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**SENATE BILL 6239**

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**State of Washington**

**59th Legislature**

**2006 Regular Session**

**By** Senators Hargrove, Johnson, Doumit, Oke, Stevens and Esser; by request of Attorney General

Read first time 01/09/2006. Referred to Committee on Human Services & Corrections.

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

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

8 **PART I**

9 **SUBSTANCE ABUSE REDUCTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 33 (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or  
34 spirits of wine, from whatever source or by whatever process produced.  
35 (2) "Alcohol test" means a chemical, biological, or physical

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 (d) Employee education in compliance with section 112 of this act;  
2 and  
3 (e) Supervisor training in compliance with section 113 of this act.  
4 (2) In addition to the requirements of subsection (1) of this  
5 section, a drug-free workplace program established under this chapter  
6 must be implemented in compliance with the confidentiality standards  
7 provided in section 115 of this act.

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

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

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

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

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

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

26 (f) Contain a general statement concerning confidentiality;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (ii) Comply with any treatment recommendations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (4) Circumstances and procedures for postinjury testing.

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

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

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



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

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

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

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

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

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

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

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

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

10 (b) The purpose of the disclosure;

11 (c) The precise information to be disclosed;

12 (d) The duration of the consent; and

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

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

19 (5) Nothing in this chapter prohibits:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (A) That is a sex offense;

27 (B) That is a serious violent offense;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (d) Admitted to any facility; or

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

24 (f) Receiving services from an individual provider.

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

1 NEW SECTION. **Sec. 124.** The department of social and health  
 2 services shall hold a summit with faith-based organizations to discuss  
 3 the appropriate role that such organizations may play in filling  
 4 support service delivery gaps to recovering drug addicts. The  
 5 department shall report findings and recommendations to the legislature  
 6 by November 1, 2006.

7 NEW SECTION. **Sec. 125.** The agency council on coordinated  
 8 transportation shall adopt, as a part of its strategic program, a plan  
 9 to increase access by recovering addicts to existing special needs  
 10 transportation services already offered by medicaid brokerages and  
 11 local transportation coalitions. The council may also implement an  
 12 awareness campaign through department of corrections community  
 13 corrections officers and service providers licensed by the department  
 14 of social and health services division of alcohol and substance abuse  
 15 to promote to recovering addicts seeking treatment the use of special  
 16 needs transportation services, the council web site, and the statewide  
 17 trip planner. The council shall report back to the legislature  
 18 regarding the implementation of these strategies by November 1, 2006.

19 NEW SECTION. **Sec. 126.** The department of social and health  
 20 services division of alcohol and substance abuse shall report to the  
 21 legislature by January 15, 2007, on the status of ongoing multimedia  
 22 campaigns to prevent methamphetamine use and underage drinking, and  
 23 promote treatment, within the state of Washington.

24 **PART II**

25 **CLEANUP OF CONTAMINATED PROPERTY**

26 **Sec. 201.** RCW 64.44.010 and 1999 c 292 s 2 are each amended to  
 27 read as follows:

28 The words and phrases defined in this section shall have the  
 29 following meanings when used in this chapter unless the context clearly  
 30 indicates otherwise.

- 31 (1) "Authorized contractor" means a person who decontaminates,  
 32 demolishes, or disposes of contaminated property as required by this  
 33 chapter who is certified by the department as provided for in RCW  
 34 64.44.060.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (c) Failing to file a work plan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

29 (7) "Hazardous substance" means:

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

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

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

38 (d) Petroleum or petroleum products; and

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

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

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

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

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

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

11 (12) "Owner or operator" means:

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

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

17 The term does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

4 (b) "Fiduciary" does not mean:

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

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

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

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

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

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

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

33 **PART III**

34 **CRIMINAL SANCTIONS AND PROCEDURE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (I) A sex offense;

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (7) The governor may pardon any offender;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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