
SUBSTITUTE SENATE BILL 6239

State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Johnson, Doumit, Oke, Stevens and Esser; by request of Attorney General)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to the impact of controlled substances, primarily
2 methamphetamine; amending RCW 2.28.170, 26.44.020, 26.44.020,
3 26.44.195, 74.34.020, 64.44.010, 64.44.020, 64.44.030, 64.44.040,
4 64.44.050, 64.44.060, 64.44.070, 9.94A.533, 9.94A.660, and 9.94A.500;
5 adding a new section to chapter 70.96A RCW; adding a new section to
6 chapter 72.09 RCW; adding a new section to chapter 64.44 RCW; adding a
7 new chapter to Title 49 RCW; creating new sections; prescribing
8 penalties; making an appropriation; providing an effective date; and
9 providing expiration dates.

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

11 **PART I**

12 **SUBSTANCE ABUSE REDUCTION**

13 NEW SECTION. **Sec. 101.** A new section is added to chapter 70.96A
14 RCW to read as follows:

15 (1) Any county that has imposed the sales and use tax authorized by
16 RCW 82.14.460 may seek a state appropriation of up to one hundred
17 thousand dollars annually beginning in fiscal year 2008 and ending in
18 fiscal year 2010. The funds shall be used to provide additional

1 support to counties for mental health or substance abuse treatment for
2 persons with methamphetamine addiction. Local governments receiving
3 funds under this section may not use the funds to supplant existing
4 funding.

5 (2) Counties receiving funding shall: (a) Provide a financial plan
6 for the expenditure of any potential funds prior to funds being
7 awarded; (b) report annually to the appropriate committees of the
8 legislature regarding the number of clients served, services provided,
9 and a statement of expenditures; and (c) expend no more than ten
10 percent for administrative costs or for information technology.

11 NEW SECTION. **Sec. 102.** A new section is added to chapter 72.09
12 RCW to read as follows:

13 (1) Through June 30, 2010, it is the intent of the legislature to
14 provide one hundred additional placements for therapeutic drug and
15 alcohol treatment in the state's correctional institutions, above the
16 level of placements provided on January 1, 2006.

17 (2) This section expires June 30, 2010.

18 NEW SECTION. **Sec. 103.** It is the intent of the legislature to
19 provide an annual combined level of state and federal funding for
20 multijurisdictional drug task forces and local government drug
21 prosecution assistance at a maximum of four million dollars.

22 NEW SECTION. **Sec. 104.** A sum not to exceed four million dollars,
23 or as much thereof as may be necessary, is appropriated for the fiscal
24 year ending June 30, 2007, from the general fund to the Washington
25 state patrol for the sole purpose of providing funding for
26 multijurisdictional drug task forces and local government drug
27 prosecution assistance.

28 NEW SECTION. **Sec. 105.** (1) It is the intent of the legislature to
29 provide assistance for jurisdictions enforcing controlled substances
30 laws who have historically been underserved by federally funded state
31 narcotics task forces and are considered to be major transport areas of
32 narcotics traffickers.

33 (2) Three pilot enforcement areas shall be established for a period
34 of four fiscal years, beginning on July 1, 2006, and ending on June 30,

1 2010, with one in the southwestern region of the state, comprising of
2 Pacific, Wahkiakum, Lewis, Grays Harbor, and Cowlitz counties; one in
3 the southeastern region of the state, comprising of Walla Walla,
4 Columbia, Garfield, and Asotin counties; and one in the northeastern
5 part of the state, comprising of Stevens, Ferry, Pend Oreille, and
6 Lincoln counties. The counties comprising a specific pilot area will
7 coordinate with each other to establish and implement a regional
8 strategy to enforce illegal drug laws.

9 (3) It is the legislature's intent to provide funding of no less
10 than 1.575 million dollars annually. The funding is to be divided
11 equally between the three pilot enforcement areas. This funding is
12 intended to provide a minimum of four additional sheriff deputies for
13 each pilot area, two deputy prosecutors who will support the counties
14 that are included in the pilot area, and court clerk and clerical staff
15 to serve the pilot area. It is the intent of the legislature that
16 those counties that have not previously received significant federal
17 narcotics task force funding shall be allocated funding for at least
18 one additional sheriff's deputy. Counties are encouraged to utilize
19 drug courts and treatment programs and to share resources that operate
20 in the region through the use of interlocal agreements. The funding
21 appropriated for this purpose must not be used to supplant existing
22 funding and cannot be used for any purpose other than the enforcement
23 of controlled substances laws.

24 The criminal justice training commission shall allocate funds to
25 the Washington association of prosecuting attorneys and the Washington
26 association of sheriffs and police chiefs. The Washington association
27 of prosecuting attorneys is responsible for administration of the
28 funding and programs for the prosecution of crimes and court
29 proceedings and the Washington association of sheriffs and police
30 chiefs shall administer the funds provided for law enforcement.

31 (4) The Washington association of sheriffs and police chiefs, the
32 Washington association of prosecuting attorneys, and the Washington
33 association of county officials shall jointly develop measures to
34 determine the efficacy of the programs in the pilot area. These
35 measures shall include comparison of arrest rates before the
36 implementation of this act and after, reduction of recidivism, and any
37 other factors that are determined to be relevant to evaluation of the

1 programs. The organizations named in this section shall present their
2 findings to the legislature by December 1, 2008.

3 **Sec. 106.** RCW 2.28.170 and 2005 c 504 s 504 are each amended to
4 read as follows:

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

6 (2) For the purposes of this section, "drug court" means a court
7 that has special calendars or dockets designed to achieve a reduction
8 in recidivism and substance abuse among nonviolent, substance abusing
9 felony and nonfelony offenders, whether adult or juvenile, by
10 increasing their likelihood for successful rehabilitation through
11 early, continuous, and intense judicially supervised treatment;
12 mandatory periodic drug testing; and the use of appropriate sanctions
13 and other rehabilitation services.

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

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

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

23 (b) Any county that establishes a drug court pursuant to this
24 section shall establish minimum requirements for the participation of
25 offenders in the program. The drug court may adopt local requirements
26 that are more stringent than the minimum. The minimum requirements
27 are:

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

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

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

34 (A) That is a sex offense;

35 (B) That is a serious violent offense;

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

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

3 **Sec. 107.** RCW 26.44.020 and 2000 c 162 s 19 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Court" means the superior court of the state of Washington,
8 juvenile department.

9 (2) "Law enforcement agency" means the police department, the
10 prosecuting attorney, the state patrol, the director of public safety,
11 or the office of the sheriff.

12 (3) "Practitioner of the healing arts" or "practitioner" means a
13 person licensed by this state to practice podiatric medicine and
14 surgery, optometry, chiropractic, nursing, dentistry, osteopathic
15 medicine and surgery, or medicine and surgery or to provide other
16 health services. The term "practitioner" includes a duly accredited
17 Christian Science practitioner: PROVIDED, HOWEVER, That a person who
18 is being furnished Christian Science treatment by a duly accredited
19 Christian Science practitioner will not be considered, for that reason
20 alone, a neglected person for the purposes of this chapter.

21 (4) "Institution" means a private or public hospital or any other
22 facility providing medical diagnosis, treatment or care.

23 (5) "Department" means the state department of social and health
24 services.

25 (6) "Child" or "children" means any person under the age of
26 eighteen years of age.

27 (7) "Professional school personnel" include, but are not limited
28 to, teachers, counselors, administrators, child care facility
29 personnel, and school nurses.

30 (8) "Social service counselor" means anyone engaged in a
31 professional capacity during the regular course of employment in
32 encouraging or promoting the health, welfare, support or education of
33 children, or providing social services to adults or families, including
34 mental health, drug and alcohol treatment, and domestic violence
35 programs, whether in an individual capacity, or as an employee or agent
36 of any public or private organization or institution.

1 (9) "Psychologist" means any person licensed to practice psychology
2 under chapter 18.83 RCW, whether acting in an individual capacity or as
3 an employee or agent of any public or private organization or
4 institution.

5 (10) "Pharmacist" means any registered pharmacist under chapter
6 18.64 RCW, whether acting in an individual capacity or as an employee
7 or agent of any public or private organization or institution.

8 (11) "Clergy" means any regularly licensed or ordained minister,
9 priest, or rabbi of any church or religious denomination, whether
10 acting in an individual capacity or as an employee or agent of any
11 public or private organization or institution.

12 (12) "Abuse or neglect" means the injury, sexual abuse, sexual
13 exploitation, negligent treatment, or maltreatment of a child by any
14 person under circumstances which indicate that the child's health,
15 welfare, and safety is harmed, including conduct prohibited under RCW
16 9A.42.100, and excluding conduct permitted under RCW 9A.16.100. An
17 abused child is a child who has been subjected to child abuse or
18 neglect as defined in this section.

19 (13) "Child protective services section" means the child protective
20 services section of the department.

21 (14) "Sexual exploitation" includes: (a) Allowing, permitting, or
22 encouraging a child to engage in prostitution by any person; or (b)
23 allowing, permitting, encouraging, or engaging in the obscene or
24 pornographic photographing, filming, or depicting of a child by any
25 person.

26 (15) "Negligent treatment or maltreatment" means an act or omission
27 that evidences a serious disregard of consequences of such magnitude as
28 to constitute a clear and present danger to the child's health,
29 welfare, and safety. The fact that siblings share a bedroom is not, in
30 and of itself, negligent treatment or maltreatment.

31 (16) "Child protective services" means those services provided by
32 the department designed to protect children from child abuse and
33 neglect and safeguard such children from future abuse and neglect, and
34 conduct investigations of child abuse and neglect reports.
35 Investigations may be conducted regardless of the location of the
36 alleged abuse or neglect. Child protective services includes referral
37 to services to ameliorate conditions that endanger the welfare of
38 children, the coordination of necessary programs and services relevant

1 to the prevention, intervention, and treatment of child abuse and
2 neglect, and services to children to ensure that each child has a
3 permanent home. In determining whether protective services should be
4 provided, the department shall not decline to provide such services
5 solely because of the child's unwillingness or developmental inability
6 to describe the nature and severity of the abuse or neglect.

7 (17) "Malice" or "maliciously" means an evil intent, wish, or
8 design to vex, annoy, or injure another person. Such malice may be
9 inferred from an act done in willful disregard of the rights of
10 another, or an act wrongfully done without just cause or excuse, or an
11 act or omission of duty betraying a willful disregard of social duty.

12 (18) "Sexually aggressive youth" means a child who is defined in
13 RCW 74.13.075(1)(b) as being a sexually aggressive youth.

14 (19) "Unfounded" means available information indicates that, more
15 likely than not, child abuse or neglect did not occur. No unfounded
16 allegation of child abuse or neglect may be disclosed to a child-
17 placing agency, private adoption agency, or any other provider licensed
18 under chapter 74.15 RCW.

19 **Sec. 108.** RCW 26.44.020 and 2005 c 512 s 5 are each amended to
20 read as follows:

21 The definitions in this section apply throughout this chapter
22 unless the context clearly requires otherwise.

23 (1) "Court" means the superior court of the state of Washington,
24 juvenile department.

25 (2) "Law enforcement agency" means the police department, the
26 prosecuting attorney, the state patrol, the director of public safety,
27 or the office of the sheriff.

28 (3) "Practitioner of the healing arts" or "practitioner" means a
29 person licensed by this state to practice podiatric medicine and
30 surgery, optometry, chiropractic, nursing, dentistry, osteopathic
31 medicine and surgery, or medicine and surgery or to provide other
32 health services. The term "practitioner" includes a duly accredited
33 Christian Science practitioner: PROVIDED, HOWEVER, That a person who
34 is being furnished Christian Science treatment by a duly accredited
35 Christian Science practitioner will not be considered, for that reason
36 alone, a neglected person for the purposes of this chapter.

1 (4) "Institution" means a private or public hospital or any other
2 facility providing medical diagnosis, treatment or care.

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

5 (6) "Child" or "children" means any person under the age of
6 eighteen years of age.

7 (7) "Professional school personnel" include, but are not limited
8 to, teachers, counselors, administrators, child care facility
9 personnel, and school nurses.

10 (8) "Social service counselor" means anyone engaged in a
11 professional capacity during the regular course of employment in
12 encouraging or promoting the health, welfare, support or education of
13 children, or providing social services to adults or families, including
14 mental health, drug and alcohol treatment, and domestic violence
15 programs, whether in an individual capacity, or as an employee or agent
16 of any public or private organization or institution.

17 (9) "Psychologist" means any person licensed to practice psychology
18 under chapter 18.83 RCW, whether acting in an individual capacity or as
19 an employee or agent of any public or private organization or
20 institution.

21 (10) "Pharmacist" means any registered pharmacist under chapter
22 18.64 RCW, whether acting in an individual capacity or as an employee
23 or agent of any public or private organization or institution.

24 (11) "Clergy" means any regularly licensed or ordained minister,
25 priest, or rabbi of any church or religious denomination, whether
26 acting in an individual capacity or as an employee or agent of any
27 public or private organization or institution.

28 (12) "Abuse or neglect" means sexual abuse, sexual exploitation, or
29 injury of a child by any person under circumstances which cause harm to
30 the child's health, welfare, or safety, including conduct prohibited
31 under RCW 9A.42.100, and excluding conduct permitted under RCW
32 9A.16.100; or the negligent treatment or maltreatment of a child by a
33 person responsible for or providing care to the child. An abused child
34 is a child who has been subjected to child abuse or neglect as defined
35 in this section.

36 (13) "Child protective services section" means the child protective
37 services section of the department.

1 (14) "Sexual exploitation" includes: (a) Allowing, permitting, or
2 encouraging a child to engage in prostitution by any person; or (b)
3 allowing, permitting, encouraging, or engaging in the obscene or
4 pornographic photographing, filming, or depicting of a child by any
5 person.

6 (15) "Negligent treatment or maltreatment" means an act or a
7 failure to act, or the cumulative effects of a pattern of conduct,
8 behavior, or inaction, that evidences a serious disregard of
9 consequences of such magnitude as to constitute a clear and present
10 danger to a child's health, welfare, or safety. When considering
11 whether a clear and present danger exists, evidence of a parent's
12 substance abuse as a contributing factor to negligent treatment or
13 maltreatment shall be given great weight. The fact that siblings share
14 a bedroom is not, in and of itself, negligent treatment or
15 maltreatment. Poverty, homelessness, or exposure to domestic violence
16 as defined in RCW 26.50.010 that is perpetrated against someone other
17 than the child (~~do~~-~~does~~) does not constitute negligent treatment or
18 maltreatment in and of (~~themselves~~-~~itself~~) itself.

19 (16) "Child protective services" means those services provided by
20 the department designed to protect children from child abuse and
21 neglect and safeguard such children from future abuse and neglect, and
22 conduct investigations of child abuse and neglect reports.
23 Investigations may be conducted regardless of the location of the
24 alleged abuse or neglect. Child protective services includes referral
25 to services to ameliorate conditions that endanger the welfare of
26 children, the coordination of necessary programs and services relevant
27 to the prevention, intervention, and treatment of child abuse and
28 neglect, and services to children to ensure that each child has a
29 permanent home. In determining whether protective services should be
30 provided, the department shall not decline to provide such services
31 solely because of the child's unwillingness or developmental inability
32 to describe the nature and severity of the abuse or neglect.

33 (17) "Malice" or "maliciously" means an evil intent, wish, or
34 design to vex, annoy, or injure another person. Such malice may be
35 inferred from an act done in willful disregard of the rights of
36 another, or an act wrongfully done without just cause or excuse, or an
37 act or omission of duty betraying a willful disregard of social duty.

1 (18) "Sexually aggressive youth" means a child who is defined in
2 RCW 74.13.075(1)(b) as being a sexually aggressive youth.

3 (19) "Unfounded" means available information indicates that, more
4 likely than not, child abuse or neglect did not occur. No unfounded
5 allegation of child abuse or neglect may be disclosed to a child-
6 placing agency, private adoption agency, or any other provider licensed
7 under chapter 74.15 RCW.

8 **Sec. 109.** RCW 26.44.195 and 2005 c 512 s 6 are each amended to
9 read as follows:

10 (1) If the department, upon investigation of a report that a child
11 has been abused or neglected as defined in this chapter, determines
12 that the child has been subject to negligent treatment or maltreatment,
13 the department may offer services to the child's parents, guardians, or
14 legal custodians to: (a) Ameliorate the conditions that endangered the
15 welfare of the child; or (b) address or treat the effects of
16 mistreatment or neglect upon the child.

17 (2) When evaluating whether the child has been subject to negligent
18 treatment or maltreatment, evidence of a parent's substance abuse as a
19 contributing factor to a parent's failure to provide for a child's
20 basic health, welfare, or safety shall be given great weight.

21 (3) If the child's parents, guardians, or legal custodians are
22 available and willing to participate on a voluntary basis in in-home
23 services, and the department determines that in-home services on a
24 voluntary basis are appropriate for the family, the department may
25 offer such services.

26 (4) In cases where the department has offered appropriate and
27 reasonable services under subsection (1) of this section, and the
28 parents, guardians, or legal custodians refuse to accept or fail to
29 obtain available and appropriate treatment or services, or are unable
30 or unwilling to participate in or successfully and substantially
31 complete the treatment or services identified by the department, the
32 department may initiate a dependency proceeding under chapter 13.34 RCW
33 on the basis that the negligent treatment or maltreatment by the
34 parent, guardian, or legal custodian constitutes neglect. When
35 evaluating whether to initiate a dependency proceeding on this basis,
36 the evidence of a parent's substance abuse as a contributing factor to
37 the negligent treatment or maltreatment shall be given great weight.

1 (5) Nothing in this section precludes the department from filing a
2 dependency petition as provided in chapter 13.34 RCW if it determines
3 that such action is necessary to protect the child from abuse or
4 neglect.

5 ~~((6) Nothing in this section shall be construed to create in any
6 person an entitlement to services or financial assistance in paying for
7 services or to create judicial authority to order the provision of
8 services to any person or family if the services are unavailable or
9 unsuitable or if the child or family is not eligible for such
10 services.))~~

11 **Sec. 110.** RCW 74.34.020 and 2003 c 230 s 1 are each amended to
12 read as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter.

15 (1) "Abandonment" means action or inaction by a person or entity
16 with a duty of care for a vulnerable adult that leaves the vulnerable
17 person without the means or ability to obtain necessary food, clothing,
18 shelter, or health care.

19 (2) "Abuse" means the willful action or inaction that inflicts
20 injury, unreasonable confinement, intimidation, or punishment on a
21 vulnerable adult. In instances of abuse of a vulnerable adult who is
22 unable to express or demonstrate physical harm, pain, or mental
23 anguish, the abuse is presumed to cause physical harm, pain, or mental
24 anguish. Abuse includes sexual abuse, mental abuse, physical abuse,
25 and exploitation of a vulnerable adult, which have the following
26 meanings:

27 (a) "Sexual abuse" means any form of nonconsensual sexual contact,
28 including but not limited to unwanted or inappropriate touching, rape,
29 sodomy, sexual coercion, sexually explicit photographing, and sexual
30 harassment. Sexual abuse includes any sexual contact between a staff
31 person, who is not also a resident or client, of a facility or a staff
32 person of a program authorized under chapter 71A.12 RCW, and a
33 vulnerable adult living in that facility or receiving service from a
34 program authorized under chapter 71A.12 RCW, whether or not it is
35 consensual.

36 (b) "Physical abuse" means the willful action of inflicting bodily
37 injury or physical mistreatment. Physical abuse includes, but is not

1 limited to, striking with or without an object, slapping, pinching,
2 choking, kicking, shoving, prodding, or the use of chemical restraints
3 or physical restraints unless the restraints are consistent with
4 licensing requirements, and includes restraints that are otherwise
5 being used inappropriately.

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

11 (d) "Exploitation" means an act of forcing, compelling, or exerting
12 undue influence over a vulnerable adult causing the vulnerable adult to
13 act in a way that is inconsistent with relevant past behavior, or
14 causing the vulnerable adult to perform services for the benefit of
15 another.

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

20 (4) "Department" means the department of social and health
21 services.

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

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

30 (7) "Individual provider" means a person under contract with the
31 department to provide services in the home under chapter 74.09 or
32 74.39A RCW.

33 (8) "Mandated reporter" is an employee of the department; law
34 enforcement officer; social worker; professional school personnel;
35 individual provider; an employee of a facility; an operator of a
36 facility; an employee of a social service, welfare, mental health,
37 adult day health, adult day care, home health, home care, or hospice

1 agency; county coroner or medical examiner; Christian Science
2 practitioner; or health care provider subject to chapter 18.130 RCW.

3 (9) "Neglect" means (a) a pattern of conduct or inaction by a
4 person or entity with a duty of care that fails to provide the goods
5 and services that maintain physical or mental health of a vulnerable
6 adult, or that fails to avoid or prevent physical or mental harm or
7 pain to a vulnerable adult, including but not limited to conduct
8 prohibited under RCW 9A.42.100; or (b) an act or omission that
9 demonstrates a serious disregard of consequences of such a magnitude as
10 to constitute a clear and present danger to the vulnerable adult's
11 health, welfare, or safety.

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

15 (11) "Protective services" means any services provided by the
16 department to a vulnerable adult with the consent of the vulnerable
17 adult, or the legal representative of the vulnerable adult, who has
18 been abandoned, abused, financially exploited, neglected, or in a state
19 of self-neglect. These services may include, but are not limited to
20 case management, social casework, home care, placement, arranging for
21 medical evaluations, psychological evaluations, day care, or referral
22 for legal assistance.

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

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

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

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

35 (c) Who has a developmental disability as defined under RCW
36 71A.10.020; or

37 (d) Admitted to any facility; or

1 (e) Receiving services from home health, hospice, or home care
2 agencies licensed or required to be licensed under chapter 70.127 RCW;
3 or

4 (f) Receiving services from an individual provider.

5 NEW SECTION. **Sec. 111.** The department of community, trade, and
6 economic development shall review federal, state, and local funding
7 sources and funding levels available to local meth action teams through
8 the Washington state methamphetamine initiative to determine whether
9 funding is adequate to accomplish the mission of the meth action teams.
10 The department shall also review the funding levels for drug task
11 forces in the state of Washington to determine whether they may require
12 additional resources to successfully interdict drug trafficking
13 organizations and clandestine labs statewide. The department shall
14 report findings and recommendations to the legislature by November 1,
15 2006.

16 NEW SECTION. **Sec. 112.** The department of social and health
17 services shall consult with faith-based organizations to discuss the
18 appropriate role that such organizations may have in filling support
19 service delivery needs for persons with chemical dependency disorders.
20 The department shall report findings and recommendations to the
21 legislature by November 1, 2006.

22 NEW SECTION. **Sec. 113.** The agency council on coordinated
23 transportation shall adopt, as a part of its strategic program, a plan
24 to increase access by recovering addicts to existing special needs
25 transportation services already offered by medicaid brokerages and
26 local transportation coalitions. The council may also implement an
27 awareness campaign through department of corrections community
28 corrections officers and service providers licensed by the department
29 of social and health services division of alcohol and substance abuse
30 to promote to recovering addicts seeking treatment the use of special
31 needs transportation services, the council web site, and the statewide
32 trip planner. The council shall report back to the legislature
33 regarding the implementation of these strategies by November 1, 2006.

1 NEW SECTION. **Sec. 114.** The department of social and health
2 services, in consultation with the attorney general, shall report to
3 the legislature by January 15, 2007, on the status of ongoing
4 multimedia campaigns to prevent methamphetamine use and underage
5 drinking, and promote treatment, within the state of Washington.

6 **PART II**

7 **DRUG-FREE WORKPLACE PROGRAM**

8 NEW SECTION. **Sec. 201.** Unless the context clearly requires
9 otherwise, the definitions in this section apply throughout this
10 chapter.

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

13 (2) "Alcohol test" means a chemical, biological, or physical
14 instrumental analysis administered for the purpose of determining the
15 presence or absence of alcohol within an individual's body systems.

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

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

24 (5) "Confirmation test" or "confirmed test" means a second
25 analytical procedure used to identify the presence of a specific drug
26 or metabolic in a specimen. Drug tests must be confirmed as specified
27 in section 205(5) of this act. Alcohol tests must be confirmed by a
28 second breath test or as specified for drug tests.

29 (6) "Department" means the department of social and health
30 services.

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

34 (8) "Drug test" means a chemical, biological, or physical
35 instrumental analysis administered on a specimen sample for the purpose

1 of determining the presence or absence of a drug or its metabolites
2 within the sample.

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

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

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

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

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

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

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

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

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

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

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

14 (20) "Specimen" means breath or urine. "Specimen" may include
15 other products of the human body capable of revealing the presence of
16 drugs or their metabolites or of alcohol, if approved by the United
17 States department of health and human services and permitted by rules
18 adopted under section 212 of this act.

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

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

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

30 (24) "Verified positive test result" means a confirmed positive
31 test result obtained by a laboratory meeting the standards specified in
32 this chapter that has been reviewed and verified by a medical review
33 officer in accordance with medical review officer guidelines
34 promulgated by the United States department of health and human
35 services.

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

1 NEW SECTION. **Sec. 202.** (1) An employer, except an employer that
2 is self-insured for the purposes of Title 51 RCW, implementing a drug-
3 free workplace program in accordance with section 203 of this act shall
4 qualify for a five percent workers' compensation premium discount under
5 Title 51 RCW if the employer:

6 (a) Is certified by the division of alcohol and substance abuse of
7 the department as provided in section 212 of this act. The employer
8 must maintain an alcohol and drug-free workplace program in accordance
9 with the standards, procedures, and rules established in or under this
10 chapter. If the employer fails to maintain the program as required,
11 the employer shall not qualify for the premium discount provided under
12 this section;

13 (b) Is in good standing and remains in good standing with the
14 department of labor and industries with respect to the employer's
15 workers' compensation premium obligations and any other premiums and
16 assessments under Title 51 RCW; and

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

19 (2) The premium discount must remain in effect as long as the
20 employer is certified under section 212 of this act, up to a maximum of
21 three years from the date of initial certification.

22 (3) A certified employer may discontinue operating a drug-free
23 workplace program at any time. The qualification for a premium
24 discount shall expire in accordance with decertification rules adopted
25 by the department under section 212 of this act.

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

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

32 (6) An employer may not receive premium discounts from the
33 department of labor and industries under more than one premium discount
34 program. For purposes of this chapter, the retrospective rating
35 program is not considered a premium discount. An employer
36 participating in and meeting all of the requirements for the discount
37 provided in this section and also participating in another premium

1 discount program offered by the department of labor and industries is
2 only entitled to the premium discount that is the highest.

3 (7) The department of labor and industries will notify self-insured
4 employers of the value of drug-free workplace programs and encourage
5 them to implement programs that are in accord with section 203 of this
6 act.

7 (8) An employer, who has had in place for two years prior to the
8 effective date of this section, a drug-free workplace program that
9 meets the requirements of section 203 of this act, shall qualify for a
10 two percent workers' compensation premium discount under Title 51 RCW.

11 NEW SECTION. **Sec. 203.** (1) A drug-free workplace program
12 established under this chapter must contain all of the following
13 elements:

14 (a) A written policy statement in compliance with section 204 of
15 this act;

16 (b) Substance abuse testing in compliance with section 205 of this
17 act;

18 (c) An employee assistance program in compliance with section 206
19 of this act;

20 (d) Employee education in compliance with section 208 of this act;
21 and

22 (e) Supervisor training in compliance with section 209 of this act.

23 (2) In addition to the requirements of subsection (1) of this
24 section, a drug-free workplace program established under this chapter
25 must be implemented in compliance with the confidentiality standards
26 provided in section 211 of this act.

27 NEW SECTION. **Sec. 204.** (1) An alcohol and drug-free workplace
28 program established under this chapter must contain a written substance
29 abuse policy statement in order to qualify for the premium discount
30 provided under section 202 of this act. The policy must:

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

33 (b) Notify employees that the use, purchase, possession, or
34 transfer of drugs or having drugs in their system is prohibited and
35 that prescription or nonprescription medications are not prohibited

1 when taken in accordance with a lawful prescription or consistent with
2 standard dosage recommendations;

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

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

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

10 (f) Contain a general statement concerning confidentiality;

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

12 (h) Contain a statement advising an employee of the employee
13 assistance program;

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

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

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

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

29 (3) An employer shall include notice of substance abuse testing to
30 all job applicants. A notice of the employer's substance abuse testing
31 policy must also be posted in an appropriate and conspicuous location
32 on the employer's premises, and copies of the policy must be made
33 available for inspection by the employees or job applicants of the
34 employer during regular business hours in the employer's personnel
35 office or other suitable locations. An employer with employees or job
36 applicants who have trouble communicating in English shall make
37 reasonable efforts to help the employees understand the policy
38 statement.

1 NEW SECTION. **Sec. 205.** (1) In conducting substance abuse testing
2 under this chapter, the employer must comply with the standards and
3 procedures established in this chapter and all applicable rules adopted
4 by the department under this chapter and must:

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

9 (b) Investigate each workplace injury that results in a worker
10 needing off-site medical attention and require an employee to submit to
11 drug and alcohol tests if the employer reasonably believes the employee
12 has caused or contributed to an injury which resulted in the need for
13 off-site medical attention. An employer need not require that an
14 employee submit to drug and alcohol tests if a supervisor, trained in
15 accordance with section 209 of this act, reasonably believes that the
16 injury was due to the inexperience of the employee or due to a
17 defective or unsafe product or working condition, or other
18 circumstances beyond the control of the employee. Under this chapter,
19 a first-time verified positive test result may not be used as a basis
20 to terminate an employee's employment. However, nothing in this
21 section prohibits an employee from being terminated for reasons other
22 than the positive test result;

23 (c) If the employee in the course of employment is referred to the
24 employee assistance program by the employer as a result of a verified
25 positive drug or alcohol test or an alcohol or drug-related incident in
26 violation of employer rules, require the employee to submit to drug and
27 alcohol testing in conjunction with any recommended rehabilitation
28 program. If the employee assistance program determines that the
29 employee does not require treatment services, the employee must still
30 be required to participate in follow-up testing. However, if an
31 employee voluntarily enters an employee assistance program, without a
32 verified positive drug or alcohol test or a violation of any drug or
33 alcohol related employer rule, follow-up testing is not required. If
34 follow-up testing is conducted, the frequency of the testing shall be
35 at least four times a year for a two-year period after completion of
36 the rehabilitation program and advance notice of the testing date may
37 not be given. A verified positive follow-up test result shall normally
38 require termination of employment.

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

4 (3) Specimen collection and substance abuse testing under this
5 section must be performed in accordance with regulations and procedures
6 approved by the United States department of health and human services
7 and the United States department of transportation regulations for
8 alcohol and drug testing and must include testing for marijuana,
9 cocaine, amphetamines, opiates, and phencyclidine. Employers may test
10 for any drug listed in section 201(7) of this act.

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

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

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

18 (ii) An opportunity for the employee or job applicant to provide to
19 a medical review officer information the employee or applicant
20 considers relevant to the drug test, including identification of
21 currently or recently used prescription or nonprescription medication
22 or other relevant medical information.

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

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

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

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

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

1 (iii) A qualified person certified or employed by a collection
2 company using collection procedures adopted by the United States
3 department of health and human services and the United States
4 department of transportation for alcohol collection.

5 (f) Within five working days after receipt of a verified positive
6 test result from the laboratory, an employer shall inform an employee
7 or job applicant in writing of the positive test result, the
8 consequences of the result, and the options available to the employee
9 or job applicant.

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

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

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

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

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

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

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

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

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

29 (A) The use of internal quality controls including the use of
30 samples of known concentrations that are used to check the performance
31 and calibration of testing equipment, and periodic use of blind samples
32 for overall accuracy;

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

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

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

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

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

9 (ii) Positive results on confirmation tests only, or negative
10 results, as applicable;

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

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

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

17 (c) A laboratory shall provide technical assistance through the use
18 of a medical review officer to the employer, employee, or job applicant
19 for the purpose of interpreting a positive confirmed drug test result
20 that could have been caused by prescription or nonprescription
21 medication taken by the employee or job applicant. The medical review
22 officer shall interpret and evaluate the laboratory's positive drug
23 test result and eliminate test results that could have been caused by
24 prescription medication or other medically documented sources in
25 accordance with the United States department of health and human
26 services medical review officer manual.

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

32 NEW SECTION. **Sec. 206.** (1) The employee assistance program
33 required under this chapter shall provide the employer with a system
34 for dealing with employees whose job performances are declining due to
35 unresolved problems, including alcohol or other drug-related problems,
36 marital problems, or legal or financial problems.

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

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

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

6 (c) The employer shall provide the employee with notice of the
7 policies and procedures regarding access to and use of the employee
8 assistance program.

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

11 NEW SECTION. **Sec. 207.** (1)(a) Rehabilitation of employees
12 suffering from either or both alcohol or drug addiction shall be a
13 primary focus of an employee assistance program.

14 (b) Under any program under this chapter, the employer may not use
15 a first-time verified positive drug or alcohol test as the basis for
16 termination of an employee. After a first-time verified positive test
17 result, the employee must be given an opportunity to keep his or her
18 job through the use of a last-chance agreement. The last-chance
19 agreement shall require an employee to:

20 (i) Submit to an employee assistance program evaluation for
21 chemical dependency;

22 (ii) Comply with any treatment recommendations;

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

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

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

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

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

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

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

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

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

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

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

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

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

14 NEW SECTION. **Sec. 208.** As part of a program established under
15 this chapter, an employer shall provide all employees with an annual
16 education program on substance abuse, in general, and its effects on
17 the workplace, specifically. An employer with employees who have
18 difficulty communicating in English shall make reasonable efforts to
19 help the employees understand the substance of the education program.
20 An education program for a minimum of one hour should include but is
21 not limited to the following information:

22 (1) The explanation of the disease model of addiction for alcohol
23 and drugs;

24 (2) The effects and dangers of the commonly abused substances in
25 the workplace; and

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

29 NEW SECTION. **Sec. 209.** In addition to the education program
30 provided in section 208 of this act, an employer shall provide all
31 supervisory personnel with a minimum of two hours of supervisor
32 training, that should include but is not limited to the following
33 information:

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

35 (2) How to document and collaborate signs of employee substance
36 abuse;

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

3 (4) Circumstances and procedures for postinjury testing.

4 NEW SECTION. **Sec. 210.** (1) A physician-patient relationship is
5 not created between an employee or job applicant and an employer,
6 medical review officer, or person performing or evaluating a drug or
7 alcohol test solely by the establishment, implementation, or
8 administration of a drug or alcohol testing program.

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

14 (3) This chapter may not be construed to operate retroactively.
15 This chapter does not abrogate the right of an employer under state or
16 federal law to conduct drug or alcohol tests or implement employee drug
17 or alcohol testing programs. However, only those programs that meet
18 the criteria outlined in this chapter qualify for workers' compensation
19 insurance premiums discounts.

20 (4) This chapter may not be construed to prohibit an employer from
21 conducting medical screening or other tests required, permitted, or not
22 disallowed by a statute or rule for the purpose of monitoring exposure
23 of employees to toxic or other unhealthy materials in the workplace or
24 in the performance of job responsibilities. The screening or tests
25 must be limited to testing for the specific material expressly
26 identified in the statute or rule, unless prior written consent of the
27 employee is obtained for other tests.

28 (5) This chapter does not establish a legal duty for employers to
29 conduct alcohol or drug tests of employees or job applicants. A cause
30 of action may not arise in favor of a person based upon the failure of
31 an employer to establish or conduct a program or policy for substance
32 abuse testing or to conduct a program or policy in conformance with the
33 standards and procedures established in this chapter. This chapter
34 does not create individual rights of action and may be enforced only by
35 the department by denial of the workers' compensation premium discount
36 provided in section 202 of this act.

1 NEW SECTION. **Sec. 211.** Confidentiality standards that apply to
2 substance abuse testing programs implemented under this chapter include
3 the following:

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

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

15 (3) Any release of the information must be pursuant to a written
16 consent form that complies with RCW 70.02.030 and is signed voluntarily
17 by the person tested, unless the release is compelled by the division
18 of alcohol and substance abuse of the department or a court of
19 competent jurisdiction in accordance with state and federal
20 confidentiality laws, or unless required by a professional or
21 occupational licensing board in a related disciplinary proceeding. Any
22 disclosure by any agency approved by the department must be in
23 accordance with RCW 70.96A.150. The consent form must contain at a
24 minimum:

25 (a) The name of the person who is authorized to obtain the
26 information;

27 (b) The purpose of the disclosure;

28 (c) The precise information to be disclosed;

29 (d) The duration of the consent; and

30 (e) The signature of the person authorizing release of the
31 information.

32 (4) Information on test results may not be released or used in a
33 criminal proceeding against the employee or job applicant. Information
34 released contrary to this subsection is inadmissible as evidence in a
35 criminal proceeding.

36 (5) Nothing in this chapter prohibits:

37 (a) An employer from using information concerning an employee or

1 job applicant's substance abuse test results in a lawful manner with
2 respect to that employee or applicant; or

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

7 NEW SECTION. **Sec. 212.** The department shall adopt by rule
8 procedures and forms for the certification of employers who establish
9 and maintain a drug-free workplace that complies with this chapter.
10 The department shall adopt by rule procedures for the decertification
11 of employers formally certified for the workers' compensation premium
12 discount provided under this chapter. The department may charge a fee
13 for the certification of a drug-free workplace program in an amount
14 that must approximate its administrative costs related to the
15 certification. Certification of an employer is required for each year
16 in which a premium discount is granted. The department may adopt any
17 other rules necessary for the implementation of this chapter.

18 NEW SECTION. **Sec. 213.** (1) The department of labor and industries
19 may adopt rules necessary for the implementation of this chapter
20 including but not limited to provisions for penalties and repayment of
21 premium discounts by employers that are decertified by the department
22 of social and health services under section 212 of this act.

23 (2) The department of labor and industries shall conduct an
24 evaluation of the effect of the premium discount provided for under
25 section 202 of this act on workplace safety and the state of Washington
26 industrial insurance fund. The department of labor and industries
27 shall report its preliminary findings to the appropriate committees of
28 the legislature on September 1st of 2007 and 2008 and shall issue a
29 comprehensive final report on December 1, 2009.

30 NEW SECTION. **Sec. 214.** The department shall conduct an evaluation
31 to determine the costs and benefits of the program under this chapter.
32 If the department contracts for the performance of any or all of the
33 evaluation, no more than ten percent of the contract amount may be used
34 to cover indirect expenses. The department shall report its

1 preliminary findings to the legislature on September 1st of 2007 and
2 2008 and shall issue a comprehensive final report on December 1, 2009.

3 NEW SECTION. **Sec. 215.** Notwithstanding any other provisions of
4 this chapter, the total premium discounts available under section 202
5 of this act shall not exceed five million dollars during any fiscal
6 year.

7 NEW SECTION. **Sec. 216.** Sections 201 through 215 of this act
8 constitute a new chapter in Title 49 RCW.

9 **PART III**
10 **CLEANUP OF CONTAMINATED PROPERTY**

11 **Sec. 301.** RCW 64.44.010 and 1999 c 292 s 2 are each amended to
12 read as follows:

13 The words and phrases defined in this section shall have the
14 following meanings when used in this chapter unless the context clearly
15 indicates otherwise.

16 (1) "Authorized contractor" means a person who decontaminates,
17 demolishes, or disposes of contaminated property as required by this
18 chapter who is certified by the department as provided for in RCW
19 64.44.060.

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

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

27 (4) "Hazardous chemicals" means the following substances (~~used~~
28 ~~in~~) associated with the illegal manufacture of (~~illegal drugs~~)
29 controlled substances: (a) Hazardous substances as defined in RCW
30 70.105D.020(~~(7)~~); and (b) immediate precursor substances as defined in
31 RCW (~~(69.43.010)~~) 69.50.101 which the state board of health, in
32 consultation with the state board of pharmacy, has determined present
33 an immediate or long-term health hazard to humans.

1 ~~((4))~~ (5) "Officer" means a local health officer authorized under
2 chapters 70.05, 70.08, and 70.46 RCW.

3 ~~((5))~~ (6) "Property" means any real or personal property, ((site,
4 structure, or part of a structure which)) or segregable part thereof,
5 that is involved in or affected by the unauthorized manufacture,
6 distribution, or storage of hazardous chemicals. This includes but is
7 not limited to single-family residences, units of multiplexes,
8 condominiums, apartment buildings, motels, hotels, boats, motor
9 vehicles, trailers, manufactured housing, ~~((or))~~ any shop, booth,
10 ~~((or))~~ garden, or storage shed, and all contents of the items
11 referenced in this subsection.

12 **Sec. 302.** RCW 64.44.020 and 1999 c 292 s 3 are each amended to
13 read as follows:

14 Whenever a law enforcement agency becomes aware that property has
15 been contaminated by hazardous chemicals, that agency shall report the
16 contamination to the local health officer. The local health officer
17 shall ~~((post))~~ cause a posting of a written warning on the premises
18 within one working day of notification of the contamination and shall
19 inspect the property within fourteen days after receiving the notice of
20 contamination. The warning shall inform the potential occupants that
21 hazardous chemicals may exist on, or have been removed from, the
22 premises and that entry is unsafe. If a property owner believes that
23 a tenant has contaminated property that was being leased or rented, and
24 the property is vacated or abandoned, then the property owner shall
25 contact the local health officer about the possible contamination.
26 Local health officers or boards may charge property owners reasonable
27 fees for inspections of suspected contaminated property requested by
28 property owners.

29 A local health officer may enter, inspect, and survey at reasonable
30 times any properties for which there are reasonable grounds to believe
31 that the property has become contaminated. If the property is
32 contaminated, the local health officer shall post a written notice
33 declaring that the officer intends to issue an order prohibiting use of
34 the property as long as the property is contaminated.

35 If access to the property is denied, a local health officer in
36 consultation with law enforcement may seek a warrant for the purpose of
37 conducting administrative inspections and seizure of property as

1 defined in RCW 69.50.505. A superior, district, or municipal court
2 within the jurisdiction of the property may, based upon probable cause
3 that the property is contaminated, issue warrants for the purpose of
4 conducting administrative inspections and seizure of property as
5 defined in RCW 69.50.505.

6 Local health officers must report all cases of contaminated
7 property to the state department of health. The department may make
8 the list of contaminated properties available to health associations,
9 landlord and realtor organizations, prosecutors, and other interested
10 groups. The department shall promptly update the list of contaminated
11 properties to remove those which have been decontaminated according to
12 provisions of this chapter.

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

15 **Sec. 303.** RCW 64.44.030 and 1999 c 292 s 4 are each amended to
16 read as follows:

17 (1) If after the inspection of the property, the local health
18 officer finds that it is contaminated, then the ~~((property shall be~~
19 ~~found unfit for))~~ local health officer shall issue an order declaring
20 the property unfit and prohibiting its use. The local health officer
21 shall cause the order to be served ~~((an order prohibiting use))~~ either
22 personally or by certified mail, with return receipt requested, upon
23 all occupants and persons having any interest therein as shown upon the
24 records of the auditor's office of the county in which such property is
25 located. The local health officer shall also ~~((post))~~ cause the order
26 ~~((prohibiting use))~~ to be posted in a conspicuous place on the
27 property. If the whereabouts of such persons is unknown and the same
28 cannot be ascertained by the local health officer in the exercise of
29 reasonable diligence, and the health officer makes an affidavit to that
30 effect, then the serving of the order upon such persons may be made
31 either by personal service or by mailing a copy of the order by
32 certified mail, postage prepaid, return receipt requested, to each
33 person at the address appearing on the last equalized tax assessment
34 roll of the county where the property is located or at the address
35 known to the county assessor, and the order shall be posted
36 conspicuously at the residence. A copy of the order shall also be
37 mailed, addressed to each person or party having a recorded right,

1 title, estate, lien, or interest in the property. The order shall
2 contain a notice that a hearing before the local health board or
3 officer shall be held upon the request of a person required to be
4 notified of the order under this section. The request for a hearing
5 must be made within ten days of serving the order. The hearing shall
6 then be held within not less than twenty days nor more than thirty days
7 after the serving of the order. The officer shall prohibit use as long
8 as the property is found to be contaminated. A copy of the order shall
9 also be filed with the auditor of the county in which the property is
10 located, where the order pertains to real property, and such filing of
11 the complaint or order shall have the same force and effect as other
12 lis pendens notices provided by law. In any hearing concerning whether
13 property is fit for use, the property owner has the burden of showing
14 that the property is decontaminated or fit for use. The owner or any
15 person having an interest in the property may file an appeal on any
16 order issued by the local health board or officer within thirty days
17 from the date of service of the order with the appeals commission
18 established pursuant to RCW 35.80.030. All proceedings before the
19 appeals commission, including any subsequent appeals to superior court,
20 shall be governed by the procedures established in chapter 35.80 RCW.

21 (2) If the local health officer determines immediate action is
22 necessary to protect public health, safety, or the environment, the
23 officer may issue or cause to be issued an emergency order, and any
24 person to whom such an order is directed shall comply immediately.
25 Emergency orders issued pursuant to this section shall expire no later
26 than seventy-two hours after issuance and shall not impair the health
27 officer from seeking an order under subsection (1) of this section.

28 **Sec. 304.** RCW 64.44.040 and 1999 c 292 s 5 are each amended to
29 read as follows:

30 (1) Upon issuance of an order declaring property unfit and
31 prohibiting its use, the city or county in which the contaminated
32 property is located may take action to prohibit use, occupancy, or
33 removal of such property; condemn, decontaminate, or demolish the
34 property; or ((to)) require that the property be vacated or the
35 contents removed from the property. The city or county may use an
36 authorized contractor if property is demolished, decontaminated, or
37 removed under this section. The city, county, or contractor shall

1 comply with all orders of the health officer during these processes.
2 No city or county may condemn, decontaminate, or demolish property
3 pursuant to this section until all procedures granting the right of
4 notice and the opportunity to appeal in RCW 64.44.030 have been
5 exhausted, but may prohibit use, occupancy, or removal of contaminated
6 property pending appeal of the order.

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

10 (b) This subsection does not apply to: (i) Health officials, law
11 enforcement officials, or other government agents performing their
12 official duties; (ii) authorized contractors or owners performing
13 decontamination pursuant to authorization by the local health officer;
14 and (iii) any person acting with permission of a local health officer,
15 or of a superior court hearing examiner following an appeal of a
16 decision of the local health officer.

17 (c) Any person who violates this subsection is guilty of a
18 misdemeanor.

19 (3) No provision of this section may be construed to limit the
20 ability of the government agents to permit occupants or owners of the
21 property at issue to remove uncontaminated personal property from the
22 premises.

23 **Sec. 305.** RCW 64.44.050 and 1999 c 292 s 6 are each amended to
24 read as follows:

25 (1) An owner of contaminated property who desires to have the
26 property decontaminated, demolished, or disposed of shall use the
27 services of an authorized contractor unless otherwise authorized by the
28 local health officer. The contractor and property owner shall prepare
29 and submit a written work plan for decontamination, demolition, or
30 disposal to the local health officer. The local health officer may
31 charge a reasonable fee for review of the work plan. If the work plan
32 is approved and the decontamination, demolition, or disposal is
33 completed and the property is retested according to the plan and
34 properly documented, then the health officer shall allow reuse of the
35 property. A release for reuse document shall be recorded in the real
36 property records indicating the property has been decontaminated,
37 demolished, or disposed of in accordance with rules of the state

1 department of health. The property owner is responsible for: (a) The
2 costs of any property testing which may be required to demonstrate the
3 presence or absence of hazardous chemicals; and (b) the costs of the
4 property's decontamination, demolition, and disposal expenses, as well
5 as costs incurred by the local health officer resulting from the
6 enforcement of this chapter.

7 (2) The local health authority has thirty days from the issuance of
8 an order declaring a property unfit and prohibiting its use to
9 establish a reasonable timeline for decontamination. The department of
10 health shall establish the factors to be considered by the local health
11 authorities in establishing the appropriate amount of time.

12 The local health officer shall notify the property owner of the
13 proposed time frame by United States mail to the last known address.
14 Notice shall be postmarked no later than the thirtieth day. The
15 property owner may request a modification of the time frame by
16 submitting a letter identifying the circumstances which justify such an
17 extension to the local health officer within thirty-five days of the
18 date of the postmark on the notification regardless of when received.

19 **Sec. 306.** RCW 64.44.060 and 1999 c 292 s 7 are each amended to
20 read as follows:

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

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

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

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

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

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

19 (c) Failing to file a work plan;

20 ~~((or))~~ (d) Failing to perform work pursuant to the work plan;

21 ~~((or))~~ (e) Failing to perform work that meets the requirements of
22 the department and the requirements of the local health officers;

23 ~~((or))~~ (f) The certificate was obtained by error, misrepresentation, or
24 fraud;

25 (g) Failing to properly dispose of contaminated property;

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

30 (i) Failing the evaluation and inspection of decontamination
31 projects pursuant to section 308 of this act; or

32 (j) If the person has been certified pursuant to RCW 74.20A.320 by
33 the department of social and health services as a person who is not in
34 compliance with a support order or a residential or visitation order.
35 If the person has continued to meet all other requirements for
36 reinstatement during the suspension, reissuance of the license or
37 certificate shall be automatic upon the department's receipt of a

1 release issued by the department of social and health services stating
2 that the person is in compliance with the order.

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

6 (6) The department of health shall prescribe fees as provided for
7 in RCW 43.70.250 for: The issuance and renewal of certificates,
8 conducting background checks of applicants, the administration of
9 examinations, and ((~~for~~)) the review of training courses.

10 (7) The decontamination account is hereby established in the state
11 treasury. All fees collected under this chapter shall be deposited in
12 this account. Moneys in the account may only be spent after
13 appropriation for costs incurred by the department in the
14 administration and enforcement of this chapter.

15 **Sec. 307.** RCW 64.44.070 and 1999 c 292 s 8 are each amended to
16 read as follows:

17 (1) The state board of health shall promulgate rules and standards
18 for carrying out the provisions in this chapter in accordance with
19 chapter 34.05 RCW, the administrative procedure act. The local board
20 of health and the local health officer are authorized to exercise such
21 powers as may be necessary to carry out this chapter. The department
22 shall provide technical assistance to local health boards and health
23 officers to carry out their duties under this chapter.

24 (2) The department shall adopt rules for decontamination of a
25 property used as ((~~an illegal drug~~)) a laboratory for the production of
26 controlled substances and methods for the testing of porous and
27 nonporous surfaces, ground water, surface water, soil, and septic tanks
28 for contamination. The rules shall establish decontamination standards
29 for hazardous chemicals, including but not limited to methamphetamine,
30 lead, mercury, and total volatile organic compounds. The department
31 shall also adopt rules pertaining to independent third party sampling
32 to verify satisfactory decontamination of property deemed contaminated
33 and unfit for use. For the purposes of this section, an independent
34 third party sampler is a person who is not an employee, agent,
35 representative, partner, joint venturer, shareholder, or parent or
36 subsidiary company of the clandestine drug laboratory decontamination
37 contractor, the contractor's company, or property owner.

1 NEW SECTION. **Sec. 308.** A new section is added to chapter 64.44
2 RCW to read as follows:

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

11 NEW SECTION. **Sec. 309.** The department of health shall report to
12 the legislature on the feasibility of providing incentives and
13 protections to landlords to encourage housing rental to those convicted
14 of drug crimes or recovery addicts. A final report must be submitted
15 to the appropriate committees of the legislature by January 1, 2007.

16 NEW SECTION. **Sec. 310.** The department of ecology shall report to
17 the legislature on the costs, benefits, and consequences of excluding
18 state and local agencies from the definition of "owner or operator" in
19 the model toxics control act when such agencies acquire the property
20 through a voluntary conveyance for the purpose of remediation. A final
21 report must be submitted to the appropriate committees of the
22 legislature by January 1, 2007.

23 **PART IV**

24 **CRIMINAL SANCTIONS AND PROCEDURE**

25 **Sec. 401.** RCW 9.94A.533 and 2003 c 53 s 58 are each amended to
26 read as follows:

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

29 (2) For persons convicted of the anticipatory offenses of criminal
30 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
31 standard sentence range is determined by locating the sentencing grid
32 sentence range defined by the appropriate offender score and the
33 seriousness level of the completed crime, and multiplying the range by
34 seventy-five percent.

1 (3) The following additional times shall be added to the standard
2 sentence range for felony crimes committed after July 23, 1995, if the
3 offender or an accomplice was armed with a firearm as defined in RCW
4 9.41.010 and the offender is being sentenced for one of the crimes
5 listed in this subsection as eligible for any firearm enhancements
6 based on the classification of the completed felony crime. If the
7 offender is being sentenced for more than one offense, the firearm
8 enhancement or enhancements must be added to the total period of
9 confinement for all offenses, regardless of which underlying offense is
10 subject to a firearm enhancement. If the offender or an accomplice was
11 armed with a firearm as defined in RCW 9.41.010 and the offender is
12 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
13 commit one of the crimes listed in this subsection as eligible for any
14 firearm enhancements, the following additional times shall be added to
15 the standard sentence range determined under subsection (2) of this
16 section based on the felony crime of conviction as classified under RCW
17 9A.28.020:

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

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

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

27 (d) If the offender is being sentenced for any firearm enhancements
28 under (a), (b), and/or (c) of this subsection and the offender has
29 previously been sentenced for any deadly weapon enhancements after July
30 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
31 (4)(a), (b), and/or (c) of this section, or both, all firearm
32 enhancements under this subsection shall be twice the amount of the
33 enhancement listed;

34 (e) Notwithstanding any other provision of law, all firearm
35 enhancements under this section are mandatory, shall be served in total
36 confinement, and shall run consecutively to all other sentencing
37 provisions, including other firearm or deadly weapon enhancements, for
38 all offenses sentenced under this chapter. However, whether or not a

1 mandatory minimum term has expired, an offender serving a sentence
2 under this subsection may be granted an extraordinary medical placement
3 when authorized under RCW 9.94A.728(4);

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

9 (g) If the standard sentence range under this section exceeds the
10 statutory maximum sentence for the offense, the statutory maximum
11 sentence shall be the presumptive sentence unless the offender is a
12 persistent offender. If the addition of a firearm enhancement
13 increases the sentence so that it would exceed the statutory maximum
14 for the offense, the portion of the sentence representing the
15 enhancement may not be reduced.

16 (4) The following additional times shall be added to the standard
17 sentence range for felony crimes committed after July 23, 1995, if the
18 offender or an accomplice was armed with a deadly weapon other than a
19 firearm as defined in RCW 9.41.010 and the offender is being sentenced
20 for one of the crimes listed in this subsection as eligible for any
21 deadly weapon enhancements based on the classification of the completed
22 felony crime. If the offender is being sentenced for more than one
23 offense, the deadly weapon enhancement or enhancements must be added to
24 the total period of confinement for all offenses, regardless of which
25 underlying offense is subject to a deadly weapon enhancement. 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 an anticipatory offense under chapter 9A.28 RCW to commit one of
29 the crimes listed in this subsection as eligible for any deadly weapon
30 enhancements, the following additional times shall be added to the
31 standard sentence range determined under subsection (2) of this section
32 based on the felony crime of conviction as classified under RCW
33 9A.28.020:

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

37 (b) One year for any felony defined under any law as a class B

1 felony or with a statutory maximum sentence of ten years, or both, and
2 not covered under (f) of this subsection;

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

6 (d) If the offender is being sentenced under (a), (b), and/or (c)
7 of this subsection for any deadly weapon enhancements and the offender
8 has previously been sentenced for any deadly weapon enhancements after
9 July 23, 1995, under (a), (b), and/or (c) of this subsection or
10 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
11 weapon enhancements under this subsection shall be twice the amount of
12 the enhancement listed;

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

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

26 (g) If the standard sentence range under this section exceeds the
27 statutory maximum sentence for the offense, the statutory maximum
28 sentence shall be the presumptive sentence unless the offender is a
29 persistent offender. If the addition of a deadly weapon enhancement
30 increases the sentence so that it would exceed the statutory maximum
31 for the offense, the portion of the sentence representing the
32 enhancement may not be reduced.

33 (5) The following additional times shall be added to the standard
34 sentence range if the offender or an accomplice committed the offense
35 while in a county jail or state correctional facility and the offender
36 is being sentenced for one of the crimes listed in this subsection. If
37 the offender or an accomplice committed one of the crimes listed in
38 this subsection while in a county jail or state correctional facility,

1 and the offender is being sentenced for an anticipatory offense under
2 chapter 9A.28 RCW to commit one of the crimes listed in this
3 subsection, the following additional times shall be added to the
4 standard sentence range determined under subsection (2) of this
5 section:

6 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
7 (a) or (b) or 69.50.410;

8 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
9 (c), (d), or (e);

10 (c) Twelve months for offenses committed under RCW 69.50.4013.

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

14 (6) An additional twenty-four months shall be added to the standard
15 sentence range for any ranked offense involving a violation of chapter
16 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
17 9.94A.605. All enhancements under this subsection shall run
18 consecutively to all other sentencing provisions, for all offenses
19 sentenced under this chapter.

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

24 **Sec. 402.** RCW 9.94A.660 and 2005 c 460 s 1 are each amended to
25 read as follows:

26 (1) An offender is eligible for the special drug offender
27 sentencing alternative if:

28 (a) The offender is convicted of a felony that is not a violent
29 offense or sex offense and the violation does not involve a sentence
30 enhancement under RCW 9.94A.533 (3) or (4);

31 (b) The offender has no current or prior convictions for a sex
32 offense at any time or violent offense within ten years before
33 conviction of the current offense, in this state, another state, or the
34 United States;

35 (c) For a violation of the Uniform Controlled Substances Act under
36 chapter 69.50 RCW or a criminal solicitation to commit such a violation
37 under chapter 9A.28 RCW, the offense involved only a small quantity of

1 the particular controlled substance as determined by the judge upon
2 consideration of such factors as the weight, purity, packaging, sale
3 price, and street value of the controlled substance;

4 (d) The offender has not been found by the United States attorney
5 general to be subject to a deportation detainer or order and does not
6 become subject to a deportation order during the period of the
7 sentence;

8 (e) The standard sentence range for the current offense is greater
9 than one year; and

10 (f) The offender has not received a drug offender sentencing
11 alternative more than once in the prior ten years before the current
12 offense.

13 (2) A motion for a sentence under this section may be made by the
14 court, the offender, or the state. If the sentencing court determines
15 that the offender is eligible for this alternative, the court may order
16 an examination of the offender. The examination shall, at a minimum,
17 address the following issues:

18 (a) Whether the offender suffers from drug addiction;

19 (b) Whether the addiction is such that there is a probability that
20 criminal behavior will occur in the future;

21 (c) Whether effective treatment for the offender's addiction is
22 available from a provider that has been licensed or certified by the
23 division of alcohol and substance abuse of the department of social and
24 health services; and

25 (d) Whether the offender and the community will benefit from the
26 use of the alternative.

27 (3) The examination report must contain:

28 (a) Information on the issues required to be addressed in
29 subsection (2) of this section; and

30 (b) A proposed treatment plan that must, at a minimum, contain:

31 (i) A proposed treatment provider that has been licensed or
32 certified by the division of alcohol and substance abuse of the
33 department of social and health services;

34 (ii) The recommended frequency and length of treatment, including
35 both residential chemical dependency treatment and treatment in the
36 community;

37 (iii) A proposed monitoring plan, including any requirements

1 regarding living conditions, lifestyle requirements, and monitoring by
2 family members and others; and

3 (iv) Recommended crime-related prohibitions and affirmative
4 conditions.

5 (4) After receipt of the examination report, if the court
6 determines that a sentence under this section is appropriate, the court
7 shall waive imposition of a sentence within the standard sentence range
8 and impose a sentence consisting of either a prison-based alternative
9 under subsection (5) of this section or a residential chemical
10 dependency treatment-based alternative under subsection (6) of this
11 section. The residential chemical dependency treatment-based
12 alternative is only available if the midpoint of the standard range is
13 twenty-four months or less.

14 (5) The prison-based alternative shall include:

15 (a) A period of total confinement in a state facility for one-half
16 of the midpoint of the standard sentence range or twelve months,
17 whichever is greater. During incarceration in the state facility,
18 offenders sentenced under this subsection shall undergo a comprehensive
19 substance abuse assessment and receive, within available resources,
20 treatment services appropriate for the offender. The treatment
21 services shall be designed by the division of alcohol and substance
22 abuse of the department of social and health services, in cooperation
23 with the department of corrections;

24 (b) The remainder of the midpoint of the standard range as a term
25 of community custody which must include appropriate substance abuse
26 treatment in a program that has been approved by the division of
27 alcohol and substance abuse of the department of social and health
28 services. If the department finds that conditions have been willfully
29 violated, the offender may be reclassified to serve the remaining
30 balance of the original sentence. An offender who fails to complete
31 the program or who is administratively terminated from the program
32 shall be reclassified to serve the unexpired term of his or her
33 sentence as ordered by the sentencing court;

34 (c) Crime-related prohibitions including a condition not to use
35 illegal controlled substances;

36 (d) A requirement to submit to urinalysis or other testing to
37 monitor that status; and

1 (e) A term of community custody pursuant to RCW 9.94A.715 to be
2 imposed upon failure to complete or administrative termination from the
3 special drug offender sentencing alternative program.

4 (6) The residential chemical dependency treatment-based alternative
5 shall include:

6 (a) A term of community custody equal to one-half of the midpoint
7 of the standard sentence range or two years, whichever is greater,
8 conditioned on the offender entering and remaining in residential
9 chemical dependency treatment certified under chapter 70.96A RCW for a
10 period set by the court between three and six months. If the court
11 imposes a term of community custody, the department shall, within
12 available resources, make chemical dependency assessment and treatment
13 services available to the offender during the term of community
14 custody. The court shall impose, as conditions of community custody,
15 treatment and other conditions as proposed in the plan under subsection
16 (3)(b) of this section. The department may impose conditions and
17 sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7),
18 9.94A.737, and 9.94A.740. The court shall schedule a progress hearing
19 during the period of residential chemical dependency treatment, and
20 schedule a treatment termination hearing for three months before the
21 expiration of the term of community custody;

22 (b) Before the progress hearing and treatment termination hearing,
23 the treatment provider and the department shall submit written reports
24 to the court and parties regarding the offender's compliance with
25 treatment and monitoring requirements, and recommendations regarding
26 termination from treatment. At the hearing, the court may:

27 (i) Authorize the department to terminate the offender's community
28 custody status on the expiration date determined under (a) of this
29 subsection; or

30 (ii) Continue the hearing to a date before the expiration date of
31 community custody, with or without modifying the conditions of
32 community custody; or

33 (iii) Impose a term of total confinement equal to one-half the
34 midpoint of the standard sentence range, followed by a term of
35 community custody under RCW 9.94A.715;

36 (c) If the court imposes a term of total confinement under (b)(iii)
37 of this subsection, the department shall, within available resources,

1 make chemical dependency assessment and treatment services available to
2 the offender during the terms of total confinement and community
3 custody.

4 (7) If the court imposes a sentence under this section, the court
5 may prohibit the offender from using alcohol or controlled substances
6 and may require that the monitoring for controlled substances be
7 conducted by the department or by a treatment alternatives to street
8 crime program or a comparable court or agency-referred program. The
9 offender may be required to pay thirty dollars per month while on
10 community custody to offset the cost of monitoring. In addition, the
11 court may impose any of the following conditions:

- 12 (a) Devote time to a specific employment or training;
- 13 (b) Remain within prescribed geographical boundaries and notify the
14 court or the community corrections officer before any change in the
15 offender's address or employment;
- 16 (c) Report as directed to a community corrections officer;
- 17 (d) Pay all court-ordered legal financial obligations;
- 18 (e) Perform community restitution work;
- 19 (f) Stay out of areas designated by the sentencing court;
- 20 (g) Such other conditions as the court may require such as
21 affirmative conditions.

22 (8)(a) The court may bring any offender sentenced under this
23 section back into court at any time on its own initiative to evaluate
24 the offender's progress in treatment or to determine if any violations
25 of the conditions of the sentence have occurred.

26 (b) If the offender is brought back to court, the court may modify
27 the terms of the community custody or impose sanctions under (c) of
28 this subsection.

29 (c) The court may order the offender to serve a term of total
30 confinement within the standard range of the offender's current offense
31 at any time during the period of community custody if the offender
32 violates the conditions of the sentence or if the offender is failing
33 to make satisfactory progress in treatment.

34 (d) An offender ordered to serve a term of total confinement under
35 (c) of this subsection shall receive credit for any time previously
36 served under this section.

37 (9) If an offender sentenced to the prison-based alternative under
38 subsection (5) of this section is found by the United States attorney

1 general to be subject to a deportation order, a hearing shall be held
2 by the department unless waived by the offender, and, if the department
3 finds that the offender is subject to a valid deportation order, the
4 department may administratively terminate the offender from the program
5 and reclassify the offender to serve the remaining balance of the
6 original sentence.

7 (10) An offender sentenced under this section shall be subject to
8 all rules relating to earned release time with respect to any period
9 served in total confinement.

10 (11) Costs of examinations and preparing treatment plans under
11 subsections (2) and (3) of this section may be paid, at the option of
12 the county, from funds provided to the county from the criminal justice
13 treatment account under RCW 70.96A.350.

14 **Sec. 403.** RCW 9.94A.500 and 2000 c 75 s 8 are each amended to read
15 as follows:

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

21 Except in cases where the defendant shall be sentenced to a term of
22 total confinement for life without the possibility of release or, when
23 authorized by RCW 10.95.030 for the crime of aggravated murder in the
24 first degree, sentenced to death, the court may order the department to
25 complete a risk assessment report. If available before sentencing, the
26 report shall be provided to the court.

27 Unless specifically waived by the court, the court shall order the
28 department to complete a chemical dependency screening report before
29 imposing a sentence upon a defendant who has been convicted of a
30 violation of the uniform controlled substances act under chapter 69.50
31 RCW (~~(9A.28)~~), a criminal solicitation to commit such a violation under
32 chapter 9A.28 RCW, or any felony where the court finds that the
33 offender has a chemical dependency that has contributed to his or her
34 offense. In addition, the court shall, at the time of plea or
35 conviction, order the department to complete a presentence report
36 before imposing a sentence upon a defendant who has been convicted of
37 a felony sexual offense. The department of corrections shall give

1 priority to presentence investigations for sexual offenders. If the
2 court determines that the defendant may be a mentally ill person as
3 defined in RCW 71.24.025, although the defendant has not established
4 that at the time of the crime he or she lacked the capacity to commit
5 the crime, was incompetent to commit the crime, or was insane at the
6 time of the crime, the court shall order the department to complete a
7 presentence report before imposing a sentence.

8 The court shall consider the risk assessment report and presentence
9 reports, if any, including any victim impact statement and criminal
10 history, and allow arguments from the prosecutor, the defense counsel,
11 the offender, the victim, the survivor of the victim, or a
12 representative of the victim or survivor, and an investigative law
13 enforcement officer as to the sentence to be imposed.

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

25 (2) To prevent wrongful disclosure of information related to mental
26 health services, as defined in RCW 71.05.445 and ((71.34.225))
27 71.34.345, a court may take only those steps necessary during a
28 sentencing hearing or any hearing in which the department presents
29 information related to mental health services to the court. The steps
30 may be taken on motion of the defendant, the prosecuting attorney, or
31 on the court's own motion. The court may seal the portion of the
32 record relating to information relating to mental health services,
33 exclude the public from the hearing during presentation or discussion
34 of information relating to mental health services, or grant other
35 relief to achieve the result intended by this subsection, but nothing
36 in this subsection shall be construed to prevent the subsequent release
37 of information related to mental health services as authorized by RCW
38 71.05.445, ((71.34.225)) 71.34.345, or 72.09.585. Any person who

1 otherwise is permitted to attend any hearing pursuant to chapter 7.69
2 or 7.69A RCW shall not be excluded from the hearing solely because the
3 department intends to disclose or discloses information related to
4 mental health services.

5 NEW SECTION. **Sec. 404.** The Washington institute for public policy
6 shall conduct a study of criminal sentencing provisions of neighboring
7 states for all crimes involving methamphetamine. The institute shall
8 report to the legislature on any criminal sentencing increases
9 necessary under Washington law to reduce or remove any incentives
10 methamphetamine traffickers and manufacturers may have to locate in
11 Washington. The report shall be completed by January 1, 2007.

12 NEW SECTION. **Sec. 405.** The Washington institute for public policy
13 shall conduct a study of the drug offender sentencing alternative. The
14 institute shall study recidivism rates for offenders who received
15 substance abuse treatment while in confinement as compared to offenders
16 who received treatment in the community or received no treatment. The
17 institute shall report to the legislature by January 1, 2007.

18 **PART V**
19 **MISCELLANEOUS**

20 NEW SECTION. **Sec. 501.** Part headings used in this act are no part
21 of the law.

22 NEW SECTION. **Sec. 502.** If specific funding for the purposes of
23 section 111 of this act, referencing this act and section 111 of this
24 act by bill or chapter number and section number, is not provided by
25 June 30, 2006, in the omnibus appropriations act, section 111 of this
26 act is null and void.

27 NEW SECTION. **Sec. 503.** Section 107 of this act expires January 1,
28 2007.

29 NEW SECTION. **Sec. 504.** Sections 108 and 109 of this act take

1 effect January 1, 2007.

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