

E2SHB 2712 - S COMM AMD
By Committee on Judiciary

OUT OF ORDER 03/07/2008

1 Strike everything after the enacting clause and insert the
2 following:

3 "PART I

4 FIVE PILOT PROJECTS FOR FISCAL YEARS 2009-2011

5 NEW SECTION. **Sec. 101.** (1) The legislature finds that the people
6 of Washington state face a crisis brought upon by increased gang crime
7 and violence, which is threatening public safety in communities across
8 the state. Those who live in communities where gang membership is on
9 the rise find themselves living with the daily threat of intimidation
10 and harassment. Ordinary citizens are increasingly vulnerable to gang-
11 related crimes such as drug dealing, damage to real property, and theft
12 of personal property and automobiles, or even assault, rape, and
13 murder. Law enforcement officers, prosecutors, and local communities
14 require assistance to combat this clear and present danger to the law-
15 abiding residents of Washington. The work group on gang-related crime,
16 established under Substitute Senate Bill No. 5987 in 2007, met
17 regularly to study and make recommendations on the problems of gang-
18 related crime in Washington.

19 (2) The legislature recognizes the efforts of the work group in
20 trying to prevent, intervene, and suppress gang-related violence in the
21 state. It is the consensus of the work group, and it is recognized by
22 the legislature, that the sum of ten million dollars, or as much
23 thereof as may be necessary, should be appropriated to the governor's
24 juvenile justice advisory committee to help provide local community
25 programs with the tools they need to reduce gang violence and protect
26 the citizens of Washington from being victimized by violent street
27 gangs.

1 NEW SECTION. **Sec. 102.** A new section is added to chapter 43.20A
2 RCW to read as follows:

3 (1) Subject to available funds, the governor's juvenile justice
4 advisory committee shall issue a request for proposal to implement five
5 pilot projects throughout the state that focus on combating criminal
6 street gangs and violence.

7 (a) The projects shall be designed to have a three-prong approach
8 to preventing, intervening, and suppressing gang-related violence.

9 (b) Consideration for grant awards shall primarily be given to, but
10 is not limited to, those applicants that show that gang violence is an
11 increasing problem in their respective community and that addressing
12 the impact of street gangs is a high priority within their local
13 community. Eligible applicants shall be nongovernmental sponsors,
14 either as the sole sponsor or as a cosponsor with a government agency.

15 (c) Grant applications shall include project processes and
16 protocols for defining objectives and measurable results.

17 (d) The costs of administration shall not exceed four percent of
18 appropriated funding.

19 (e) Grants awarded under this section shall be used to supplement,
20 not supplant, other moneys that are available for combating criminal
21 street gangs and violence.

22 (2) The governor's juvenile justice advisory committee shall
23 convene a state gang work group.

24 (a) The committee, in collaboration with the work group, shall meet
25 semiannually to determine how grants are to be distributed and to
26 provide oversight of the selected pilot projects established in
27 subsection (1) of this section.

28 (b) The department of social and health services shall provide
29 staff support and the use of the department's facilities as may be
30 required of the committee and work group.

31 (c) The work group shall include a total of twenty members that
32 consist of the following:

33 (i) One member from each of the two largest caucuses of the senate,
34 appointed by the president of the senate;

35 (ii) One member from each of the two largest caucuses of the house
36 of representatives, appointed by the speaker of the house of
37 representatives;

38 (iii) The attorney general or the attorney general's designee;

1 (iv) A prosecutor appointed by the Washington association of
2 prosecuting attorneys;

3 (v) A defender appointed by the Washington defender association or
4 the Washington association of criminal defense lawyers;

5 (vi) The state superintendent of public instruction or the
6 superintendent's designee;

7 (vii) The secretary of the department of corrections or the
8 secretary's designee;

9 (viii) The secretary of the department of social and health
10 services or the secretary's designee;

11 (ix) The chief of the Washington state patrol or the chief's
12 designee;

13 (x) A city representative working through the association of
14 Washington cities, a nonprofit organization;

15 (xi) A representative of the Washington state association of
16 counties; and

17 (xii) Representatives, appointed by the governor, that shall
18 include, but are not limited to:

19 (A) City law enforcement;

20 (B) County law enforcement;

21 (C) Court administrators including but not limited to juvenile
22 court administrators; and

23 (D) Experts in gang or delinquency prevention.

24 (3)(a) The department of social and health services shall be
25 responsible for any costs incurred due to the convening of the work
26 group and the oversight and administration of the grant program.

27 (b) Nonlegislative members shall be compensated in accordance with
28 RCW 43.03.250 and shall be reimbursed for travel expenses incurred in
29 carrying out the duties of the work group in accordance with RCW
30 43.03.050 and 43.03.060, within available resources.

31 **PART II**

32 **NEAR-TERM RELIEF FOR 2008**

33 **Two Million Dollar Washington Association Of Sheriffs And Police**
34 **Chiefs Grant Program To Communities**

1 NEW SECTION. **Sec. 201.** A new section is added to chapter 36.28A
2 RCW to read as follows:

3 (1) When funded, the Washington association of sheriffs and police
4 chiefs shall establish a grant program to assist local law enforcement
5 agencies in the support of special enforcement emphasis targeting gang
6 crime. Grant applications shall be reviewed and awarded through peer
7 review panels. Grant applicants are encouraged to utilize
8 multijurisdictional efforts.

9 (2) Each grant applicant shall:

10 (a) Show a significant gang problem in the jurisdiction or
11 jurisdictions receiving the grant;

12 (b) Verify that grant awards are sufficient to cover increased
13 investigation, prosecution, and jail costs;

14 (c) Design an enforcement program that best suits the specific gang
15 problem in the jurisdiction or jurisdictions receiving the grant; and

16 (d) Demonstrate community coordination focusing on prevention,
17 intervention, and suppression.

18 (3) The cost of administering the grants shall not exceed sixty
19 thousand dollars, or four percent of appropriated funding, whichever is
20 greater.

21 **One Million Dollar Graffiti/Tagging Abatement Grant**

22 NEW SECTION. **Sec. 202.** A new section is added to chapter 36.28A
23 RCW to read as follows:

24 (1) When funded, the Washington association of sheriffs and police
25 chiefs shall establish a grant program to assist local law enforcement
26 agencies in the support of graffiti and tagging abatement programs
27 located in local communities. Grant applicants are encouraged to
28 utilize multijurisdictional efforts.

29 (2) Each graffiti or tagging abatement grant applicant shall:

30 (a) Demonstrate that a significant gang problem exists in the
31 jurisdiction or jurisdictions receiving the grant;

32 (b) Show how the funds will be used to dispose or eliminate any
33 current or ongoing tagging or graffiti within a specified time period;

34 (c) Specify how the funds will be used to reduce gang-related
35 graffiti or tagging within its community; and

1 (d) Show how the local citizens and business owners of the
2 community will benefit from the proposed graffiti or tagging abatement
3 process being presented in the grant application.

4 (3) The cost of administering the grants shall not exceed
5 twenty-five thousand dollars, or four percent of funding, whichever is
6 greater.

7 **PART III**
8 **STATEWIDE GANG INFORMATION DATABASE**

9 NEW SECTION. **Sec. 301.** A new section is added to chapter 43.43
10 RCW to read as follows:

11 The Washington association of sheriffs and police chiefs shall work
12 with the Washington state patrol to coordinate, designate, and
13 recommend the use of a statewide database accessible by law enforcement
14 agencies that utilizes existing resources, networks, or structures for
15 assessing and addressing the problems associated with criminal street
16 gangs.

17 (1) The gang database shall comply with federal regulations for
18 state law enforcement databases shared with other law enforcement
19 agencies, including auditing and access to data.

20 (2) The Washington state patrol, in consultation with the
21 Washington state association of sheriffs and police chiefs, shall adopt
22 uniform state criteria for entering gangs, gang members, and gang
23 associates into the database. Data on individuals may be entered only
24 based on reasonable suspicion of criminal activity or actual criminal
25 activity and must be supported by documentation, where documentation is
26 available.

27 (3) Information in the database shall be available to all local,
28 state, and federal general authority law enforcement agencies, the
29 Washington department of corrections, and the juvenile rehabilitation
30 administration of the Washington department of social and health
31 services solely for gang enforcement and for tracking gangs, gang
32 members, and gang incidents. Information in the database shall not be
33 available for public use.

34 (4) The database shall provide an internet-based multiagency,
35 multilocation, information-sharing application that operates in a
36 network fashion.

1 (5) The database shall be used solely as a law enforcement
2 intelligence tool and shall not be used as evidence in any criminal,
3 civil, or administrative proceeding. Law enforcement may use the
4 information within the database to obtain information external to the
5 database to formulate the probable cause necessary to make a stop or
6 arrest. The mere existence of information relating to an individual
7 within the database does not by itself justify a stop or arrest.

8 (6) Access to the database shall be determined by the chief
9 executive officer of each participating agency. Information about
10 specific individuals in the database shall be automatically expunged
11 if: (a) No new or updated information has been entered into the
12 database within the previous five years; (b) there are no pending
13 criminal charges against such person in any court in this state or
14 another state or in any federal court; (c) the person has not been
15 convicted of a new crime in this state, another state, or federal court
16 within the last five years; and (d) it has been five years since the
17 person completed his or her term of total confinement.

18 (7) Each law enforcement and criminal justice agency using the
19 database is required to:

20 (a) Identify a system administrator that is responsible for
21 annually auditing the use of the system within his or her respective
22 agency to ensure agency compliance with policies established for the
23 use of the database;

24 (b) Ensure that all users of the database receive training on the
25 use of the database before granting the users access to the database;

26 (c) Ensure that any information entered into the database relates
27 to a criminal street gang associate or gang member who is twelve years
28 old or older;

29 (d) Annually produce a gang threat assessment report including
30 available data sources such as uniform crime reports, record management
31 systems, and entries into the statewide gang database. Local public
32 schools shall also be encouraged to provide data to the local gang
33 threat assessment report.

34 (8) The database and all contents in the database are confidential
35 and exempt from public disclosure under chapter 42.56 RCW.

36 (9) Any public employee or public agency as defined in RCW
37 4.24.470, or units of local government and its employees, as provided
38 in RCW 36.28A.010, and the Washington association of sheriffs and

1 police chiefs and its employees are immune from civil liability for
2 damages arising from incidents involving a person who has been included
3 in the database, unless it is shown that an employee acted with gross
4 negligence or bad faith.

5 **Sec. 302.** RCW 42.56.240 and 2005 c 274 s 404 are each amended to
6 read as follows:

7 The following investigative, law enforcement, and crime victim
8 information is exempt from public inspection and copying under this
9 chapter:

10 (1) Specific intelligence information and specific investigative
11 records compiled by investigative, law enforcement, and penology
12 agencies, and state agencies vested with the responsibility to
13 discipline members of any profession, the nondisclosure of which is
14 essential to effective law enforcement or for the protection of any
15 person's right to privacy;

16 (2) Information revealing the identity of persons who are witnesses
17 to or victims of crime or who file complaints with investigative, law
18 enforcement, or penology agencies, other than the commission, if
19 disclosure would endanger any person's life, physical safety, or
20 property. If at the time a complaint is filed the complainant, victim,
21 or witness indicates a desire for disclosure or nondisclosure, such
22 desire shall govern. However, all complaints filed with the commission
23 about any elected official or candidate for public office must be made
24 in writing and signed by the complainant under oath;

25 (3) Any records of investigative reports prepared by any state,
26 county, municipal, or other law enforcement agency pertaining to sex
27 offenses contained in chapter 9A.44 RCW or sexually violent offenses as
28 defined in RCW 71.09.020, which have been transferred to the Washington
29 association of sheriffs and police chiefs for permanent electronic
30 retention and retrieval pursuant to RCW 40.14.070(2)(b);

31 (4) License applications under RCW 9.41.070; copies of license
32 applications or information on the applications may be released to law
33 enforcement or corrections agencies; (~~and~~)

34 (5) Information revealing the identity of child victims of sexual
35 assault who are under age eighteen. Identifying information means the
36 child victim's name, address, location, photograph, and in cases in

1 which the child victim is a relative or stepchild of the alleged
2 perpetrator, identification of the relationship between the child and
3 the alleged perpetrator; and
4 (6) The statewide gang database referenced in section 301 of this
5 act.

6 **PART IV**
7 **CIVIL INJUNCTIONS**

8 NEW SECTION. **Sec. 401.** The legislature recognizes that counsel is
9 not constitutionally required in civil actions (*In re Marriage of King*,
10 No. 79978-4 (Wash. Dec. 6, 2007)), but believes that it should be
11 required as a matter of public policy in actions brought against a
12 respondent criminal street gang member under section 403 of this act
13 who might risk the loss of procedural rights, in that the resulting
14 injunction may be enforced by criminal prosecution for contempt of
15 court.

16 NEW SECTION. **Sec. 402.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires otherwise.
18 (1) "Gang" means "criminal street gang" as defined in RCW
19 9.94A.030.
20 (2) "Pattern of criminal street gang activity" has the same meaning
21 as that term is defined in RCW 9.94A.030.

22 NEW SECTION. **Sec. 403.** (1) Equitable relief is authorized to
23 enjoin, abate, and prevent criminal street gang activity, whether it is
24 a private or public nuisance. Relief is authorized to enjoin criminal
25 street gang-related offenses defined in RCW 9.94A.030(17) and
26 associated noncriminal acts or acts which are known precursors to gang-
27 related criminal acts as specified in subsection (2) of this section,
28 upon a showing that the individual gang member sought to be enjoined
29 has been convicted of a crime included within the definition of
30 "pattern of criminal street gang activity" under RCW 9.94A.030, and of
31 the following elements by a preponderance of the evidence:
32 (a) A gang is named as a respondent and contains at least five
33 members, at least two of whom possess active leadership roles at the

1 time of application, and that any person sought to be enjoined is an
2 active or current member of the gang;

3 (b) The gang is a cohesive organization with a historical
4 relationship to the described geographical area for the past five years
5 or more immediately prior to the filing, and with known leadership,
6 membership, and criminal practices;

7 (c) The respondent gang members have committed, during the five
8 years immediately prior to the filing of the petition, a pattern of
9 criminal street gang activity within the described geographical area.
10 It is necessary to demonstrate a nexus between criminal gang activity
11 and crime in the area;

12 (d) As a result of the criminal activity of the gang or members, a
13 significant number of nongang members residing within the described
14 geographical area are in reasonable fear of their physical security or
15 that of their family members, or of significant damage to their
16 property to such an extent that they are intimidated or terrorized, and
17 are effectively prevented from living normal lives; and

18 (e) The plaintiffs have engaged in prevention and intervention
19 planning to serve a reasonable number of the gang's total membership
20 with prevention and intervention services to divert them from gang
21 activity.

22 (2) The complaint for equitable relief shall contain a statement of
23 specific relief requested and activities sought to be enjoined, which
24 may include:

25 (a) Associating with other gang members;

26 (b) Confronting, intimidating, annoying, harassing, threatening,
27 challenging, provoking, or assaulting any person;

28 (c) Confronting, intimidating, annoying, harassing, threatening,
29 challenging, provoking, or assaulting any person known to be a victim
30 or witness to gang activity;

31 (d) Possessing or knowingly remaining in the presence of anyone who
32 is in possession of any firearm, ammunition, or deadly weapon in a
33 public place;

34 (e) Possessing or knowingly remaining in the presence of anyone who
35 is in possession of any controlled substance or drug paraphernalia;

36 (f) Consuming alcohol in public;

37 (g) Being present on any private property without the written
38 consent of the owner;

1 (h) Defacing any public or private property or possessing graffiti
2 or tagging tools; or

3 (i) Violating any court defined curfew.

4 (3) The attorney general, the prosecuting attorney, or city
5 attorney or city prosecutor may maintain an action of an equitable
6 nature in the name of the state under this act. If a city applies for
7 equitable relief under this act, the city shall seek and obtain
8 approval of the prosecuting attorney of the county in which the city is
9 located to maintain the action.

10 (4) Service of the summons and complaint on the respondent gang
11 members may be made by representative service of at least five active
12 and current members of the gang, at least two of whom possess active
13 leadership roles at the time of application. A person served in a
14 representative capacity and who appears may request, if indigent, that
15 an attorney be appointed to represent him or her at public expense. If
16 the court appoints counsel, the plaintiff shall pay the cost of
17 representation. Notice of this shall be provided in the summons. A
18 person served in a representative capacity of the gang need not
19 testify, but may testify and cross-examine witnesses and present
20 testimony and other evidence on his or her own behalf.

21 (5) A court of competent jurisdiction shall conduct an evidentiary
22 hearing on the complaint for equitable relief filed under this act
23 whether or not any person served in a representative capacity of the
24 gang appears to contest the issuance of the injunction. The plaintiff
25 must prove by a preponderance of the evidence all of the elements set
26 forth in subsection (1) of this section that the persons served in a
27 representative capacity are current and active members of the gang, and
28 that the specific remedies requested are reasonable and necessary.

29 (6) If after trial the court grants the request for relief, it
30 shall issue an appropriate order of injunction against the gang and any
31 members of the gang within the delineated geographical area as
32 authorized by this section.

33 (7) An injunction issued under this section is not effective as to
34 any person unless the plaintiff makes a showing to the court, which may
35 be made ex parte, that the person is an active or current member or
36 associate of the gang, as defined in RCW 9.94A.030, and after
37 authorization by the court the person is served with personal notice of
38 the injunction. The notice must state that the person may request an

1 evidentiary hearing at which the plaintiffs must present evidence and
2 show by preponderance of evidence that the defendant is a member of the
3 gang. The individual need not testify, but may testify and may cross-
4 examine witnesses for the plaintiffs and may present testimony and
5 other evidence on his or her own behalf. The plaintiff may seek to add
6 any person to an existing gang injunction at any time using the
7 procedures in this subsection, regardless of whether the person was a
8 gang member or associate at the time that the request for relief was
9 requested or granted.

10 (8) The final order of injunction shall contain an opt out
11 provision, by which an alleged member previously included in the order
12 may petition at any time for removal from the injunction after a period
13 of three years in which no act by the alleged member has resulted in
14 either a contempt finding or a conviction of crime, and further that
15 there is no criminal charge pending at the time of the hearing. In the
16 petition, the alleged member may request a court hearing on the matter.

17 (9) All actions to punish any violation of the injunction shall be
18 by prosecution of the crime of contempt of court. It is an affirmative
19 defense that the person charged was a gang member but that he or she
20 was no longer an active or current member of the gang at the time of
21 the alleged violation.

22 (10) No nonprofit or charitable organization which is conducting
23 its affairs with ordinary care and skill, no labor organization, and no
24 governmental entity, shall be enjoined or abated under this chapter.

25 **PART V**

26 **ADDITIONAL MEASURES TO COMBAT GANG-RELATED CRIME**

27 **Increase In Sentences For Adults Who Recruit Juveniles**

28 **Sec. 501.** RCW 9.94A.533 and 2007 c 368 s 9 are each amended to
29 read as follows:

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

32 (2) For persons convicted of the anticipatory offenses of criminal
33 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
34 standard sentence range is determined by locating the sentencing grid

1 sentence range defined by the appropriate offender score and the
2 seriousness level of the completed crime, and multiplying the range by
3 seventy-five percent.

4 (3) The following additional times shall be added to the standard
5 sentence range for felony crimes committed after July 23, 1995, if the
6 offender or an accomplice was armed with a firearm as defined in RCW
7 9.41.010 and the offender is being sentenced for one of the crimes
8 listed in this subsection as eligible for any firearm enhancements
9 based on the classification of the completed felony crime. If the
10 offender is being sentenced for more than one offense, the firearm
11 enhancement or enhancements must be added to the total period of
12 confinement for all offenses, regardless of which underlying offense is
13 subject to a firearm enhancement. If the offender or an accomplice was
14 armed with a firearm as defined in RCW 9.41.010 and the offender is
15 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
16 commit one of the crimes listed in this subsection as eligible for any
17 firearm enhancements, the following additional times shall be added to
18 the standard sentence range determined under subsection (2) of this
19 section based on the felony crime of conviction as classified under RCW
20 9A.28.020:

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

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

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

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

37 (e) Notwithstanding any other provision of law, all firearm
38 enhancements under this section are mandatory, shall be served in total

1 confinement, and shall run consecutively to all other sentencing
2 provisions, including other firearm or deadly weapon enhancements, for
3 all offenses sentenced under this chapter. However, whether or not a
4 mandatory minimum term has expired, an offender serving a sentence
5 under this subsection may be granted an extraordinary medical placement
6 when authorized under RCW 9.94A.728(4);

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

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

19 (4) The following additional times shall be added to the standard
20 sentence range for felony crimes committed after July 23, 1995, if the
21 offender or an accomplice was armed with a deadly weapon other than a
22 firearm as defined in RCW 9.41.010 and the offender is being sentenced
23 for one of the crimes listed in this subsection as eligible for any
24 deadly weapon enhancements based on the classification of the completed
25 felony crime. If the offender is being sentenced for more than one
26 offense, the deadly weapon enhancement or enhancements must be added to
27 the total period of confinement for all offenses, regardless of which
28 underlying offense is subject to a deadly weapon enhancement. If the
29 offender or an accomplice was armed with a deadly weapon other than a
30 firearm as defined in RCW 9.41.010 and the offender is being sentenced
31 for an anticipatory offense under chapter 9A.28 RCW to commit one of
32 the crimes listed in this subsection as eligible for any deadly weapon
33 enhancements, the following additional times shall be added to the
34 standard sentence range determined under subsection (2) of this section
35 based on the felony crime of conviction as classified under RCW
36 9A.28.020:

37 (a) Two years for any felony defined under any law as a class A

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

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

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

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

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

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

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

36 (5) The following additional times shall be added to the standard
37 sentence range if the offender or an accomplice committed the offense
38 while in a county jail or state correctional facility and the offender

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

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

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

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

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

17 (6) An additional twenty-four months shall be added to the standard
18 sentence range for any ranked offense involving a violation of chapter
19 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
20 9.94A.605. All enhancements under this subsection shall run
21 consecutively to all other sentencing provisions, for all offenses
22 sentenced under this chapter.

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

27 (8)(a) The following additional times shall be added to the
28 standard sentence range for felony crimes committed on or after July 1,
29 2006, if the offense was committed with sexual motivation, as that term
30 is defined in RCW 9.94A.030. If the offender is being sentenced for
31 more than one offense, the sexual motivation enhancement must be added
32 to the total period of total confinement for all offenses, regardless
33 of which underlying offense is subject to a sexual motivation
34 enhancement. If the offender committed the offense with sexual
35 motivation and the offender is being sentenced for an anticipatory
36 offense under chapter 9A.28 RCW, the following additional times shall
37 be added to the standard sentence range determined under subsection (2)

1 of this section based on the felony crime of conviction as classified
2 under RCW 9A.28.020:

3 (i) Two years for any felony defined under the law as a class A
4 felony or with a statutory maximum sentence of at least twenty years,
5 or both;

6 (ii) Eighteen months for any felony defined under any law as a
7 class B felony or with a statutory maximum sentence of ten years, or
8 both;

9 (iii) One year for any felony defined under any law as a class C
10 felony or with a statutory maximum sentence of five years, or both;

11 (iv) If the offender is being sentenced for any sexual motivation
12 enhancements under (i), (ii), and/or (iii) of this subsection and the
13 offender has previously been sentenced for any sexual motivation
14 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
15 this subsection, all sexual motivation enhancements under this
16 subsection shall be twice the amount of the enhancement listed;

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

25 (c) The sexual motivation enhancements in this subsection apply to
26 all felony crimes;

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

34 (e) The portion of the total confinement sentence which the
35 offender must serve under this subsection shall be calculated before
36 any earned early release time is credited to the offender;

37 (f) Nothing in this subsection prevents a sentencing court from

1 imposing a sentence outside the standard sentence range pursuant to RCW
2 9.94A.535.

3 (9) An additional one-year enhancement shall be added to the
4 standard sentence range for the felony crimes of RCW 9A.44.073,
5 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
6 or after July 22, 2007, if the offender engaged, agreed, or offered to
7 engage the victim in the sexual conduct in return for a fee. If the
8 offender is being sentenced for more than one offense, the one-year
9 enhancement must be added to the total period of total confinement for
10 all offenses, regardless of which underlying offense is subject to the
11 enhancement. If the offender is being sentenced for an anticipatory
12 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
13 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
14 solicited another, or conspired to engage, agree, or offer to engage
15 the victim in (~~{the}~~) the sexual conduct in return for a fee, an
16 additional one-year enhancement shall be added to the standard sentence
17 range determined under subsection (2) of this section. For purposes of
18 this subsection, "sexual conduct" means sexual intercourse or sexual
19 contact, both as defined in chapter 9A.44 RCW.

20 (10)(a) For a person age eighteen or older convicted of any
21 criminal street gang-related felony offense for which the person
22 compensated, threatened, or solicited a minor in order to involve the
23 minor in the commission of the felony offense, the standard sentence
24 range is determined by locating the sentencing grid sentence range
25 defined by the appropriate offender score and the seriousness level of
26 the completed crime, and multiplying the range by one hundred twenty-
27 five percent. If the standard sentence range under this subsection
28 exceeds the statutory maximum sentence for the offense, the statutory
29 maximum sentence is the presumptive sentence unless the offender is a
30 persistent offender.

31 (b) This subsection does not apply to any criminal street gang-
32 related felony offense for which involving a minor in the commission of
33 the felony offense is an element of the offense.

34 (c) The increased penalty specified in (a) of this subsection is
35 unavailable in the event that the prosecution gives notice that it will
36 seek an exceptional sentence based on an aggravating factor under RCW
37 9.94A.535.

1 NEW SECTION. **Sec. 502.** A new section is added to chapter 9.94A
2 RCW to read as follows:

3 (1) In a prosecution of a criminal street gang-related felony
4 offense, the prosecution may file a special allegation that the felony
5 offense involved the compensation, threatening, or solicitation of a
6 minor in order to involve that minor in the commission of the felony
7 offense, as described under RCW 9.94A.533(10)(a).

8 (2) The state has the burden of proving a special allegation made
9 under this section beyond a reasonable doubt. If a jury is had, the
10 jury shall, if it finds the defendant guilty, also find a special
11 verdict as to whether the criminal street gang-related felony offense
12 involved the compensation, threatening, or solicitation of a minor in
13 order to involve that minor in the commission of the felony offense.
14 If no jury is had, the court shall make a finding of fact as to whether
15 the criminal street gang-related felony offense involved the
16 compensation, threatening, or solicitation of a minor in order to
17 involve that minor in the commission of the felony offense.

18 **Expansion Of The List Of Aggravating Factors**

19 **Sec. 503.** RCW 9.94A.535 and 2007 c 377 s 10 are each amended to
20 read as follows:

21 The court may impose a sentence outside the standard sentence range
22 for an offense if it finds, considering the purpose of this chapter,
23 that there are substantial and compelling reasons justifying an
24 exceptional sentence. Facts supporting aggravated sentences, other
25 than the fact of a prior conviction, shall be determined pursuant to
26 the provisions of RCW 9.94A.537.

27 Whenever a sentence outside the standard sentence range is imposed,
28 the court shall set forth the reasons for its decision in written
29 findings of fact and conclusions of law. A sentence outside the
30 standard sentence range shall be a determinate sentence.

31 If the sentencing court finds that an exceptional sentence outside
32 the standard sentence range should be imposed, the sentence is subject
33 to review only as provided for in RCW 9.94A.585(4).

34 A departure from the standards in RCW 9.94A.589 (1) and (2)
35 governing whether sentences are to be served consecutively or

1 concurrently is an exceptional sentence subject to the limitations in
2 this section, and may be appealed by the offender or the state as set
3 forth in RCW 9.94A.585 (2) through (6).

4 (1) Mitigating Circumstances - Court to Consider

5 The court may impose an exceptional sentence below the standard
6 range if it finds that mitigating circumstances are established by a
7 preponderance of the evidence. The following are illustrative only and
8 are not intended to be exclusive reasons for exceptional sentences.

9 (a) To a significant degree, the victim was an initiator, willing
10 participant, aggressor, or provoker of the incident.

11 (b) Before detection, the defendant compensated, or made a good
12 faith effort to compensate, the victim of the criminal conduct for any
13 damage or injury sustained.

14 (c) The defendant committed the crime under duress, coercion,
15 threat, or compulsion insufficient to constitute a complete defense but
16 which significantly affected his or her conduct.

17 (d) The defendant, with no apparent predisposition to do so, was
18 induced by others to participate in the crime.

19 (e) The defendant's capacity to appreciate the wrongfulness of his
20 or her conduct, or to conform his or her conduct to the requirements of
21 the law, was significantly impaired. Voluntary use of drugs or alcohol
22 is excluded.

23 (f) The offense was principally accomplished by another person and
24 the defendant manifested extreme caution or sincere concern for the
25 safety or well-being of the victim.

26 (g) The operation of the multiple offense policy of RCW 9.94A.589
27 results in a presumptive sentence that is clearly excessive in light of
28 the purpose of this chapter, as expressed in RCW 9.94A.010.

29 (h) The defendant or the defendant's children suffered a continuing
30 pattern of physical or sexual abuse by the victim of the offense and
31 the offense is a response to that abuse.

32 (2) Aggravating Circumstances - Considered and Imposed by the Court

33 The trial court may impose an aggravated exceptional sentence
34 without a finding of fact by a jury under the following circumstances:

35 (a) The defendant and the state both stipulate that justice is best
36 served by the imposition of an exceptional sentence outside the
37 standard range, and the court finds the exceptional sentence to be

1 consistent with and in furtherance of the interests of justice and the
2 purposes of the sentencing reform act.

3 (b) The defendant's prior unscored misdemeanor or prior unscored
4 foreign criminal history results in a presumptive sentence that is
5 clearly too lenient in light of the purpose of this chapter, as
6 expressed in RCW 9.94A.010.

7 (c) The defendant has committed multiple current offenses and the
8 defendant's high offender score results in some of the current offenses
9 going unpunished.

10 (d) The failure to consider the defendant's prior criminal history
11 which was omitted from the offender score calculation pursuant to RCW
12 9.94A.525 results in a presumptive sentence that is clearly too
13 lenient.

14 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
15 the Court

16 Except for circumstances listed in subsection (2) of this section,
17 the following circumstances are an exclusive list of factors that can
18 support a sentence above the standard range. Such facts should be
19 determined by procedures specified in RCW 9.94A.537.

20 (a) The defendant's conduct during the commission of the current
21 offense manifested deliberate cruelty to the victim.

22 (b) The defendant knew or should have known that the victim of the
23 current offense was particularly vulnerable or incapable of resistance.

24 (c) The current offense was a violent offense, and the defendant
25 knew that the victim of the current offense was pregnant.

26 (d) The current offense was a major economic offense or series of
27 offenses, so identified by a consideration of any of the following
28 factors:

29 (i) The current offense involved multiple victims or multiple
30 incidents per victim;

31 (ii) The current offense involved attempted or actual monetary loss
32 substantially greater than typical for the offense;

33 (iii) The current offense involved a high degree of sophistication
34 or planning or occurred over a lengthy period of time; or

35 (iv) The defendant used his or her position of trust, confidence,
36 or fiduciary responsibility to facilitate the commission of the current
37 offense.

1 (e) The current offense was a major violation of the Uniform
2 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
3 trafficking in controlled substances, which was more onerous than the
4 typical offense of its statutory definition: The presence of ANY of
5 the following may identify a current offense as a major VUCSA:

6 (i) The current offense involved at least three separate
7 transactions in which controlled substances were sold, transferred, or
8 possessed with intent to do so;

9 (ii) The current offense involved an attempted or actual sale or
10 transfer of controlled substances in quantities substantially larger
11 than for personal use;

12 (iii) The current offense involved the manufacture of controlled
13 substances for use by other parties;

14 (iv) The circumstances of the current offense reveal the offender
15 to have occupied a high position in the drug distribution hierarchy;

16 (v) The current offense involved a high degree of sophistication or
17 planning, occurred over a lengthy period of time, or involved a broad
18 geographic area of disbursement; or

19 (vi) The offender used his or her position or status to facilitate
20 the commission of the current offense, including positions of trust,
21 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
22 other medical professional).

23 (f) The current offense included a finding of sexual motivation
24 pursuant to RCW 9.94A.835.

25 (g) The offense was part of an ongoing pattern of sexual abuse of
26 the same victim under the age of eighteen years manifested by multiple
27 incidents over a prolonged period of time.

28 (h) The current offense involved domestic violence, as defined in
29 RCW 10.99.020, and one or more of the following was present:

30 (i) The offense was part of an ongoing pattern of psychological,
31 physical, or sexual abuse of the victim manifested by multiple
32 incidents over a prolonged period of time;

33 (ii) The offense occurred within sight or sound of the victim's or
34 the offender's minor children under the age of eighteen years; or

35 (iii) The offender's conduct during the commission of the current
36 offense manifested deliberate cruelty or intimidation of the victim.

37 (i) The offense resulted in the pregnancy of a child victim of
38 rape.

1 (j) The defendant knew that the victim of the current offense was
2 a youth who was not residing with a legal custodian and the defendant
3 established or promoted the relationship for the primary purpose of
4 victimization.

5 (k) The offense was committed with the intent to obstruct or impair
6 human or animal health care or agricultural or forestry research or
7 commercial production.

8 (l) The current offense is trafficking in the first degree or
9 trafficking in the second degree and any victim was a minor at the time
10 of the offense.

11 (m) The offense involved a high degree of sophistication or
12 planning.

13 (n) The defendant used his or her position of trust, confidence, or
14 fiduciary responsibility to facilitate the commission of the current
15 offense.

16 (o) The defendant committed a current sex offense, has a history of
17 sex offenses, and is not amenable to treatment.

18 (p) The offense involved an invasion of the victim's privacy.

19 (q) The defendant demonstrated or displayed an egregious lack of
20 remorse.

21 (r) The offense involved a destructive and foreseeable impact on
22 persons other than the victim.

23 (s) The defendant committed the offense to obtain or maintain his
24 or her membership or to advance his or her position in the hierarchy of
25 an organization, association, or identifiable group.

26 (t) The defendant committed the current offense shortly after being
27 released from incarceration.

28 (u) The current offense is a burglary and the victim of the
29 burglary was present in the building or residence when the crime was
30 committed.

31 (v) The offense was committed against a law enforcement officer who
32 was performing his or her official duties at the time of the offense,
33 the offender knew that the victim was a law enforcement officer, and
34 the victim's status as a law enforcement officer is not an element of
35 the offense.

36 (w) The defendant committed the offense against a victim who was
37 acting as a good samaritan.

1 (x) The defendant committed the offense against a public official
2 or officer of the court in retaliation of the public official's
3 performance of his or her duty to the criminal justice system.

4 (y) The victim's injuries substantially exceed the level of bodily
5 harm necessary to satisfy the elements of the offense. This aggravator
6 is not an exception to RCW 9.94A.530(2).

7 (z)(i)(A) The current offense is theft in the first degree, theft
8 in the second degree, possession of stolen property in the first
9 degree, or possession of stolen property in the second degree; (B) the
10 stolen property involved is metal property; and (C) the property damage
11 to the victim caused in the course of the theft of metal property is
12 more than three times the value of the stolen metal property, or the
13 theft of the metal property creates a public hazard.

14 (ii) For purposes of this subsection, "metal property" means
15 commercial metal property or nonferrous metal property, as defined in
16 RCW 19.290.010.

17 (aa) The defendant committed the offense with the intent to
18 directly or indirectly cause any benefit, aggrandizement, gain, profit,
19 or other advantage to or for a criminal street gang as defined in RCW
20 9.94A.030, its reputation, influence, or membership.

21 **Requiring Community Custody For Unlawful Possession Of A Firearm**

22 **Sec. 504.** RCW 9.94A.545 and 2006 c 128 s 4 are each amended to
23 read as follows:

24 (1) Except as provided in RCW 9.94A.650 and in subsection (2) of
25 this section, on all sentences of confinement for one year or less, in
26 which the offender is convicted of a sex offense, a violent offense, a
27 crime against a person under RCW 9.94A.411, or felony violation of
28 chapter 69.50 or 69.52 RCW or an attempt, conspiracy, or solicitation
29 to commit such a crime, the court may impose up to one year of
30 community custody, subject to conditions and sanctions as authorized in
31 RCW 9.94A.715 and 9.94A.720. An offender shall be on community custody
32 as of the date of sentencing. However, during the time for which the
33 offender is in total or partial confinement pursuant to the sentence or
34 a violation of the sentence, the period of community custody shall
35 toll.

1 (2)(a) If the offender is guilty of failure to register under RCW
2 9A.44.130(~~(+10+)~~) (11)(a), the court shall impose a term of community
3 custody under RCW 9.94A.715.

4 (b) If the offender is a criminal street gang associate or member
5 and is found guilty of unlawful possession of a firearm under RCW
6 9.41.040, the court shall impose a term of community custody under RCW
7 9.94A.715.

8 (c) In a criminal case in which there has been a special
9 allegation, the state shall prove by a preponderance of the evidence
10 that the accused is a criminal street gang member or associate as
11 defined in RCW 9.94A.030 and has committed the crime of unlawful
12 possession of a firearm. The court shall make a finding of fact of
13 whether or not the accused was a criminal street gang member or
14 associate at the time of the commission of the crime, or if a jury
15 trial is had, the jury shall, if it finds the defendant guilty, also
16 find a special verdict as to whether or not the accused was a criminal
17 street gang member or associate during the commission of the crime.

18 **Sec. 505.** RCW 9.94A.715 and 2006 c 130 s 2 and 2006 c 128 s 5 are
19 each reenacted and amended to read as follows:

20 (1) When a court sentences a person to the custody of the
21 department for a sex offense not sentenced under RCW 9.94A.712, a
22 violent offense, any crime against persons under RCW 9.94A.411(2), an
23 offense involving the unlawful possession of a firearm under RCW
24 9.41.040, where the offender is a criminal street gang member or
25 associate, or a felony offense under chapter 69.50 or 69.52 RCW,
26 committed on or after July 1, 2000, or when a court sentences a person
27 to a term of confinement of one year or less for a violation of RCW
28 9A.44.130(~~(+10+)~~) (11)(a) committed on or after June 7, 2006, the court
29 shall in addition to the other terms of the sentence, sentence the
30 offender to community custody for the community custody range
31 established under RCW 9.94A.850 or up to the period of earned release
32 awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer.
33 The community custody shall begin: (a) Upon completion of the term of
34 confinement; (b) at such time as the offender is transferred to
35 community custody in lieu of earned release in accordance with RCW
36 9.94A.728 (1) and (2); or (c) with regard to offenders sentenced under
37 RCW 9.94A.660, upon failure to complete or administrative termination

1 from the special drug offender sentencing alternative program. Except
2 as provided in RCW 9.94A.501, the department shall supervise any
3 sentence of community custody imposed under this section.

4 (2)(a) Unless a condition is waived by the court, the conditions of
5 community custody shall include those provided for in RCW 9.94A.700(4).
6 The conditions may also include those provided for in RCW 9.94A.700(5).
7 The court may also order the offender to participate in rehabilitative
8 programs or otherwise perform affirmative conduct reasonably related to
9 the circumstances of the offense, the offender's risk of reoffending,
10 or the safety of the community, and the department shall enforce such
11 conditions pursuant to subsection (6) of this section.

12 (b) As part of any sentence that includes a term of community
13 custody imposed under this subsection, the court shall also require the
14 offender to comply with any conditions imposed by the department under
15 RCW 9.94A.720. The department shall assess the offender's risk of
16 reoffense and may establish and modify additional conditions of the
17 offender's community custody based upon the risk to community safety.
18 In addition, the department may require the offender to participate in
19 rehabilitative programs, or otherwise perform affirmative conduct, and
20 to obey all laws. The department may impose electronic monitoring as
21 a condition of community custody for an offender sentenced to a term of
22 community custody under this section pursuant to a conviction for a sex
23 offense. Within the resources made available by the department for
24 this purpose, the department shall carry out any electronic monitoring
25 imposed under this section using the most appropriate technology given
26 the individual circumstances of the offender. As used in this section,
27 "electronic monitoring" means the monitoring of an offender using an
28 electronic offender tracking system including, but not limited to, a
29 system using radio frequency or active or passive global positioning
30 system technology.

31 (c) The department may not impose conditions that are contrary to
32 those ordered by the court and may not contravene or decrease court
33 imposed conditions. The department shall notify the offender in
34 writing of any such conditions or modifications. In setting,
35 modifying, and enforcing conditions of community custody, the
36 department shall be deemed to be performing a quasi-judicial function.

37 (3) If an offender violates conditions imposed by the court or the
38 department pursuant to this section during community custody, the

1 department may transfer the offender to a more restrictive confinement
2 status and impose other available sanctions as provided in RCW
3 9.94A.737 and 9.94A.740.

4 (4) Except for terms of community custody under RCW 9.94A.670, the
5 department shall discharge the offender from community custody on a
6 date determined by the department, which the department may modify,
7 based on risk and performance of the offender, within the range or at
8 the end of the period of earned release, whichever is later.

9 (5) At any time prior to the completion or termination of a sex
10 offender's term of community custody, if the court finds that public
11 safety would be enhanced, the court may impose and enforce an order
12 extending any or all of the conditions imposed pursuant to this section
13 for a period up to the maximum allowable sentence for the crime as it
14 is classified in chapter 9A.20 RCW, regardless of the expiration of the
15 offender's term of community custody. If a violation of a condition
16 extended under this subsection occurs after the expiration of the
17 offender's term of community custody, it shall be deemed a violation of
18 the sentence for the purposes of RCW 9.94A.631 and may be punishable as
19 contempt of court as provided for in RCW 7.21.040. If the court
20 extends a condition beyond the expiration of the term of community
21 custody, the department is not responsible for supervision of the
22 offender's compliance with the condition.

23 (6) Within the funds available for community custody, the
24 department shall determine conditions and duration of community custody
25 on the basis of risk to community safety, and shall supervise offenders
26 during community custody on the basis of risk to community safety and
27 conditions imposed by the court. The secretary shall adopt rules to
28 implement the provisions of this subsection.

29 (7) By the close of the next business day after receiving notice of
30 a condition imposed or modified by the department, an offender may
31 request an administrative review under rules adopted by the department.
32 The condition shall remain in effect unless the reviewing officer finds
33 that it is not reasonably related to any of the following: (a) The
34 crime of conviction; (b) the offender's risk of reoffending; or (c) the
35 safety of the community.

36 **Making Subsequent Convictions Of Malicious Mischief 3 A Gross**
37 **Misdemeanor Offense**

1 which the person injured by the act constituting the offense has a
2 remedy by a civil action, the offense may be compromised as provided in
3 RCW 10.22.020, except when it was committed:

4 (1) By or upon an officer while in the execution of the duties of
5 his office((-));

6 (2) Riotously;

7 (3) With an intent to commit a felony; or

8 (4) By one family or household member against another as defined in
9 RCW 10.99.020 and was a crime of domestic violence as defined in RCW
10 10.99.020.

11 **Criminal Street Gang Definition**

12 **Sec. 509.** RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006
13 c 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and
14 amended to read as follows:

15 Unless the context clearly requires otherwise, the definitions in
16 this section apply throughout this chapter.

17 (1) "Board" means the indeterminate sentence review board created
18 under chapter 9.95 RCW.

19 (2) "Collect," or any derivative thereof, "collect and remit," or
20 "collect and deliver," when used with reference to the department,
21 means that the department, either directly or through a collection
22 agreement authorized by RCW 9.94A.760, is responsible for monitoring
23 and enforcing the offender's sentence with regard to the legal
24 financial obligation, receiving payment thereof from the offender, and,
25 consistent with current law, delivering daily the entire payment to the
26 superior court clerk without depositing it in a departmental account.

27 (3) "Commission" means the sentencing guidelines commission.

28 (4) "Community corrections officer" means an employee of the
29 department who is responsible for carrying out specific duties in
30 supervision of sentenced offenders and monitoring of sentence
31 conditions.

32 (5) "Community custody" means that portion of an offender's
33 sentence of confinement in lieu of earned release time or imposed
34 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
35 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
36 community subject to controls placed on the offender's movement and

1 activities by the department. For offenders placed on community
2 custody for crimes committed on or after July 1, 2000, the department
3 shall assess the offender's risk of reoffense and may establish and
4 modify conditions of community custody, in addition to those imposed by
5 the court, based upon the risk to community safety.

6 (6) "Community custody range" means the minimum and maximum period
7 of community custody included as part of a sentence under RCW
8 9.94A.715, as established by the commission or the legislature under
9 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

17 (8) "Community protection zone" means the area within eight hundred
18 eighty feet of the facilities and grounds of a public or private
19 school.

20 (9) "Community restitution" means compulsory service, without
21 compensation, performed for the benefit of the community by the
22 offender.

23 (10) "Community supervision" means a period of time during which a
24 convicted offender is subject to crime-related prohibitions and other
25 sentence conditions imposed by a court pursuant to this chapter or RCW
26 16.52.200(6) or 46.61.524. Where the court finds that any offender has
27 a chemical dependency that has contributed to his or her offense, the
28 conditions of supervision may, subject to available resources, include
29 treatment. For purposes of the interstate compact for out-of-state
30 supervision of parolees and probationers, RCW 9.95.270, community
31 supervision is the functional equivalent of probation and should be
32 considered the same as probation by other states.

33 (11) "Confinement" means total or partial confinement.

34 (12) "Conviction" means an adjudication of guilt pursuant to Titles
35 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
36 acceptance of a plea of guilty.

37 (13) "Crime-related prohibition" means an order of a court
38 prohibiting conduct that directly relates to the circumstances of the

1 crime for which the offender has been convicted, and shall not be
2 construed to mean orders directing an offender affirmatively to
3 participate in rehabilitative programs or to otherwise perform
4 affirmative conduct. However, affirmative acts necessary to monitor
5 compliance with the order of a court may be required by the department.

6 (14) "Criminal history" means the list of a defendant's prior
7 convictions and juvenile adjudications, whether in this state, in
8 federal court, or elsewhere.

9 (a) The history shall include, where known, for each conviction (i)
10 whether the defendant has been placed on probation and the length and
11 terms thereof; and (ii) whether the defendant has been incarcerated and
12 the length of incarceration.

13 (b) A conviction may be removed from a defendant's criminal history
14 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
15 a similar out-of-state statute, or if the conviction has been vacated
16 pursuant to a governor's pardon.

17 (c) The determination of a defendant's criminal history is distinct
18 from the determination of an offender score. A prior conviction that
19 was not included in an offender score calculated pursuant to a former
20 version of the sentencing reform act remains part of the defendant's
21 criminal history.

22 (15) "Criminal street gang" means any ongoing organization,
23 association, or group of three or more persons, whether formal or
24 informal, having a common name or common identifying sign or symbol,
25 having as one of its primary activities the commission of criminal
26 acts, and whose members or associates individually or collectively
27 engage in or have engaged in a pattern of criminal street gang
28 activity. This definition does not apply to employees engaged in
29 concerted activities for their mutual aid and protection, or to the
30 activities of labor and bona fide nonprofit organizations or their
31 members or agents.

32 (16) "Criminal street gang associate or member" means any person
33 who actively participates in any criminal street gang and who
34 intentionally promotes, furthers, or assists in any criminal act by the
35 criminal street gang.

36 (17) "Criminal street gang-related offense" means any felony or
37 misdemeanor offense, whether in this state or elsewhere, that is
38 committed for the benefit of, at the direction of, or in association

1 with any criminal street gang, or is committed with the intent to
2 promote, further, or assist in any criminal conduct by the gang, or is
3 committed for one or more of the following reasons:

4 (a) To gain admission, prestige, or promotion within the gang;

5 (b) To increase or maintain the gang's size, membership, prestige,
6 dominance, or control in any geographical area;

7 (c) To exact revenge or retribution for the gang or any member of
8 the gang;

9 (d) To obstruct justice, or intimidate or eliminate any witness
10 against the gang or any member of the gang;

11 (e) To directly or indirectly cause any benefit, aggrandizement,
12 gain, profit, or other advantage for the gang, its reputation,
13 influence, or membership; or

14 (f) To provide the gang with any advantage in, or any control or
15 dominance over any criminal market sector, including, but not limited
16 to, manufacturing, delivering, or selling any controlled substance
17 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
18 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
19 RCW); human trafficking (RCW 9A.40.100); or promoting pornography
20 (chapter 9.68 RCW).

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

25 ~~((+16+))~~ (19) "Day reporting" means a program of enhanced
26 supervision designed to monitor the offender's daily activities and
27 compliance with sentence conditions, and in which the offender is
28 required to report daily to a specific location designated by the
29 department or the sentencing court.

30 ~~((+17+))~~ (20) "Department" means the department of corrections.

31 ~~((+18+))~~ (21) "Determinate sentence" means a sentence that states
32 with exactitude the number of actual years, months, or days of total
33 confinement, of partial confinement, of community supervision, the
34 number of actual hours or days of community restitution work, or
35 dollars or terms of a legal financial obligation. The fact that an
36 offender through earned release can reduce the actual period of
37 confinement shall not affect the classification of the sentence as a
38 determinate sentence.

1 (~~(19)~~) (22) "Disposable earnings" means that part of the earnings
2 of an offender remaining after the deduction from those earnings of any
3 amount required by law to be withheld. For the purposes of this
4 definition, "earnings" means compensation paid or payable for personal
5 services, whether denominated as wages, salary, commission, bonuses, or
6 otherwise, and, notwithstanding any other provision of law making the
7 payments exempt from garnishment, attachment, or other process to
8 satisfy a court-ordered legal financial obligation, specifically
9 includes periodic payments pursuant to pension or retirement programs,
10 or insurance policies of any type, but does not include payments made
11 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
12 or Title 74 RCW.

13 (~~(20)~~) (23) "Drug offender sentencing alternative" is a
14 sentencing option available to persons convicted of a felony offense
15 other than a violent offense or a sex offense and who are eligible for
16 the option under RCW 9.94A.660.

17 (~~(21)~~) (24) "Drug offense" means:

18 (a) Any felony violation of chapter 69.50 RCW except possession of
19 a controlled substance (RCW 69.50.4013) or forged prescription for a
20 controlled substance (RCW 69.50.403);

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

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

27 (~~(22)~~) (25) "Earned release" means earned release from
28 confinement as provided in RCW 9.94A.728.

29 (~~(23)~~) (26) "Escape" means:

30 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
31 first degree (RCW 9A.76.110), escape in the second degree (RCW
32 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
33 willful failure to return from work release (RCW 72.65.070), or willful
34 failure to be available for supervision by the department while in
35 community custody (RCW 72.09.310); or

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

1 ~~((+24+))~~ (27) "Felony traffic offense" means:

2 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
3 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
4 run injury-accident (RCW 46.52.020(4)), felony driving while under the
5 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
6 felony physical control of a vehicle while under the influence of
7 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

11 ~~((+25+))~~ (28) "Fine" means a specific sum of money ordered by the
12 sentencing court to be paid by the offender to the court over a
13 specific period of time.

14 ~~((+26+))~~ (29) "First-time offender" means any person who has no
15 prior convictions for a felony and is eligible for the first-time
16 offender waiver under RCW 9.94A.650.

17 ~~((+27+))~~ (30) "Home detention" means a program of partial
18 confinement available to offenders wherein the offender is confined in
19 a private residence subject to electronic surveillance.

20 ~~((+28+))~~ (31) "Legal financial obligation" means a sum of money
21 that is ordered by a superior court of the state of Washington for
22 legal financial obligations which may include restitution to the
23 victim, statutorily imposed crime victims' compensation fees as
24 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
25 drug funds, court-appointed attorneys' fees, and costs of defense,
26 fines, and any other financial obligation that is assessed to the
27 offender as a result of a felony conviction. Upon conviction for
28 vehicular assault while under the influence of intoxicating liquor or
29 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
30 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
31 legal financial obligations may also include payment to a public agency
32 of the expense of an emergency response to the incident resulting in
33 the conviction, subject to RCW 38.52.430.

34 ~~((+29+))~~ (32) "Most serious offense" means any of the following
35 felonies or a felony attempt to commit any of the following felonies:

36 (a) Any felony defined under any law as a class A felony or
37 criminal solicitation of or criminal conspiracy to commit a class A
38 felony;

- 1 (b) Assault in the second degree;
- 2 (c) Assault of a child in the second degree;
- 3 (d) Child molestation in the second degree;
- 4 (e) Controlled substance homicide;
- 5 (f) Extortion in the first degree;
- 6 (g) Incest when committed against a child under age fourteen;
- 7 (h) Indecent liberties;
- 8 (i) Kidnapping in the second degree;
- 9 (j) Leading organized crime;
- 10 (k) Manslaughter in the first degree;
- 11 (l) Manslaughter in the second degree;
- 12 (m) Promoting prostitution in the first degree;
- 13 (n) Rape in the third degree;
- 14 (o) Robbery in the second degree;
- 15 (p) Sexual exploitation;
- 16 (q) Vehicular assault, when caused by the operation or driving of
- 17 a vehicle by a person while under the influence of intoxicating liquor
- 18 or any drug or by the operation or driving of a vehicle in a reckless
- 19 manner;
- 20 (r) Vehicular homicide, when proximately caused by the driving of
- 21 any vehicle by any person while under the influence of intoxicating
- 22 liquor or any drug as defined by RCW 46.61.502, or by the operation of
- 23 any vehicle in a reckless manner;
- 24 (s) Any other class B felony offense with a finding of sexual
- 25 motivation;
- 26 (t) Any other felony with a deadly weapon verdict under RCW
- 27 9.94A.602;
- 28 (u) Any felony offense in effect at any time prior to December 2,
- 29 1993, that is comparable to a most serious offense under this
- 30 subsection, or any federal or out-of-state conviction for an offense
- 31 that under the laws of this state would be a felony classified as a
- 32 most serious offense under this subsection;
- 33 (v)(i) A prior conviction for indecent liberties under RCW
- 34 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
- 35 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
- 36 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
- 37 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

1 (ii) A prior conviction for indecent liberties under RCW
2 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
3 if: (A) The crime was committed against a child under the age of
4 fourteen; or (B) the relationship between the victim and perpetrator is
5 included in the definition of indecent liberties under RCW
6 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
7 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
8 through July 27, 1997.

9 ~~((+30+))~~ (33) "Nonviolent offense" means an offense which is not a
10 violent offense.

11 ~~((+31+))~~ (34) "Offender" means a person who has committed a felony
12 established by state law and is eighteen years of age or older or is
13 less than eighteen years of age but whose case is under superior court
14 jurisdiction under RCW 13.04.030 or has been transferred by the
15 appropriate juvenile court to a criminal court pursuant to RCW
16 13.40.110. Throughout this chapter, the terms "offender" and
17 "defendant" are used interchangeably.

18 ~~((+32+))~~ (35) "Partial confinement" means confinement for no more
19 than one year in a facility or institution operated or utilized under
20 contract by the state or any other unit of government, or, if home
21 detention or work crew has been ordered by the court, in an approved
22 residence, for a substantial portion of each day with the balance of
23 the day spent in the community. Partial confinement includes work
24 release, home detention, work crew, and a combination of work crew and
25 home detention.

26 ~~((+33+))~~ (36) "Pattern of criminal street gang activity" means:

27 (a) The commission, attempt, conspiracy, or solicitation of, or any
28 prior juvenile adjudication of or adult conviction of, two or more of
29 the following criminal street gang-related offenses:

30 (i) Any "serious violent" felony offense as defined in RCW
31 9.94A.030, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of
32 a Child 1 (RCW 9A.36.120);

33 (ii) Any "violent" offense as defined by RCW 9.94A.030, excluding
34 Assault of a Child 2 (RCW 9A.36.130);

35 (iii) Deliver or Possession with Intent to Deliver a Controlled
36 Substance (chapter 69.50 RCW);

37 (iv) Any violation of the firearms and dangerous weapon act
38 (chapter 9.41 RCW);

1 (v) Theft of a Firearm (RCW 9A.56.300);
2 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);
3 (vii) Malicious Harassment (RCW 9A.36.080);
4 (viii) Harassment where a subsequent violation or deadly threat is
5 made (RCW 9A.46.020(2)(b));
6 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
7 (x) Any felony conviction by a person eighteen years of age or
8 older with a special finding of involving a juvenile in a felony
9 offense under section 502 of this act;
10 (xi) Residential Burglary (RCW 9A.52.025);
11 (xii) Burglary 2 (RCW 9A.52.030);
12 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
13 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
14 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
15 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
16 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
17 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
18 9A.56.075);
19 (xix) Extortion 1 (RCW 9A.56.120);
20 (xx) Extortion 2 (RCW 9A.56.130);
21 (xxi) Intimidating a Witness (RCW 9A.72.110);
22 (xxii) Tampering with a Witness (RCW 9A.72.120);
23 (xxiii) Reckless Endangerment (RCW 9A.36.050);
24 (xxiv) Coercion (RCW 9A.36.070);
25 (xxv) Harassment (RCW 9A.46.020); or
26 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
27 (b) That at least one of the offenses listed in (a) of this
28 subsection shall have occurred after July 1, 2008;
29 (c) That the most recent committed offense listed in (a) of this
30 subsection occurred within three years of a prior offense listed in (a)
31 of this subsection; and
32 (d) Of the offenses that were committed in (a) of this subsection,
33 the offenses occurred on separate occasions or were committed by two or
34 more persons.
35 (37) "Persistent offender" is an offender who:
36 (a)(i) Has been convicted in this state of any felony considered a
37 most serious offense; and

1 (ii) Has, before the commission of the offense under (a) of this
2 subsection, been convicted as an offender on at least two separate
3 occasions, whether in this state or elsewhere, of felonies that under
4 the laws of this state would be considered most serious offenses and
5 would be included in the offender score under RCW 9.94A.525; provided
6 that of the two or more previous convictions, at least one conviction
7 must have occurred before the commission of any of the other most
8 serious offenses for which the offender was previously convicted; or

9 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
10 of a child in the first degree, child molestation in the first degree,
11 rape in the second degree, rape of a child in the second degree, or
12 indecent liberties by forcible compulsion; (B) any of the following
13 offenses with a finding of sexual motivation: Murder in the first
14 degree, murder in the second degree, homicide by abuse, kidnapping in
15 the first degree, kidnapping in the second degree, assault in the first
16 degree, assault in the second degree, assault of a child in the first
17 degree, assault of a child in the second degree, or burglary in the
18 first degree; or (C) an attempt to commit any crime listed in this
19 subsection (~~(+33+)~~) (37)(b)(i); and

20 (ii) Has, before the commission of the offense under (b)(i) of this
21 subsection, been convicted as an offender on at least one occasion,
22 whether in this state or elsewhere, of an offense listed in (b)(i) of
23 this subsection or any federal or out-of-state offense or offense under
24 prior Washington law that is comparable to the offenses listed in
25 (b)(i) of this subsection. A conviction for rape of a child in the
26 first degree constitutes a conviction under (b)(i) of this subsection
27 only when the offender was sixteen years of age or older when the
28 offender committed the offense. A conviction for rape of a child in
29 the second degree constitutes a conviction under (b)(i) of this
30 subsection only when the offender was eighteen years of age or older
31 when the offender committed the offense.

32 (~~(+34+)~~) (38) "Postrelease supervision" is that portion of an
33 offender's community placement that is not community custody.

34 (~~(+35+)~~) (39) "Predatory" means: (a) The perpetrator of the crime
35 was a stranger to the victim, as defined in this section; (b) the
36 perpetrator established or promoted a relationship with the victim
37 prior to the offense and the victimization of the victim was a
38 significant reason the perpetrator established or promoted the

1 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
2 volunteer, or other person in authority in any public or private school
3 and the victim was a student of the school under his or her authority
4 or supervision. For purposes of this subsection, "school" does not
5 include home-based instruction as defined in RCW 28A.225.010; (ii) a
6 coach, trainer, volunteer, or other person in authority in any
7 recreational activity and the victim was a participant in the activity
8 under his or her authority or supervision; or (iii) a pastor, elder,
9 volunteer, or other person in authority in any church or religious
10 organization, and the victim was a member or participant of the
11 organization under his or her authority.

12 ~~((36))~~ (40) "Private school" means a school regulated under
13 chapter 28A.195 or 28A.205 RCW.

14 ~~((37))~~ (41) "Public school" has the same meaning as in RCW
15 28A.150.010.

16 ~~((38))~~ (42) "Restitution" means a specific sum of money ordered
17 by the sentencing court to be paid by the offender to the court over a
18 specified period of time as payment of damages. The sum may include
19 both public and private costs.

20 ~~((39))~~ (43) "Risk assessment" means the application of an
21 objective instrument supported by research and adopted by the
22 department for the purpose of assessing an offender's risk of
23 reoffense, taking into consideration the nature of the harm done by the
24 offender, place and circumstances of the offender related to risk, the
25 offender's relationship to any victim, and any information provided to
26 the department by victims. The results of a risk assessment shall not
27 be based on unconfirmed or unconfirmable allegations.

28 ~~((40))~~ (44) "Serious traffic offense" means:

29 (a) Nonfelony driving while under the influence of intoxicating
30 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
31 while under the influence of intoxicating liquor or any drug (RCW
32 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
33 attended vehicle (RCW 46.52.020(5)); or

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

37 ~~((41))~~ (45) "Serious violent offense" is a subcategory of violent
38 offense and means:

1 (a)(i) Murder in the first degree;
2 (ii) Homicide by abuse;
3 (iii) Murder in the second degree;
4 (iv) Manslaughter in the first degree;
5 (v) Assault in the first degree;
6 (vi) Kidnapping in the first degree;
7 (vii) Rape in the first degree;
8 (viii) Assault of a child in the first degree; or
9 (ix) An attempt, criminal solicitation, or criminal conspiracy to
10 commit one of these felonies; or

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

14 (~~(42)~~) (46) "Sex offense" means:

15 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
16 RCW 9A.44.130(~~(11)~~) (12);

17 (ii) A violation of RCW 9A.64.020;

18 (iii) A felony that is a violation of chapter 9.68A RCW other than
19 RCW 9.68A.080; or

20 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
21 criminal solicitation, or criminal conspiracy to commit such crimes;

22 (b) Any conviction for a felony offense in effect at any time prior
23 to July 1, 1976, that is comparable to a felony classified as a sex
24 offense in (a) of this subsection;

25 (c) A felony with a finding of sexual motivation under RCW
26 9.94A.835 or 13.40.135; or

27 (d) Any federal or out-of-state conviction for an offense that
28 under the laws of this state would be a felony classified as a sex
29 offense under (a) of this subsection.

30 (~~(43)~~) (47) "Sexual motivation" means that one of the purposes
31 for which the defendant committed the crime was for the purpose of his
32 or her sexual gratification.

33 (~~(44)~~) (48) "Standard sentence range" means the sentencing
34 court's discretionary range in imposing a nonappealable sentence.

35 (~~(45)~~) (49) "Statutory maximum sentence" means the maximum length
36 of time for which an offender may be confined as punishment for a crime
37 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
38 the crime, or other statute defining the maximum penalty for a crime.

1 (~~(46)~~) (50) "Stranger" means that the victim did not know the
2 offender twenty-four hours before the offense.

3 (~~(47)~~) (51) "Total confinement" means confinement inside the
4 physical boundaries of a facility or institution operated or utilized
5 under contract by the state or any other unit of government for twenty-
6 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

7 (~~(48)~~) (52) "Transition training" means written and verbal
8 instructions and assistance provided by the department to the offender
9 during the two weeks prior to the offender's successful completion of
10 the work ethic camp program. The transition training shall include
11 instructions in the offender's requirements and obligations during the
12 offender's period of community custody.

13 (~~(49)~~) (53) "Victim" means any person who has sustained
14 emotional, psychological, physical, or financial injury to person or
15 property as a direct result of the crime charged.

16 (~~(50)~~) (54) "Violent offense" means:

17 (a) Any of the following felonies:

18 (i) Any felony defined under any law as a class A felony or an
19 attempt to commit a class A felony;

20 (ii) Criminal solicitation of or criminal conspiracy to commit a
21 class A felony;

22 (iii) Manslaughter in the first degree;

23 (iv) Manslaughter in the second degree;

24 (v) Indecent liberties if committed by forcible compulsion;

25 (vi) Kidnapping in the second degree;

26 (vii) Arson in the second degree;

27 (viii) Assault in the second degree;

28 (ix) Assault of a child in the second degree;

29 (x) Extortion in the first degree;

30 (xi) Robbery in the second degree;

31 (xii) Drive-by shooting;

32 (xiii) Vehicular assault, when caused by the operation or driving
33 of a vehicle by a person while under the influence of intoxicating
34 liquor or any drug or by the operation or driving of a vehicle in a
35 reckless manner; and

36 (xiv) Vehicular homicide, when proximately caused by the driving of
37 any vehicle by any person while under the influence of intoxicating

1 liquor or any drug as defined by RCW 46.61.502, or by the operation of
2 any vehicle in a reckless manner;

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

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

9 ~~((+51+))~~ (55) "Work crew" means a program of partial confinement
10 consisting of civic improvement tasks for the benefit of the community
11 that complies with RCW 9.94A.725.

12 ~~((+52+))~~ (56) "Work ethic camp" means an alternative incarceration
13 program as provided in RCW 9.94A.690 designed to reduce recidivism and
14 lower the cost of corrections by requiring offenders to complete a
15 comprehensive array of real-world job and vocational experiences,
16 character-building work ethics training, life management skills
17 development, substance abuse rehabilitation, counseling, literacy
18 training, and basic adult education.

19 ~~((+53+))~~ (57) "Work release" means a program of partial confinement
20 available to offenders who are employed or engaged as a student in a
21 regular course of study at school.

22 **Gangs In Schools**

23 NEW SECTION. **Sec. 510.** A new section is added to chapter 28A.300
24 RCW to read as follows:

25 (1) The task force on gangs in schools shall study and make
26 recommendations for the creation of a brochure to help teachers and
27 parents learn about criminal street gangs and criminal street gang
28 activity. In preparing the brochure, the task force, at a minimum,
29 shall include provisions on:

30 (a) The types of indicators that parents or others should be made
31 aware as an early warning signal of possible criminal street gang
32 involvement. Such indicators include changes in a child's behavior,
33 changes in friends or acquaintances, changes in dress apparel, graffiti
34 and tagging markings located around the home or immediate property, and
35 any other potential indicators as suggested by the task force;

1 (b) Possible places that a parent or teacher may go to seek help in
2 trying to prevent a child from joining the membership of a criminal
3 street gang or committing a criminal street gang offense; and

4 (c) Possible options that a person may have in order to provide
5 assistance to a criminal street gang member seeking to opt out of his
6 or her criminal street gang membership.

7 (2) The task force shall report its findings and recommendations to
8 the legislature and the superintendent of public instruction by
9 December 31, 2008.

10 (3) The superintendent of public instruction shall make the
11 brochures available for parents, teachers, students, and others
12 interested in trying to understand criminal street gang activity.

13 (4) The brochure shall be available in bilingual or multilingual
14 languages in those school districts where a significant segment of
15 students speak a language other than English and have a limited
16 proficiency in English.

17 **PART VI**
18 **STATE PREEMPTION**

19 NEW SECTION. **Sec. 601.** (1) The state of Washington hereby fully
20 occupies and preempts the entire field of definitions used for purposes
21 of substantive criminal law relating to criminal street gangs, criminal
22 street gang-related offenses, criminal street gang associates and
23 members, and pattern of criminal street gang activity. These
24 definitions of "criminal street gang," "criminal street gang associate
25 or member," "criminal street gang-related offense," and "pattern of
26 criminal street gang activity" contained in RCW 9.94A.030 expressly
27 preempt any conflicting city or county codes or ordinances. Cities,
28 towns, counties, or other municipalities may enact laws and ordinances
29 relating to criminal street gangs that contain definitions that are
30 consistent with definitions pursuant to RCW 9.94A.030. Local laws and
31 ordinances that are inconsistent with the definitions shall not be
32 enacted and are preempted and repealed, regardless of the nature of the
33 code, charter, or home rule status of such city, town, county, or
34 municipality.

35 (2) The preemption provided in this chapter does not apply to

1 "gang" as defined in RCW 28A.600.455 under the common school provisions
2 act or "gang" as defined in RCW 59.18.030 under the landlord-tenant
3 act.

4 (3) The preemption provided for in this chapter does not restrict
5 the adoption or use of a uniform state definition of "gang," "gang
6 member," or "gang associate," for purposes of the creation and
7 maintenance of the statewide gang database for law enforcement
8 intelligence purposes under section 301 of this act.

9 **PART VII**
10 **TEMPORARY WITNESS RELOCATION PROGRAM**

11 NEW SECTION. **Sec. 701.** A new section is added to chapter 43.31
12 RCW to read as follows:

13 The legislature recognizes that witnesses are often fearful of
14 testifying against criminal gang members. Witnesses may be subject to
15 harassment, intimidation, and threats. While the state does not ensure
16 protection of witnesses, the state intends to provide resources to
17 assist local prosecutors in combating gang-related crimes and to help
18 citizens perform their civic duty to testify in these cases.

19 NEW SECTION. **Sec. 702.** A new section is added to chapter 43.31
20 RCW to read as follows:

21 (1) Subject to available funds, the department of community, trade,
22 and economic development shall establish a temporary witness assistance
23 grant program for witnesses of felony criminal street gang-related
24 offenses. The department of community, trade, and economic development
25 shall develop a formula for distributing temporary witness assistance
26 grants and consideration shall primarily be given to those county
27 prosecutors that show that there is a significant gang problem in their
28 jurisdiction.

29 (2) As part of the temporary witness assistance grant program, the
30 department of community, trade, and economic development shall work in
31 collaboration with each local prosecuting attorney to determine how and
32 how much grant funding shall be distributed in order to reimburse
33 county prosecutors in assisting witnesses of felony gang-related
34 offenses with temporary assistance, relocation, and shelter.

1 (3) Each temporary witness assistance grant awarded shall be
2 limited to a maximum of five thousand dollars per witness of a felony
3 criminal street gang-related offense or for a period of no more than
4 three months.

5 (4) Based upon the prior approval of the department of community,
6 trade, and economic development, approved county prosecutor costs
7 incurred for providing temporary witness assistance shall be reimbursed
8 to the respective county prosecutor's office on a quarterly basis.

9 (5) An appointed or elected public official, public employee, or
10 public agency as defined in RCW 4.24.470 is immune from civil liability
11 for damages resulting from the temporary witness assistance program,
12 unless it is shown that the official, employee, or agency acted with
13 gross negligence or in bad faith.

14 NEW SECTION. **Sec. 703.** If specific funding for purposes of
15 section 702 of this act, referencing section 702 of this act by bill or
16 chapter and section number, is not provided by June 30, 2008, in the
17 omnibus operating appropriations act, section 702 of this act is null
18 and void.

19 **PART VIII**
20 **STUDY ON BEST PRACTICES TO REDUCE GANG INVOLVEMENT WHILE**
21 **INCARCERATED**

22 NEW SECTION. **Sec. 801.** A new section is added to chapter 72.09
23 RCW to read as follows:

24 (1) The department shall study and establish best practices to
25 reduce gang involvement and recruitment among incarcerated offenders.
26 The department shall study and make recommendations regarding the
27 establishment of:

28 (a) Intervention programs within the institutions of the department
29 for offenders who are seeking to opt out of gangs. The intervention
30 programs shall include, but are not limited to, tattoo removal, anger
31 management, GED, and other interventions; and

32 (b) An intervention program to assist gang members with successful
33 reentry into the community.

34 (2) The department shall report to the legislature on its findings
35 and recommendations by January 1, 2009.

1 chapter to Title 7 RCW; adding a new chapter to Title 9 RCW; creating
2 new sections; and prescribing penalties."

EFFECT: (1) Specifies that the cost to the Washington Association of Sheriffs and Police Chiefs (WASPC) to administer grants to law enforcement to target gang crime shall not exceed \$60,000 or four percent of appropriated funding, whichever is greater.

(2) Specifies that the cost to WASPC to administer grants to law enforcement for support of graffiti and tagging abatement programs shall not exceed \$25,000 or four percent of funding, whichever is greater.

(3) Adds an additional criterion for obtaining a civil injunction to prevent criminal street gang-related offenses and associated acts. This additional criterion is that the individual gang member sought to be enjoined must have been convicted of a crime included within the definition of "pattern of criminal street gang activity."

(4) Eliminates the provision limiting administrative costs for the temporary witness assistance program, to be administered by the Department of Community, Trade, and Economic Development.

(5) Technical amendments.

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