order.

11 (5) A contractor, supervisor, or worker who violates any provision
12 of this chapter may be assessed a fine not to exceed five hundred
13 dollars for each violation.

14 (6) The department of health shall prescribe fees as provided for
15 in RCW 43.70.250 for the issuance and renewal of certificates, the
16 administration of examinations, and for the review of training courses.

17 (7) The decontamination account is hereby established in the state
18 treasury. All fees collected under this chapter shall be deposited in
19 this account. Moneys in the account may only be spent after
20 appropriation for costs incurred by the department in the
21 administration and enforcement of this chapter.

22 **Sec. 207.** RCW 64.44.070 and 1999 c 292 s 8 are each amended to
23 read as follows:

24 (1) The state board of health shall promulgate rules and standards
25 for carrying out the provisions in this chapter in accordance with
26 chapter 34.05 RCW, the administrative procedure act. The local board
27 of health and the local health officer are authorized to exercise such
28 powers as may be necessary to carry out this chapter. The department
29 shall provide technical assistance to local health boards and health
30 officers to carry out their duties under this chapter.

31 (2) The department shall adopt rules for decontamination of a
32 property used as an illegal drug laboratory and methods for the testing
33 of porous and nonporous surfaces, ground water, surface water, soil,
34 and septic tanks for contamination. The rules shall establish
35 decontamination standards for hazardous chemicals, including but not
36 limited to methamphetamine, lead, mercury, and total volatile organic
37 compounds. The department shall also adopt rules pertaining to

1 independent third party sampling to verify satisfactory decontamination
2 of property deemed contaminated and unfit for use. For the purposes of
3 this section, an independent third party sampler is a person who is not
4 an employee, agent, representative, partner, joint venturer,
5 shareholder, or parent or subsidiary company of the clandestine drug
6 laboratory decontamination contractor, the contractor's company, or
7 property owner.

8 NEW SECTION. Sec. 208. A new section is added to chapter 64.44
9 RCW to read as follows:

10 The department may evaluate annually a number of the property
11 decontamination projects performed by licensed contractors to determine
12 the adequacy of the decontamination work, using the services of an
13 independent environmental contractor or state or local agency. If a
14 project fails the evaluation and inspection, the contractor is subject
15 to a civil penalty and license suspension, pursuant to RCW 64.44.060
16 (4) and (5); and the contractor is prohibited from performing
17 additional work until deficiencies have been corrected.

18 NEW SECTION. Sec. 209. A new section is added to chapter 64.44
19 RCW to read as follows:

20 (1) The methamphetamine contamination cleanup account is created in
21 the state treasury. All receipts from appropriations for this purpose
22 must be deposited into the account. Moneys in the account may be spent
23 only after appropriation. Expenditures from the account may be used
24 only for cleanup of residential rental properties contaminated by
25 methamphetamine production.

26 (2) The department of health shall review applications and make
27 grants to landlords who own residential rental properties that have
28 been contaminated by methamphetamine production. The department may
29 only make grants to landlords who had no knowledge or consent
30 concerning the production of methamphetamine on the property.

31 **Sec. 210.** RCW 70.105D.020 and 2005 c 191 s 1 are each amended to
32 read as follows:

33 (1) "Agreed order" means an order issued by the department under
34 this chapter with which the potentially liable person receiving the
35 order agrees to comply. An agreed order may be used to require or

1 approve any cleanup or other remedial actions but it is not a
2 settlement under RCW 70.105D.040(4) and shall not contain a covenant
3 not to sue, or provide protection from claims for contribution, or
4 provide eligibility for public funding of remedial actions under RCW
5 70.105D.070(2)(d)(xi).

6 (2) "Department" means the department of ecology.

7 (3) "Director" means the director of ecology or the director's
8 designee.

9 (4) "Facility" means (a) any building, structure, installation,
10 equipment, pipe or pipeline (including any pipe into a sewer or
11 publicly owned treatment works), well, pit, pond, lagoon, impoundment,
12 ditch, landfill, storage container, motor vehicle, rolling stock,
13 vessel, or aircraft, or (b) any site or area where a hazardous
14 substance, other than a consumer product in consumer use, has been
15 deposited, stored, disposed of, or placed, or otherwise come to be
16 located.

17 (5) "Federal cleanup law" means the federal comprehensive
18 environmental response, compensation, and liability act of 1980, 42
19 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

20 (6) "Foreclosure and its equivalents" means purchase at a
21 foreclosure sale, acquisition, or assignment of title in lieu of
22 foreclosure, termination of a lease, or other repossession, acquisition
23 of a right to title or possession, an agreement in satisfaction of the
24 obligation, or any other comparable formal or informal manner, whether
25 pursuant to law or under warranties, covenants, conditions,
26 representations, or promises from the borrower, by which the holder
27 acquires title to or possession of a facility securing a loan or other
28 obligation.

29 (7) "Hazardous substance" means:

30 (a) Any dangerous or extremely hazardous waste as defined in RCW
31 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste
32 designated by rule pursuant to chapter 70.105 RCW;

33 (b) Any hazardous substance as defined in RCW 70.105.010(14) or any
34 hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

35 (c) Any substance that, on March 1, 1989, is a hazardous substance
36 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.
37 9601(14);

38 (d) Petroleum or petroleum products; and

1 (e) Any substance or category of substances, including solid waste
2 decomposition products, determined by the director by rule to present
3 a threat to human health or the environment if released into the
4 environment.

5 The term hazardous substance does not include any of the following
6 when contained in an underground storage tank from which there is not
7 a release: Crude oil or any fraction thereof or petroleum, if the tank
8 is in compliance with all applicable federal, state, and local law.

9 (8) "Independent remedial actions" means remedial actions conducted
10 without department oversight or approval, and not under an order,
11 agreed order, or consent decree.

12 (9) "Holder" means a person who holds indicia of ownership
13 primarily to protect a security interest. A holder includes the
14 initial holder such as the loan originator, any subsequent holder such
15 as a successor-in-interest or subsequent purchaser of the security
16 interest on the secondary market, a guarantor of an obligation, surety,
17 or any other person who holds indicia of ownership primarily to protect
18 a security interest, or a receiver, court-appointed trustee, or other
19 person who acts on behalf or for the benefit of a holder. A holder can
20 be a public or privately owned financial institution, receiver,
21 conservator, loan guarantor, or other similar persons that loan money
22 or guarantee repayment of a loan. Holders typically are banks or
23 savings and loan institutions but may also include others such as
24 insurance companies, pension funds, or private individuals that engage
25 in loaning of money or credit.

26 (10) "Indicia of ownership" means evidence of a security interest,
27 evidence of an interest in a security interest, or evidence of an
28 interest in a facility securing a loan or other obligation, including
29 any legal or equitable title to a facility acquired incident to
30 foreclosure and its equivalents. Evidence of such interests includes,
31 mortgages, deeds of trust, sellers interest in a real estate contract,
32 liens, surety bonds, and guarantees of obligations, title held pursuant
33 to a lease financing transaction in which the lessor does not select
34 initially the leased facility, or legal or equitable title obtained
35 pursuant to foreclosure and their equivalents. Evidence of such
36 interests also includes assignments, pledges, or other rights to or
37 other forms of encumbrance against the facility that are held primarily
38 to protect a security interest.

1 (11) "Operating a facility primarily to protect a security
2 interest" occurs when all of the following are met: (a) Operating the
3 facility where the borrower has defaulted on the loan or otherwise
4 breached the security agreement; (b) operating the facility to preserve
5 the value of the facility as an ongoing business; (c) the operation is
6 being done in anticipation of a sale, transfer, or assignment of the
7 facility; and (d) the operation is being done primarily to protect a
8 security interest. Operating a facility for longer than one year prior
9 to foreclosure or its equivalents shall be presumed to be operating the
10 facility for other than to protect a security interest.

11 (12) "Owner or operator" means:

12 (a) Any person with any ownership interest in the facility or who
13 exercises any control over the facility; or

14 (b) In the case of an abandoned facility, any person who had owned,
15 or operated, or exercised control over the facility any time before its
16 abandonment;

17 The term does not include:

18 (i) An agency of the state or unit of local government which
19 acquired ownership or control through a drug forfeiture action under
20 RCW 69.50.505, through a voluntary conveyance for the purpose of
21 remediating the property for a public purpose, or involuntarily through
22 bankruptcy, tax delinquency, abandonment, or other circumstances in
23 which the government involuntarily acquires title. This exclusion does
24 not apply to an agency of the state or unit of local government which
25 has caused or contributed to the release or threatened release of a
26 hazardous substance from the facility;

27 (ii) A person who, without participating in the management of a
28 facility, holds indicia of ownership primarily to protect the person's
29 security interest in the facility. Holders after foreclosure and its
30 equivalent and holders who engage in any of the activities identified
31 in subsection (13)(e) through (g) of this section shall not lose this
32 exemption provided the holder complies with all of the following:

33 (A) The holder properly maintains the environmental compliance
34 measures already in place at the facility;

35 (B) The holder complies with the reporting requirements in the
36 rules adopted under this chapter;

37 (C) The holder complies with any order issued to the holder by the
38 department to abate an imminent or substantial endangerment;

1 (D) The holder allows the department or potentially liable persons
2 under an order, agreed order, or settlement agreement under this
3 chapter access to the facility to conduct remedial actions and does not
4 impede the conduct of such remedial actions;

5 (E) Any remedial actions conducted by the holder are in compliance
6 with any preexisting requirements identified by the department, or, if
7 the department has not identified such requirements for the facility,
8 the remedial actions are conducted consistent with the rules adopted
9 under this chapter; and

10 (F) The holder does not exacerbate an existing release. The
11 exemption in this subsection (12)(b)(ii) does not apply to holders who
12 cause or contribute to a new release or threatened release or who are
13 otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e);
14 provided, however, that a holder shall not lose this exemption if it
15 establishes that any such new release has been remediated according to
16 the requirements of this chapter and that any hazardous substances
17 remaining at the facility after remediation of the new release are
18 divisible from such new release;

19 (iii) A fiduciary in his, her, or its personal or individual
20 capacity. This exemption does not preclude a claim against the assets
21 of the estate or trust administered by the fiduciary or against a
22 nonemployee agent or independent contractor retained by a fiduciary.
23 This exemption also does not apply to the extent that a person is
24 liable under this chapter independently of the person's ownership as a
25 fiduciary or for actions taken in a fiduciary capacity which cause or
26 contribute to a new release or exacerbate an existing release of
27 hazardous substances. This exemption applies provided that, to the
28 extent of the fiduciary's powers granted by law or by the applicable
29 governing instrument granting fiduciary powers, the fiduciary complies
30 with all of the following:

31 (A) The fiduciary properly maintains the environmental compliance
32 measures already in place at the facility;

33 (B) The fiduciary complies with the reporting requirements in the
34 rules adopted under this chapter;

35 (C) The fiduciary complies with any order issued to the fiduciary
36 by the department to abate an imminent or substantial endangerment;

37 (D) The fiduciary allows the department or potentially liable

1 persons under an order, agreed order, or settlement agreement under
2 this chapter access to the facility to conduct remedial actions and
3 does not impede the conduct of such remedial actions;

4 (E) Any remedial actions conducted by the fiduciary are in
5 compliance with any preexisting requirements identified by the
6 department, or, if the department has not identified such requirements
7 for the facility, the remedial actions are conducted consistent with
8 the rules adopted under this chapter; and

9 (F) The fiduciary does not exacerbate an existing release.

10 The exemption in this subsection (12)(b)(iii) does not apply to
11 fiduciaries who cause or contribute to a new release or threatened
12 release or who are otherwise liable under RCW 70.105D.040(1) (b), (c),
13 (d), and (e); provided however, that a fiduciary shall not lose this
14 exemption if it establishes that any such new release has been
15 remediated according to the requirements of this chapter and that any
16 hazardous substances remaining at the facility after remediation of the
17 new release are divisible from such new release. The exemption in this
18 subsection (12)(b)(iii) also does not apply where the fiduciary's
19 powers to comply with this subsection (12)(b)(iii) are limited by a
20 governing instrument created with the objective purpose of avoiding
21 liability under this chapter or of avoiding compliance with this
22 chapter; or

23 (iv) Any person who has any ownership interest in, operates, or
24 exercises control over real property where a hazardous substance has
25 come to be located solely as a result of migration of the hazardous
26 substance to the real property through the ground water from a source
27 off the property, if:

28 (A) The person can demonstrate that the hazardous substance has not
29 been used, placed, managed, or otherwise handled on the property in a
30 manner likely to cause or contribute to a release of the hazardous
31 substance that has migrated onto the property;

32 (B) The person has not caused or contributed to the release of the
33 hazardous substance;

34 (C) The person does not engage in activities that damage or
35 interfere with the operation of remedial actions installed on the
36 person's property or engage in activities that result in exposure of
37 humans or the environment to the contaminated ground water that has
38 migrated onto the property;

1 (D) If requested, the person allows the department, potentially
2 liable persons who are subject to an order, agreed order, or consent
3 decree, and the authorized employees, agents, or contractors of each,
4 access to the property to conduct remedial actions required by the
5 department. The person may attempt to negotiate an access agreement
6 before allowing access; and

7 (E) Legal withdrawal of ground water does not disqualify a person
8 from the exemption in this subsection (12)(b)(iv).

9 (13) "Participation in management" means exercising decision-making
10 control over the borrower's operation of the facility, environmental
11 compliance, or assuming or manifesting responsibility for the overall
12 management of the enterprise encompassing the day-to-day decision
13 making of the enterprise.

14 The term does not include any of the following: (a) A holder with
15 the mere capacity or ability to influence, or the unexercised right to
16 control facility operations; (b) a holder who conducts or requires a
17 borrower to conduct an environmental audit or an environmental site
18 assessment at the facility for which indicia of ownership is held; (c)
19 a holder who requires a borrower to come into compliance with any
20 applicable laws or regulations at the facility for which indicia of
21 ownership is held; (d) a holder who requires a borrower to conduct
22 remedial actions including setting minimum requirements, but does not
23 otherwise control or manage the borrower's remedial actions or the
24 scope of the borrower's remedial actions except to prepare a facility
25 for sale, transfer, or assignment; (e) a holder who engages in workout
26 or policing activities primarily to protect the holder's security
27 interest in the facility; (f) a holder who prepares a facility for
28 sale, transfer, or assignment or requires a borrower to prepare a
29 facility for sale, transfer, or assignment; (g) a holder who operates
30 a facility primarily to protect a security interest, or requires a
31 borrower to continue to operate, a facility primarily to protect a
32 security interest; and (h) a prospective holder who, as a condition of
33 becoming a holder, requires an owner or operator to conduct an
34 environmental audit, conduct an environmental site assessment, come
35 into compliance with any applicable laws or regulations, or conduct
36 remedial actions prior to holding a security interest is not
37 participating in the management of the facility.

1 (14) "Person" means an individual, firm, corporation, association,
2 partnership, consortium, joint venture, commercial entity, state
3 government agency, unit of local government, federal government agency,
4 or Indian tribe.

5 (15) "Policing activities" means actions the holder takes to insure
6 that the borrower complies with the terms of the loan or security
7 interest or actions the holder takes or requires the borrower to take
8 to maintain the value of the security. Policing activities include:
9 Requiring the borrower to conduct remedial actions at the facility
10 during the term of the security interest; requiring the borrower to
11 comply or come into compliance with applicable federal, state, and
12 local environmental and other laws, regulations, and permits during the
13 term of the security interest; securing or exercising authority to
14 monitor or inspect the facility including on-site inspections, or to
15 monitor or inspect the borrower's business or financial condition
16 during the term of the security interest; or taking other actions
17 necessary to adequately police the loan or security interest such as
18 requiring a borrower to comply with any warranties, covenants,
19 conditions, representations, or promises from the borrower.

20 (16) "Potentially liable person" means any person whom the
21 department finds, based on credible evidence, to be liable under RCW
22 70.105D.040. The department shall give notice to any such person and
23 allow an opportunity for comment before making the finding, unless an
24 emergency requires otherwise.

25 (17) "Prepare a facility for sale, transfer, or assignment" means
26 to secure access to the facility; perform routine maintenance on the
27 facility; remove inventory, equipment, or structures; properly maintain
28 environmental compliance measures already in place at the facility;
29 conduct remedial actions to clean up releases at the facility; or to
30 perform other similar activities intended to preserve the value of the
31 facility where the borrower has defaulted on the loan or otherwise
32 breached the security agreement or after foreclosure and its
33 equivalents and in anticipation of a pending sale, transfer, or
34 assignment, primarily to protect the holder's security interest in the
35 facility. A holder can prepare a facility for sale, transfer, or
36 assignment for up to one year prior to foreclosure and its equivalents
37 and still stay within the security interest exemption in subsection
38 (12)(b)(ii) of this section.

1 (18) "Primarily to protect a security interest" means the indicia
2 of ownership is held primarily for the purpose of securing payment or
3 performance of an obligation. The term does not include indicia of
4 ownership held primarily for investment purposes nor indicia of
5 ownership held primarily for purposes other than as protection for a
6 security interest. A holder may have other, secondary reasons, for
7 maintaining indicia of ownership, but the primary reason must be for
8 protection of a security interest. Holding indicia of ownership after
9 foreclosure or its equivalents for longer than five years shall be
10 considered to be holding the indicia of ownership for purposes other
11 than primarily to protect a security interest. For facilities that
12 have been acquired through foreclosure or its equivalents prior to July
13 23, 1995, this five-year period shall begin as of July 23, 1995.

14 (19) "Public notice" means, at a minimum, adequate notice mailed to
15 all persons who have made timely request of the department and to
16 persons residing in the potentially affected vicinity of the proposed
17 action; mailed to appropriate news media; published in the newspaper of
18 largest circulation in the city or county of the proposed action; and
19 opportunity for interested persons to comment.

20 (20) "Release" means any intentional or unintentional entry of any
21 hazardous substance into the environment, including but not limited to
22 the abandonment or disposal of containers of hazardous substances.

23 (21) "Remedy" or "remedial action" means any action or expenditure
24 consistent with the purposes of this chapter to identify, eliminate, or
25 minimize any threat or potential threat posed by hazardous substances
26 to human health or the environment including any investigative and
27 monitoring activities with respect to any release or threatened release
28 of a hazardous substance and any health assessments or health effects
29 studies conducted in order to determine the risk or potential risk to
30 human health.

31 (22) "Security interest" means an interest in a facility created or
32 established for the purpose of securing a loan or other obligation.
33 Security interests include deeds of trusts, sellers interest in a real
34 estate contract, liens, legal, or equitable title to a facility
35 acquired incident to foreclosure and its equivalents, and title
36 pursuant to lease financing transactions. Security interests may also
37 arise from transactions such as sale and leasebacks, conditional sales,
38 installment sales, trust receipt transactions, certain assignments,

1 factoring agreements, accounts receivable financing arrangements,
2 easements, and consignments, if the transaction creates or establishes
3 an interest in a facility for the purpose of securing a loan or other
4 obligation.

5 (23) "Industrial properties" means properties that are or have been
6 characterized by, or are to be committed to, traditional industrial
7 uses such as processing or manufacturing of materials, marine terminal
8 and transportation areas and facilities, fabrication, assembly,
9 treatment, or distribution of manufactured products, or storage of bulk
10 materials, that are either:

11 (a) Zoned for industrial use by a city or county conducting land
12 use planning under chapter 36.70A RCW; or

13 (b) For counties not planning under chapter 36.70A RCW and the
14 cities within them, zoned for industrial use and adjacent to properties
15 currently used or designated for industrial purposes.

16 (24) "Workout activities" means those actions by which a holder, at
17 any time prior to foreclosure and its equivalents, seeks to prevent,
18 cure, or mitigate a default by the borrower or obligor; or to preserve,
19 or prevent the diminution of, the value of the security. Workout
20 activities include: Restructuring or renegotiating the terms of the
21 security interest; requiring payment of additional rent or interest;
22 exercising forbearance; requiring or exercising rights pursuant to an
23 assignment of accounts or other amounts owed to an obligor; requiring
24 or exercising rights pursuant to an escrow agreement pertaining to
25 amounts owed to an obligor; providing specific or general financial or
26 other advice, suggestions, counseling, or guidance; and exercising any
27 right or remedy the holder is entitled to by law or under any
28 warranties, covenants, conditions, representations, or promises from
29 the borrower.

30 (25)(a) "Fiduciary" means a person acting for the benefit of
31 another party as a bona fide trustee; executor; administrator;
32 custodian; guardian of estates or guardian ad litem; receiver;
33 conservator; committee of estates of incapacitated persons; trustee in
34 bankruptcy; trustee, under an indenture agreement, trust agreement,
35 lease, or similar financing agreement, for debt securities,
36 certificates of interest or certificates of participation in debt
37 securities, or other forms of indebtedness as to which the trustee is
38 not, in the capacity of trustee, the lender. Except as provided in

1 subsection (12)(b)(iii) of this section, the liability of a fiduciary
2 under this chapter shall not exceed the assets held in the fiduciary
3 capacity.

4 (b) "Fiduciary" does not mean:

5 (i) A person acting as a fiduciary with respect to a trust or other
6 fiduciary estate that was organized for the primary purpose of, or is
7 engaged in, actively carrying on a trade or business for profit, unless
8 the trust or other fiduciary estate was created as part of, or to
9 facilitate, one or more estate plans or because of the incapacity of a
10 natural person;

11 (ii) A person who acquires ownership or control of a facility with
12 the objective purpose of avoiding liability of the person or any other
13 person. It is prima facie evidence that the fiduciary acquired
14 ownership or control of the facility to avoid liability if the facility
15 is the only substantial asset in the fiduciary estate at the time the
16 facility became subject to the fiduciary estate;

17 (iii) A person who acts in a capacity other than that of a
18 fiduciary or in a beneficiary capacity and in that capacity directly or
19 indirectly benefits from a trust or fiduciary relationship;

20 (iv) A person who is a beneficiary and fiduciary with respect to
21 the same fiduciary estate, and who while acting as a fiduciary receives
22 benefits that exceed customary or reasonable compensation, and
23 incidental benefits permitted under applicable law;

24 (v) A person who is a fiduciary and receives benefits that
25 substantially exceed customary or reasonable compensation, and
26 incidental benefits permitted under applicable law; or

27 (vi) A person who acts in the capacity of trustee of state or
28 federal lands or resources.

29 (26) "Fiduciary capacity" means the capacity of a person holding
30 title to a facility, or otherwise having control of an interest in the
31 facility pursuant to the exercise of the responsibilities of the person
32 as a fiduciary.

33 **PART III**

34 **CRIMINAL SANCTIONS AND PROCEDURE**

35 **Sec. 301.** RCW 9.94A.533 and 2003 c 53 s 58 are each amended to
36 read as follows:

1 (1) The provisions of this section apply to the standard sentence
2 ranges determined by RCW 9.94A.510 or 9.94A.517.

3 (2) For persons convicted of the anticipatory offenses of criminal
4 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
5 standard sentence range is determined by locating the sentencing grid
6 sentence range defined by the appropriate offender score and the
7 seriousness level of the completed crime, and multiplying the range by
8 seventy-five percent.

9 (3) The following additional times shall be added to the standard
10 sentence range for felony crimes committed after July 23, 1995, if the
11 offender or an accomplice was armed with a firearm as defined in RCW
12 9.41.010 and the offender is being sentenced for one of the crimes
13 listed in this subsection as eligible for any firearm enhancements
14 based on the classification of the completed felony crime. If the
15 offender is being sentenced for more than one offense, the firearm
16 enhancement or enhancements must be added to the total period of
17 confinement for all offenses, regardless of which underlying offense is
18 subject to a firearm enhancement. If the offender or an accomplice was
19 armed with a firearm as defined in RCW 9.41.010 and the offender is
20 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
21 commit one of the crimes listed in this subsection as eligible for any
22 firearm enhancements, the following additional times shall be added to
23 the standard sentence range determined under subsection (2) of this
24 section based on the felony crime of conviction as classified under RCW
25 9A.28.020:

26 (a) Five years for any felony defined under any law as a class A
27 felony or with a statutory maximum sentence of at least twenty years,
28 or both, and not covered under (f) of this subsection;

29 (b) Three years for any felony defined under any law as a class B
30 felony or with a statutory maximum sentence of ten years, or both, and
31 not covered under (f) of this subsection;

32 (c) Eighteen months for any felony defined under any law as a class
33 C felony or with a statutory maximum sentence of five years, or both,
34 and not covered under (f) of this subsection;

35 (d) If the offender is being sentenced for any firearm enhancements
36 under (a), (b), and/or (c) of this subsection and the offender has
37 previously been sentenced for any deadly weapon enhancements after July
38 23, 1995, under (a), (b), and/or (c) of this subsection or subsection

1 (4)(a), (b), and/or (c) of this section, or both, all firearm
2 enhancements under this subsection shall be twice the amount of the
3 enhancement listed;

4 (e) Notwithstanding any other provision of law, all firearm
5 enhancements under this section are mandatory, shall be served in total
6 confinement, and shall run consecutively to all other sentencing
7 provisions, including other firearm or deadly weapon enhancements, for
8 all offenses sentenced under this chapter. However, whether or not a
9 mandatory minimum term has expired, an offender serving a sentence
10 under this subsection may be granted an extraordinary medical placement
11 when authorized under RCW 9.94A.728(4);

12 (f) The firearm enhancements in this section shall apply to all
13 felony crimes except the following: Possession of a machine gun,
14 possessing a stolen firearm, drive-by shooting, theft of a firearm,
15 unlawful possession of a firearm in the first and second degree, and
16 use of a machine gun in a felony;

17 (g) If the standard sentence range under this section exceeds the
18 statutory maximum sentence for the offense, the statutory maximum
19 sentence shall be the presumptive sentence unless the offender is a
20 persistent offender. If the addition of a firearm enhancement
21 increases the sentence so that it would exceed the statutory maximum
22 for the offense, the portion of the sentence representing the
23 enhancement may not be reduced.

24 (4) The following additional times shall be added to the standard
25 sentence range for felony crimes committed after July 23, 1995, if the
26 offender or an accomplice was armed with a deadly weapon other than a
27 firearm as defined in RCW 9.41.010 and the offender is being sentenced
28 for one of the crimes listed in this subsection as eligible for any
29 deadly weapon enhancements based on the classification of the completed
30 felony crime. If the offender is being sentenced for more than one
31 offense, the deadly weapon enhancement or enhancements must be added to
32 the total period of confinement for all offenses, regardless of which
33 underlying offense is subject to a deadly weapon enhancement. If the
34 offender or an accomplice was armed with a deadly weapon other than a
35 firearm as defined in RCW 9.41.010 and the offender is being sentenced
36 for an anticipatory offense under chapter 9A.28 RCW to commit one of
37 the crimes listed in this subsection as eligible for any deadly weapon
38 enhancements, the following additional times shall be added to the

1 standard sentence range determined under subsection (2) of this section
2 based on the felony crime of conviction as classified under RCW
3 9A.28.020:

4 (a) Two years for any felony defined under any law as a class A
5 felony or with a statutory maximum sentence of at least twenty years,
6 or both, and not covered under (f) of this subsection;

7 (b) One year for any felony defined under any law as a class B
8 felony or with a statutory maximum sentence of ten years, or both, and
9 not covered under (f) of this subsection;

10 (c) Six months for any felony defined under any law as a class C
11 felony or with a statutory maximum sentence of five years, or both, and
12 not covered under (f) of this subsection;

13 (d) If the offender is being sentenced under (a), (b), and/or (c)
14 of this subsection for any deadly weapon enhancements and the offender
15 has previously been sentenced for any deadly weapon enhancements after
16 July 23, 1995, under (a), (b), and/or (c) of this subsection or
17 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
18 weapon enhancements under this subsection shall be twice the amount of
19 the enhancement listed;

20 (e) Notwithstanding any other provision of law, all deadly weapon
21 enhancements under this section are mandatory, shall be served in total
22 confinement, and shall run consecutively to all other sentencing
23 provisions, including other firearm or deadly weapon enhancements, for
24 all offenses sentenced under this chapter. However, whether or not a
25 mandatory minimum term has expired, an offender serving a sentence
26 under this subsection may be granted an extraordinary medical placement
27 when authorized under RCW 9.94A.728(4);

28 (f) The deadly weapon enhancements in this section shall apply to
29 all felony crimes except the following: Possession of a machine gun,
30 possessing a stolen firearm, drive-by shooting, theft of a firearm,
31 unlawful possession of a firearm in the first and second degree, and
32 use of a machine gun in a felony;

33 (g) If the standard sentence range under this section exceeds the
34 statutory maximum sentence for the offense, the statutory maximum
35 sentence shall be the presumptive sentence unless the offender is a
36 persistent offender. If the addition of a deadly weapon enhancement
37 increases the sentence so that it would exceed the statutory maximum

1 for the offense, the portion of the sentence representing the
2 enhancement may not be reduced.

3 (5) The following additional times shall be added to the standard
4 sentence range if the offender or an accomplice committed the offense
5 while in a county jail or state correctional facility and the offender
6 is being sentenced for one of the crimes listed in this subsection. If
7 the offender or an accomplice committed one of the crimes listed in
8 this subsection while in a county jail or state correctional facility,
9 and the offender is being sentenced for an anticipatory offense under
10 chapter 9A.28 RCW to commit one of the crimes listed in this
11 subsection, the following additional times shall be added to the
12 standard sentence range determined under subsection (2) of this
13 section:

- 14 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
- 15 (a) or (b) or 69.50.410;
- 16 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
- 17 (c), (d), or (e);
- 18 (c) Twelve months for offenses committed under RCW 69.50.4013.

19 For the purposes of this subsection, all of the real property of a
20 state correctional facility or county jail shall be deemed to be part
21 of that facility or county jail.

22 (6) An additional twenty-four months shall be added to the standard
23 sentence range for any ranked offense involving a violation of chapter
24 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
25 9.94A.605. All enhancements under this subsection shall run
26 consecutively to all other sentencing provisions, for all offenses
27 sentenced under this chapter.

28 (7) An additional two years shall be added to the standard sentence
29 range for vehicular homicide committed while under the influence of
30 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
31 prior offense as defined in RCW 46.61.5055.

32 **Sec. 302.** RCW 9.94A.728 and 2004 c 176 s 6 are each amended to
33 read as follows:

34 No person serving a sentence imposed pursuant to this chapter and
35 committed to the custody of the department shall leave the confines of
36 the correctional facility or be released prior to the expiration of the
37 sentence except as follows:

1 (1) Except as otherwise provided for in subsection (2) of this
2 section, the term of the sentence of an offender committed to a
3 correctional facility operated by the department may be reduced by
4 earned release time in accordance with procedures that shall be
5 developed and promulgated by the correctional agency having
6 jurisdiction in which the offender is confined. The earned release
7 time shall be for good behavior and good performance, as determined by
8 the correctional agency having jurisdiction. The correctional agency
9 shall not credit the offender with earned release credits in advance of
10 the offender actually earning the credits. Any program established
11 pursuant to this section shall allow an offender to earn early release
12 credits for presentence incarceration. If an offender is transferred
13 from a county jail to the department, the administrator of a county
14 jail facility shall certify to the department the amount of time spent
15 in custody at the facility and the amount of earned release time. An
16 offender who has been convicted of a felony committed after July 23,
17 1995, that involves any applicable deadly weapon enhancements under RCW
18 9.94A.533 (3) or (4), or both, shall not receive any good time credits
19 or earned release time for that portion of his or her sentence that
20 results from any deadly weapon enhancements.

21 (a) In the case of an offender convicted of a serious violent
22 offense, or a sex offense that is a class A felony, committed on or
23 after July 1, 1990, and before July 1, 2003, the aggregate earned
24 release time may not exceed fifteen percent of the sentence. In the
25 case of an offender convicted of a serious violent offense, or a sex
26 offense that is a class A felony, committed on or after July 1, 2003,
27 the aggregate earned release time may not exceed ten percent of the
28 sentence.

29 (b)(i) In the case of an offender who qualifies under (b)(ii) of
30 this subsection, the aggregate earned release time may not exceed fifty
31 percent of the sentence.

32 (ii) An offender is qualified to earn up to fifty percent of
33 aggregate earned release time under this subsection (1)(b) if he or
34 she:

35 (A) Is classified in one of the two lowest risk categories under
36 (b)(iii) of this subsection;

37 (B) Is not confined pursuant to a sentence for:

38 (I) A sex offense;

1 (II) A violent offense;
2 (III) A crime against persons as defined in RCW 9.94A.411;
3 (IV) A felony that is domestic violence as defined in RCW
4 10.99.020;
5 (V) A violation of RCW 9A.52.025 (residential burglary);
6 (VI) A violation of, or an attempt, solicitation, or conspiracy to
7 violate, RCW 69.50.401 by manufacture or delivery or possession with
8 intent to deliver methamphetamine; (~~or~~)
9 (VII) A violation of, or an attempt, solicitation, or conspiracy to
10 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
11 (~~and~~)
12 (C) Is not confined pursuant to a sentence imposed under RCW
13 9.94A.660; and
14 (D) Has no prior conviction for:
15 (I) A sex offense;
16 (II) A violent offense;
17 (III) A crime against persons as defined in RCW 9.94A.411;
18 (IV) A felony that is domestic violence as defined in RCW
19 10.99.020;
20 (V) A violation of RCW 9A.52.025 (residential burglary);
21 (VI) A violation of, or an attempt, solicitation, or conspiracy to
22 violate, RCW 69.50.401 by manufacture or delivery or possession with
23 intent to deliver methamphetamine; or
24 (VII) A violation of, or an attempt, solicitation, or conspiracy to
25 violate, RCW 69.50.406 (delivery of a controlled substance to a minor).
26 (iii) For purposes of determining an offender's eligibility under
27 this subsection (1)(b), the department shall perform a risk assessment
28 of every offender committed to a correctional facility operated by the
29 department who has no current or prior conviction for a sex offense, a
30 violent offense, a crime against persons as defined in RCW 9.94A.411,
31 a felony that is domestic violence as defined in RCW 10.99.020, a
32 violation of RCW 9A.52.025 (residential burglary), a violation of, or
33 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by
34 manufacture or delivery or possession with intent to deliver
35 methamphetamine, or a violation of, or an attempt, solicitation, or
36 conspiracy to violate, RCW 69.50.406 (delivery of a controlled
37 substance to a minor). The department must classify each assessed

1 offender in one of four risk categories between highest and lowest
2 risk.

3 (iv) The department shall recalculate the earned release time and
4 reschedule the expected release dates for each qualified offender under
5 this subsection (1)(b).

6 (v) This subsection (1)(b) applies retroactively to eligible
7 offenders serving terms of total confinement in a state correctional
8 facility as of July 1, 2003.

9 (vi) This subsection (1)(b) does not apply to offenders convicted
10 after July 1, 2010.

11 (c) In no other case shall the aggregate earned release time exceed
12 one-third of the total sentence;

13 (2)(a) A person convicted of a sex offense or an offense
14 categorized as a serious violent offense, assault in the second degree,
15 vehicular homicide, vehicular assault, assault of a child in the second
16 degree, any crime against persons where it is determined in accordance
17 with RCW 9.94A.602 that the offender or an accomplice was armed with a
18 deadly weapon at the time of commission, or any felony offense under
19 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become
20 eligible, in accordance with a program developed by the department, for
21 transfer to community custody status in lieu of earned release time
22 pursuant to subsection (1) of this section;

23 (b) A person convicted of a sex offense, a violent offense, any
24 crime against persons under RCW 9.94A.411(2), or a felony offense under
25 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may
26 become eligible, in accordance with a program developed by the
27 department, for transfer to community custody status in lieu of earned
28 release time pursuant to subsection (1) of this section;

29 (c) The department shall, as a part of its program for release to
30 the community in lieu of earned release, require the offender to
31 propose a release plan that includes an approved residence and living
32 arrangement. All offenders with community placement or community
33 custody terms eligible for release to community custody status in lieu
34 of earned release shall provide an approved residence and living
35 arrangement prior to release to the community;

36 (d) The department may deny transfer to community custody status in
37 lieu of earned release time pursuant to subsection (1) of this section
38 if the department determines an offender's release plan, including

1 proposed residence location and living arrangements, may violate the
2 conditions of the sentence or conditions of supervision, place the
3 offender at risk to violate the conditions of the sentence, place the
4 offender at risk to reoffend, or present a risk to victim safety or
5 community safety. The department's authority under this section is
6 independent of any court-ordered condition of sentence or statutory
7 provision regarding conditions for community custody or community
8 placement;

9 (e) An offender serving a term of confinement imposed under RCW
10 9.94A.670(4)(a) is not eligible for earned release credits under this
11 section;

12 (3) An offender may leave a correctional facility pursuant to an
13 authorized furlough or leave of absence. In addition, offenders may
14 leave a correctional facility when in the custody of a corrections
15 officer or officers;

16 (4)(a) The secretary may authorize an extraordinary medical
17 placement for an offender when all of the following conditions exist:

18 (i) The offender has a medical condition that is serious enough to
19 require costly care or treatment;

20 (ii) The offender poses a low risk to the community because he or
21 she is physically incapacitated due to age or the medical condition;
22 and

23 (iii) Granting the extraordinary medical placement will result in
24 a cost savings to the state.

25 (b) An offender sentenced to death or to life imprisonment without
26 the possibility of release or parole is not eligible for an
27 extraordinary medical placement.

28 (c) The secretary shall require electronic monitoring for all
29 offenders in extraordinary medical placement unless the electronic
30 monitoring equipment interferes with the function of the offender's
31 medical equipment or results in the loss of funding for the offender's
32 medical care. The secretary shall specify who shall provide the
33 monitoring services and the terms under which the monitoring shall be
34 performed.

35 (d) The secretary may revoke an extraordinary medical placement
36 under this subsection at any time;

37 (5) The governor, upon recommendation from the clemency and pardons

1 board, may grant an extraordinary release for reasons of serious health
2 problems, senility, advanced age, extraordinary meritorious acts, or
3 other extraordinary circumstances;

4 (6) No more than the final six months of the sentence may be served
5 in partial confinement designed to aid the offender in finding work and
6 reestablishing himself or herself in the community;

7 (7) The governor may pardon any offender;

8 (8) The department may release an offender from confinement any
9 time within ten days before a release date calculated under this
10 section; and

11 (9) An offender may leave a correctional facility prior to
12 completion of his or her sentence if the sentence has been reduced as
13 provided in RCW 9.94A.870.

14 Notwithstanding any other provisions of this section, an offender
15 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a
16 mandatory minimum sentence of total confinement shall not be released
17 from total confinement before the completion of the listed mandatory
18 minimum sentence for that felony crime of conviction unless allowed
19 under RCW 9.94A.540, however persistent offenders are not eligible for
20 extraordinary medical placement.

21 **Sec. 303.** RCW 9.94A.500 and 2000 c 75 s 8 are each amended to read
22 as follows:

23 (1) Before imposing a sentence upon a defendant, the court shall
24 conduct a sentencing hearing. The sentencing hearing shall be held
25 within forty court days following conviction. Upon the motion of
26 either party for good cause shown, or on its own motion, the court may
27 extend the time period for conducting the sentencing hearing.

28 Except in cases where the defendant shall be sentenced to a term of
29 total confinement for life without the possibility of release or, when
30 authorized by RCW 10.95.030 for the crime of aggravated murder in the
31 first degree, sentenced to death, the court may order the department to
32 complete a risk assessment report. If available before sentencing, the
33 report shall be provided to the court.

34 Unless specifically waived by the court, the court shall order the
35 department to complete a chemical dependency screening report before
36 imposing a sentence upon a defendant who has been convicted of ((a
37 ~~violation of the uniform controlled substances act under chapter 69.50~~

1 ~~RCW or a criminal solicitation to commit such a violation under chapter~~
2 ~~9A.28 RCW~~) any felony where the court finds that the offender has a
3 chemical dependency that has contributed to his or her offense. In
4 addition, the court shall, at the time of plea or conviction, order the
5 department to complete a presentence report before imposing a sentence
6 upon a defendant who has been convicted of a felony (~~sexual offense~~).
7 The department of corrections shall give priority to presentence
8 investigations for sexual offenders. If the court determines that the
9 defendant may be a mentally ill person as defined in RCW 71.24.025,
10 although the defendant has not established that at the time of the
11 crime he or she lacked the capacity to commit the crime, was
12 incompetent to commit the crime, or was insane at the time of the
13 crime, the court shall order the department to complete a presentence
14 report before imposing a sentence.

15 The court shall consider the risk assessment report and presentence
16 reports, if any, including any victim impact statement and criminal
17 history, and allow arguments from the prosecutor, the defense counsel,
18 the offender, the victim, the survivor of the victim, or a
19 representative of the victim or survivor, and an investigative law
20 enforcement officer as to the sentence to be imposed.

21 If the court is satisfied by a preponderance of the evidence that
22 the defendant has a criminal history, the court shall specify the
23 convictions it has found to exist. All of this information shall be
24 part of the record. Copies of all risk assessment reports and
25 presentence reports presented to the sentencing court and all written
26 findings of facts and conclusions of law as to sentencing entered by
27 the court shall be sent to the department by the clerk of the court at
28 the conclusion of the sentencing and shall accompany the offender if
29 the offender is committed to the custody of the department. Court
30 clerks shall provide, without charge, certified copies of documents
31 relating to criminal convictions requested by prosecuting attorneys.

32 (2) To prevent wrongful disclosure of information related to mental
33 health services, as defined in RCW 71.05.445 and (~~71.34.225~~)
34 71.34.345, a court may take only those steps necessary during a
35 sentencing hearing or any hearing in which the department presents
36 information related to mental health services to the court. The steps
37 may be taken on motion of the defendant, the prosecuting attorney, or
38 on the court's own motion. The court may seal the portion of the

1 record relating to information relating to mental health services,
2 exclude the public from the hearing during presentation or discussion
3 of information relating to mental health services, or grant other
4 relief to achieve the result intended by this subsection, but nothing
5 in this subsection shall be construed to prevent the subsequent release
6 of information related to mental health services as authorized by RCW
7 71.05.445, (~~(71.34.225)~~) 71.34.345, or 72.09.585. Any person who
8 otherwise is permitted to attend any hearing pursuant to chapter 7.69
9 or 7.69A RCW shall not be excluded from the hearing solely because the
10 department intends to disclose or discloses information related to
11 mental health services.

12 NEW SECTION. **Sec. 304.** The Washington institute for public policy
13 shall conduct a study of criminal sentencing provisions of neighboring
14 states for all crimes involving methamphetamine. The institute shall
15 report to the legislature on any criminal sentencing increases
16 necessary under Washington law to reduce or remove any incentives
17 methamphetamine traffickers and manufacturers may have to locate in
18 Washington. The report shall be completed by January 1, 2007.

19 NEW SECTION. **Sec. 305.** The Washington institute for public policy
20 shall conduct a study of the drug offender sentencing alternative to
21 determine its impact on recidivism. The institute shall study the
22 success rate of the sentencing alternative for different types of
23 crimes and whether offenders who received substance abuse treatment
24 while in confinement were more or less successful than offenders who
25 received treatment in the community or received no treatment. The
26 institute shall report to the legislature by January 1, 2007.

27 NEW SECTION. **Sec. 306.** Part headings used in this act are no part
28 of the law.

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