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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2712

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State of Washington

60th Legislature

2008 Regular Session

By House Appropriations (originally sponsored by Representatives Hurst, Ross, Dickerson, Newhouse, Conway, Morrell, Roach, Kelley, and Ormsby)

READ FIRST TIME 02/12/08.

1 AN ACT Relating to criminal street gangs; amending RCW 42.56.240,  
2 9.94A.533, 9.94A.535, 9.94A.545, and 10.22.010; reenacting and amending  
3 RCW 9.94A.715 and 9.94A.030; adding a new section to chapter 43.20A  
4 RCW; adding new sections to chapter 36.28A RCW; adding a new section to  
5 chapter 43.43 RCW; adding a new section to chapter 9.94A RCW; adding a  
6 new section to chapter 9A.48 RCW; adding a new section to chapter 4.24  
7 RCW; adding a new section to chapter 28A.300 RCW; adding new sections  
8 to chapter 43.31 RCW; adding a new section to chapter 72.09 RCW; adding  
9 a new chapter to Title 7 RCW; adding a new chapter to Title 9 RCW;  
10 creating new sections; and prescribing penalties.

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

12 PART I

13 FIVE PILOT PROJECTS FOR FISCAL YEARS 2009-2011

14 NEW SECTION. **Sec. 101.** (1) The legislature finds that the people  
15 of Washington state face a crisis brought upon by increased gang crime  
16 and violence, which is threatening public safety in communities across  
17 the state. Those who live in communities where gang membership is on  
18 the rise find themselves living with the daily threat of intimidation

1 and harassment. Ordinary citizens are increasingly vulnerable to gang-  
2 related crimes such as drug dealing, damage to real property, and theft  
3 of personal property and automobiles, or even assault, rape, and  
4 murder. Law enforcement officers, prosecutors, and local communities  
5 require assistance to combat this clear and present danger to the law-  
6 abiding residents of Washington. The work group on gang-related crime,  
7 established under Substitute Senate Bill No. 5987 in 2007, met  
8 regularly to study and make recommendations on the problems of gang-  
9 related crime in Washington.

10 (2) The legislature recognizes the efforts of the work group in  
11 trying to prevent, intervene, and suppress gang-related violence in the  
12 state. It is the consensus of the work group, and it is recognized by  
13 the legislature, that the sum of ten million dollars, or as much  
14 thereof as may be necessary, should be appropriated to the governor's  
15 juvenile justice advisory committee to help provide local community  
16 programs with the tools they need to reduce gang violence and protect  
17 the citizens of Washington from being victimized by violent street  
18 gangs.

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

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

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

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

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

35 (d) The costs of administration shall not exceed four percent of  
36 appropriated funding.

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

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

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

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

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

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

17 (ii) One member from each of the two largest caucuses of the house  
18 of representatives, appointed by the speaker of the house of  
19 representatives;

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

21 (iv) A prosecutor appointed by the Washington association of  
22 prosecuting attorneys;

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

25 (vi) The state superintendent of public instruction or the  
26 superintendent's designee;

27 (vii) The secretary of the department of corrections or the  
28 secretary's designee;

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

31 (ix) The chief of the Washington state patrol or the chief's  
32 designee;

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

35 (xi) A representative of the Washington state association of  
36 counties; and

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

- 1 (A) City law enforcement;  
2 (B) County law enforcement;  
3 (C) Court administrators including but not limited to juvenile  
4 court administrators; and  
5 (D) Experts in gang or delinquency prevention.

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

9 (b) Nonlegislative members shall be compensated in accordance with  
10 RCW 43.03.250 and shall be reimbursed for travel expenses incurred in  
11 carrying out the duties of the work group in accordance with RCW  
12 43.03.050 and 43.03.060, within available resources.

13 **PART II**  
14 **NEAR-TERM RELIEF FOR 2008**

15 **Two Million Dollar Washington Association Of Sheriffs And Police**  
16 **Chiefs Grant Program To Communities**

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

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

25 (2) Each grant applicant shall:

26 (a) Show a significant gang problem in the jurisdiction or  
27 jurisdictions receiving the grant;

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

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

32 (d) Demonstrate community coordination focusing on prevention,  
33 intervention, and suppression.

34 (3) The cost of administering the grants shall not exceed four  
35 percent of appropriated funding.

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

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

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

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

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

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

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

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

19          (3) The cost of administering the grants shall not exceed four  
20   percent of funding.

21   **PART III**

22   **STATEWIDE GANG INFORMATION DATABASE**

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

25           The Washington association of sheriffs and police chiefs shall work  
26   with the Washington state patrol to coordinate, designate, and  
27   recommend the use of a statewide database accessible by law enforcement  
28   agencies that utilizes existing resources, networks, or structures for  
29   assessing and addressing the problems associated with criminal street  
30   gangs.

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

34          (2) The Washington state patrol, in consultation with the  
35   Washington state association of sheriffs and police chiefs, shall adopt  
36   uniform state criteria for entering gangs, gang members, and gang

1 associates into the database. Data on individuals may be entered only  
2 based on reasonable suspicion of criminal activity or actual criminal  
3 activity and must be supported by documentation, where documentation is  
4 available.

5 (3) Information in the database shall be available to all local,  
6 state, and federal general authority law enforcement agencies, the  
7 Washington department of corrections, and the juvenile rehabilitation  
8 administration of the Washington department of social and health  
9 services solely for gang enforcement and for tracking gangs, gang  
10 members, and gang incidents. Information in the database shall not be  
11 available for public use.

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

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

22 (6) Access to the database shall be determined by the chief  
23 executive officer of each participating agency. Information about  
24 specific individuals in the database shall be automatically expunged  
25 if: (a) No new or updated information has been entered into the  
26 database within the previous five years; (b) there are no pending  
27 criminal charges against such person in any court in this state or  
28 another state or in any federal court; (c) the person has not been  
29 convicted of a new crime in this state, another state, or federal court  
30 within the last five years; and (d) it has been five years since the  
31 person completed his or her term of total confinement.

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

34 (a) Identify a system administrator that is responsible for  
35 annually auditing the use of the system within his or her respective  
36 agency to ensure agency compliance with policies established for the  
37 use of the database;

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

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

6 (d) Annually produce a gang threat assessment report including  
7 available data sources, uniform crime reports, record management  
8 systems, and entries into the statewide gang database. Local public  
9 schools shall also be encouraged to provide data to the local gang  
10 threat assessment report.

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

13 (9) Any public employee or public agency as defined in RCW  
14 4.24.470, or units of local government and its employees, as provided  
15 in RCW 36.28A.010, and the Washington association of sheriffs and  
16 police chiefs and its employees are immune from civil liability for  
17 damages arising from incidents involving a person who has been included  
18 in the database, unless it is shown that an employee acted with gross  
19 negligence or bad faith.

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

22 The following investigative, law enforcement, and crime victim  
23 information is exempt from public inspection and copying under this  
24 chapter:

25 (1) Specific intelligence information and specific investigative  
26 records compiled by investigative, law enforcement, and penology  
27 agencies, and state agencies vested with the responsibility to  
28 discipline members of any profession, the nondisclosure of which is  
29 essential to effective law enforcement or for the protection of any  
30 person's right to privacy;

31 (2) Information revealing the identity of persons who are witnesses  
32 to or victims of crime or who file complaints with investigative, law  
33 enforcement, or penology agencies, other than the commission, if  
34 disclosure would endanger any person's life, physical safety, or  
35 property. If at the time a complaint is filed the complainant, victim,  
36 or witness indicates a desire for disclosure or nondisclosure, such

1 desire shall govern. However, all complaints filed with the commission  
2 about any elected official or candidate for public office must be made  
3 in writing and signed by the complainant under oath;

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

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

13 (5) Information revealing the identity of child victims of sexual  
14 assault who are under age eighteen. Identifying information means the  
15 child victim's name, address, location, photograph, and in cases in  
16 which the child victim is a relative or stepchild of the alleged  
17 perpetrator, identification of the relationship between the child and  
18 the alleged perpetrator; and

19 (6) The statewide gang database referenced in section 301 of this  
20 act.

21 **PART IV**  
22 **CIVIL INJUNCTIONS**

23 NEW SECTION. **Sec. 401.** The legislature recognizes that counsel is  
24 not constitutionally required in civil actions (*In re Marriage of King*,  
25 No. 79978-4 (Wash. Dec. 6, 2007)), but believes that it should be  
26 required as a matter of public policy in actions brought against a  
27 respondent criminal street gang member under section 403 of this act  
28 who might risk the loss of procedural rights, in that the resulting  
29 injunction may be enforced by summary order holding the respondent in  
30 contempt of court.

31 NEW SECTION. **Sec. 402.** The definitions in this section apply  
32 throughout this chapter unless the context clearly requires otherwise.

33 (1) "Gang" means "criminal street gang" as defined in RCW  
34 9.94A.030.



1 (2) "Pattern of criminal street gang activity" has the same meaning  
2 as that term is defined in RCW 9.94A.030.

3 NEW SECTION. **Sec. 403.** (1) Equitable relief is authorized to  
4 enjoin, abate, and prevent criminal street gang activity, whether it is  
5 a private or public nuisance. Relief is authorized to enjoin criminal  
6 street gang-related offenses defined in RCW 9.94A.030(17) and  
7 associated noncriminal acts or acts which are known precursors to gang-  
8 related criminal acts as specified in subsection (2) of this section,  
9 upon a showing of the following elements by a preponderance of the  
10 evidence:

11 (a) A gang is named as a defendant and contains at least five  
12 members, at least two of whom possess active leadership roles at the  
13 time of application, and that any person sought to be enjoined is an  
14 active or current member of the gang;

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

19 (c) The defendants and other gang members have committed, during  
20 the five years immediately prior to the filing of the petition, a  
21 pattern of criminal street gang activity within the described  
22 geographical area. It is necessary to demonstrate a nexus between  
23 criminal gang activity and crime in the area;

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

30 (e) The plaintiffs have engaged in prevention and intervention  
31 planning to serve a reasonable number of the gang's total membership  
32 with prevention and intervention services to divert them from gang  
33 activity.

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

37 (a) Associating with other gang members;

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

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

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

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

11 (f) Consuming alcohol in public;

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

14 (h) Defacing any public or private property or possessing graffiti  
15 or tagging tools; or

16 (i) Violating any court defined curfew.

17 (3) The attorney general, the prosecuting attorney, or city  
18 attorney or city prosecutor may maintain an action of an equitable  
19 nature in the name of the state under this act. If a city applies for  
20 equitable relief under this act, the city shall seek and obtain  
21 approval of the prosecuting attorney of the county in which the city is  
22 located to maintain the action.

23 (4) Service of the summons and complaint on the defendant gang may  
24 be made by representative service of at least five active and current  
25 members of the gang, at least two of whom possess active leadership  
26 roles at the time of application. A person served in a representative  
27 capacity and who appears may request, if indigent, that an attorney be  
28 appointed to represent him or her at public expense. If the court  
29 appoints counsel, the plaintiff shall pay the cost of representation.  
30 Notice of this shall be provided in the summons. A person served in a  
31 representative capacity of the gang need not testify, but may testify  
32 and cross-examine witnesses and present testimony and other evidence on  
33 his or her own behalf.

34 (5) A court of competent jurisdiction shall conduct an evidentiary  
35 hearing on the complaint for equitable relief filed under this act  
36 whether or not any person served in a representative capacity of the  
37 gang appears to contest the issuance of the injunction. The plaintiff  
38 must prove by a preponderance of the evidence all of the elements set

1 forth in subsection (1) of this section that the persons served in a  
2 representative capacity are current and active members of the gang, and  
3 that the specific remedies requested are reasonable and necessary.

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

8 (7) An injunction issued under this section is not effective as to  
9 any person unless the plaintiff makes a showing to the court, which may  
10 be made ex parte, that the person is an active or current member or  
11 associate of the gang, as defined in RCW 9.94A.030, and after  
12 authorization by the court the person is served with personal notice of  
13 the injunction. The notice must state that the person may request an  
14 evidentiary hearing at which the plaintiffs must present evidence and  
15 show by preponderance of evidence that the defendant is a member of the  
16 gang. The individual need not testify, but may testify and may cross-  
17 examine witnesses for the plaintiffs and may present testimony and  
18 other evidence on his or her own behalf. The plaintiff may seek to add  
19 any person to an existing gang injunction at any time using the  
20 procedures in this subsection, regardless of whether the person was a  
21 gang member or associate at the time that the request for relief was  
22 requested or granted.

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

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

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

1 PART V

2 ADDITIONAL MEASURES TO COMBAT GANG-RELATED CRIME

3 Increase In Sentences For Adults Who Recruit Juveniles

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

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

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

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

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

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

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

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

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

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

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

31 (4) The following additional times shall be added to the standard  
32 sentence range for felony crimes committed after July 23, 1995, if the  
33 offender or an accomplice was armed with a deadly weapon other than a  
34 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
35 for one of the crimes listed in this subsection as eligible for any  
36 deadly weapon enhancements based on the classification of the completed  
37 felony crime. If the offender is being sentenced for more than one  
38 offense, the deadly weapon enhancement or enhancements must be added to

1 the total period of confinement for all offenses, regardless of which  
2 underlying offense is subject to a deadly weapon enhancement. If the  
3 offender or an accomplice was armed with a deadly weapon other than a  
4 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
5 for an anticipatory offense under chapter 9A.28 RCW to commit one of  
6 the crimes listed in this subsection as eligible for any deadly weapon  
7 enhancements, the following additional times shall be added to the  
8 standard sentence range determined under subsection (2) of this section  
9 based on the felony crime of conviction as classified under RCW  
10 9A.28.020:

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

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

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

20 (d) If the offender is being sentenced under (a), (b), and/or (c)  
21 of this subsection for any deadly weapon enhancements and the offender  
22 has previously been sentenced for any deadly weapon enhancements after  
23 July 23, 1995, under (a), (b), and/or (c) of this subsection or  
24 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly  
25 weapon enhancements under this subsection shall be twice the amount of  
26 the enhancement listed;

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

35 (f) The deadly weapon enhancements in this section shall apply to  
36 all felony crimes except the following: Possession of a machine gun,  
37 possessing a stolen firearm, drive-by shooting, theft of a firearm,

1 unlawful possession of a firearm in the first and second degree, and  
2 use of a machine gun in a felony;

3 (g) If the standard sentence range under this section exceeds the  
4 statutory maximum sentence for the offense, the statutory maximum  
5 sentence shall be the presumptive sentence unless the offender is a  
6 persistent offender. If the addition of a deadly weapon enhancement  
7 increases the sentence so that it would exceed the statutory maximum  
8 for the offense, the portion of the sentence representing the  
9 enhancement may not be reduced.

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

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

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

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

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

29 (6) An additional twenty-four months shall be added to the standard  
30 sentence range for any ranked offense involving a violation of chapter  
31 69.50 RCW if the offense was also a violation of RCW 69.50.435 or  
32 9.94A.605. All enhancements under this subsection shall run  
33 consecutively to all other sentencing provisions, for all offenses  
34 sentenced under this chapter.

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

1 (8)(a) The following additional times shall be added to the  
2 standard sentence range for felony crimes committed on or after July 1,  
3 2006, if the offense was committed with sexual motivation, as that term  
4 is defined in RCW 9.94A.030. If the offender is being sentenced for  
5 more than one offense, the sexual motivation enhancement must be added  
6 to the total period of total confinement for all offenses, regardless  
7 of which underlying offense is subject to a sexual motivation  
8 enhancement. If the offender committed the offense with sexual  
9 motivation and the offender is being sentenced for an anticipatory  
10 offense under chapter 9A.28 RCW, the following additional times shall  
11 be added to the standard sentence range determined under subsection (2)  
12 of this section based on the felony crime of conviction as classified  
13 under RCW 9A.28.020:

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

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

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

22 (iv) If the offender is being sentenced for any sexual motivation  
23 enhancements under (i), (ii), and/or (iii) of this subsection and the  
24 offender has previously been sentenced for any sexual motivation  
25 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of  
26 this subsection, all sexual motivation enhancements under this  
27 subsection shall be twice the amount of the enhancement listed;

28 (b) Notwithstanding any other provision of law, all sexual  
29 motivation enhancements under this subsection are mandatory, shall be  
30 served in total confinement, and shall run consecutively to all other  
31 sentencing provisions, including other sexual motivation enhancements,  
32 for all offenses sentenced under this chapter. However, whether or not  
33 a mandatory minimum term has expired, an offender serving a sentence  
34 under this subsection may be granted an extraordinary medical placement  
35 when authorized under RCW 9.94A.728(4);

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



1 (d) If the standard sentence range under this subsection exceeds  
2 the statutory maximum sentence for the offense, the statutory maximum  
3 sentence shall be the presumptive sentence unless the offender is a  
4 persistent offender. If the addition of a sexual motivation  
5 enhancement increases the sentence so that it would exceed the  
6 statutory maximum for the offense, the portion of the sentence  
7 representing the enhancement may not be reduced;

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

11 (f) Nothing in this subsection prevents a sentencing court from  
12 imposing a sentence outside the standard sentence range pursuant to RCW  
13 9.94A.535.

14 (9) An additional one-year enhancement shall be added to the  
15 standard sentence range for the felony crimes of RCW 9A.44.073,  
16 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
17 or after July 22, 2007, if the offender engaged, agreed, or offered to  
18 engage the victim in the sexual conduct in return for a fee. If the  
19 offender is being sentenced for more than one offense, the one-year  
20 enhancement must be added to the total period of total confinement for  
21 all offenses, regardless of which underlying offense is subject to the  
22 enhancement. If the offender is being sentenced for an anticipatory  
23 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,  
24 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,  
25 solicited another, or conspired to engage, agree, or offer to engage  
26 the victim in (~~{the}~~) the sexual conduct in return for a fee, an  
27 additional one-year enhancement shall be added to the standard sentence  
28 range determined under subsection (2) of this section. For purposes of  
29 this subsection, "sexual conduct" means sexual intercourse or sexual  
30 contact, both as defined in chapter 9A.44 RCW.

31 (10)(a) For a person age eighteen or older convicted of any  
32 criminal street gang-related felony offense for which the person  
33 compensated, threatened, or solicited a minor in order to involve the  
34 minor in the commission of the felony offense, the standard sentence  
35 range is determined by locating the sentencing grid sentence range  
36 defined by the appropriate offender score and the seriousness level of  
37 the completed crime, and multiplying the range by one hundred twenty-  
38 five percent. If the standard sentence range under this subsection

1 exceeds the statutory maximum sentence for the offense, the statutory  
2 maximum sentence is the presumptive sentence unless the offender is a  
3 persistent offender.

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

7 (c) The increased penalty specified in (a) of this subsection is  
8 unavailable in the event that the prosecution gives notice that it will  
9 seek an exceptional sentence based on an aggravating factor under RCW  
10 9.94A.535.

11 NEW SECTION. Sec. 502. A new section is added to chapter 9.94A  
12 RCW to read as follows:

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

18 (2) The state has the burden of proving a special allegation made  
19 under this section beyond a reasonable doubt. If a jury is had, the  
20 jury shall, if it finds the defendant guilty, also find a special  
21 verdict as to whether the criminal street gang-related felony offense  
22 involved the compensation, threatening, or solicitation of a minor in  
23 order to involve that minor in the commission of the felony offense.  
24 If no jury is had, the court shall make a finding of fact as to whether  
25 the criminal street gang-related felony offense involved the  
26 compensation, threatening, or solicitation of a minor in order to  
27 involve that minor in the commission of the felony offense.

#### 28 **Expansion Of The List Of Aggravating Factors**

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

31 The court may impose a sentence outside the standard sentence range  
32 for an offense if it finds, considering the purpose of this chapter,  
33 that there are substantial and compelling reasons justifying an  
34 exceptional sentence. Facts supporting aggravated sentences, other

1 than the fact of a prior conviction, shall be determined pursuant to  
2 the provisions of RCW 9.94A.537.

3 Whenever a sentence outside the standard sentence range is imposed,  
4 the court shall set forth the reasons for its decision in written  
5 findings of fact and conclusions of law. A sentence outside the  
6 standard sentence range shall be a determinate sentence.

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

10 A departure from the standards in RCW 9.94A.589 (1) and (2)  
11 governing whether sentences are to be served consecutively or  
12 concurrently is an exceptional sentence subject to the limitations in  
13 this section, and may be appealed by the offender or the state as set  
14 forth in RCW 9.94A.585 (2) through (6).

15 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

30 (e) The defendant's capacity to appreciate the wrongfulness of his  
31 or her conduct, or to conform his or her conduct to the requirements of  
32 the law, was significantly impaired. Voluntary use of drugs or alcohol  
33 is excluded.

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

37 (g) The operation of the multiple offense policy of RCW 9.94A.589

1 results in a presumptive sentence that is clearly excessive in light of  
2 the purpose of this chapter, as expressed in RCW 9.94A.010.

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

6 (2) Aggravating Circumstances - Considered and Imposed by the Court  
7 The trial court may impose an aggravated exceptional sentence  
8 without a finding of fact by a jury under the following circumstances:

9 (a) The defendant and the state both stipulate that justice is best  
10 served by the imposition of an exceptional sentence outside the  
11 standard range, and the court finds the exceptional sentence to be  
12 consistent with and in furtherance of the interests of justice and the  
13 purposes of the sentencing reform act.

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

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

21 (d) The failure to consider the defendant's prior criminal history  
22 which was omitted from the offender score calculation pursuant to RCW  
23 9.94A.525 results in a presumptive sentence that is clearly too  
24 lenient.

25 (3) Aggravating Circumstances - Considered by a Jury -Imposed by  
26 the Court

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

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

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

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

37 (d) The current offense was a major economic offense or series of

1 offenses, so identified by a consideration of any of the following  
2 factors:

3 (i) The current offense involved multiple victims or multiple  
4 incidents per victim;

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

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

9 (iv) The defendant used his or her position of trust, confidence,  
10 or fiduciary responsibility to facilitate the commission of the current  
11 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (i) The offense resulted in the pregnancy of a child victim of  
11 rape.

12 (j) The defendant knew that the victim of the current offense was  
13 a youth who was not residing with a legal custodian and the defendant  
14 established or promoted the relationship for the primary purpose of  
15 victimization.

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

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

22 (m) The offense involved a high degree of sophistication or  
23 planning.

24 (n) The defendant used his or her position of trust, confidence, or  
25 fiduciary responsibility to facilitate the commission of the current  
26 offense.

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

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

30 (q) The defendant demonstrated or displayed an egregious lack of  
31 remorse.

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

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

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

1 (u) The current offense is a burglary and the victim of the  
2 burglary was present in the building or residence when the crime was  
3 committed.

4 (v) The offense was committed against a law enforcement officer who  
5 was performing his or her official duties at the time of the offense,  
6 the offender knew that the victim was a law enforcement officer, and  
7 the victim's status as a law enforcement officer is not an element of  
8 the offense.

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

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

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

17 (z)(i)(A) The current offense is theft in the first degree, theft  
18 in the second degree, possession of stolen property in the first  
19 degree, or possession of stolen property in the second degree; (B) the  
20 stolen property involved is metal property; and (C) the property damage  
21 to the victim caused in the course of the theft of metal property is  
22 more than three times the value of the stolen metal property, or the  
23 theft of the metal property creates a public hazard.

24 (ii) For purposes of this subsection, "metal property" means  
25 commercial metal property or nonferrous metal property, as defined in  
26 RCW 19.290.010.

27 (aa) The defendant committed the offense with the intent to  
28 directly or indirectly cause any benefit, aggrandizement, gain, profit,  
29 or other advantage to or for a criminal street gang as defined in RCW  
30 9.94A.030, its reputation, influence, or membership.

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

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

34 (1) Except as provided in RCW 9.94A.650 and in subsection (2) of  
35 this section, on all sentences of confinement for one year or less, in  
36 which the offender is convicted of a sex offense, a violent offense, a

1 crime against a person under RCW 9.94A.411, or felony violation of  
2 chapter 69.50 or 69.52 RCW or an attempt, conspiracy, or solicitation  
3 to commit such a crime, the court may impose up to one year of  
4 community custody, subject to conditions and sanctions as authorized in  
5 RCW 9.94A.715 and 9.94A.720. An offender shall be on community custody  
6 as of the date of sentencing. However, during the time for which the  
7 offender is in total or partial confinement pursuant to the sentence or  
8 a violation of the sentence, the period of community custody shall  
9 toll.

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

13 (b) If the offender is a criminal street gang associate or member  
14 and is found guilty of unlawful possession of a firearm under RCW  
15 9.41.040, the court shall impose a term of community custody under RCW  
16 9.94A.715.

17 (c) In a criminal case in which there has been a special  
18 allegation, the state shall prove by a preponderance of the evidence  
19 that the accused is a criminal street gang member or associate as  
20 defined in RCW 9.94A.030 and has committed the crime of unlawful  
21 possession of a firearm. The court shall make a finding of fact of  
22 whether or not the accused was a criminal street gang member or  
23 associate at the time of the commission of the crime, or if a jury  
24 trial is had, the jury shall, if it finds the defendant guilty, also  
25 find a special verdict as to whether or not the accused was a criminal  
26 street gang member or associate during the commission of the crime.

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

29 (1) When a court sentences a person to the custody of the  
30 department for a sex offense not sentenced under RCW 9.94A.712, a  
31 violent offense, any crime against persons under RCW 9.94A.411(2), an  
32 offense involving the unlawful possession of a firearm under RCW  
33 9.41.040, where the offender is a criminal street gang member or  
34 associate, or a felony offense under chapter 69.50 or 69.52 RCW,  
35 committed on or after July 1, 2000, or when a court sentences a person  
36 to a term of confinement of one year or less for a violation of RCW  
37 9A.44.130(~~(+10+)~~) (11)(a) committed on or after June 7, 2006, the court



1 shall in addition to the other terms of the sentence, sentence the  
2 offender to community custody for the community custody range  
3 established under RCW 9.94A.850 or up to the period of earned release  
4 awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer.  
5 The community custody shall begin: (a) Upon completion of the term of  
6 confinement; (b) at such time as the offender is transferred to  
7 community custody in lieu of earned release in accordance with RCW  
8 9.94A.728 (1) and (2); or (c) with regard to offenders sentenced under  
9 RCW 9.94A.660, upon failure to complete or administrative termination  
10 from the special drug offender sentencing alternative program. Except  
11 as provided in RCW 9.94A.501, the department shall supervise any  
12 sentence of community custody imposed under this section.

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

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

1 system using radio frequency or active or passive global positioning  
2 system technology.

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

9 (3) If an offender violates conditions imposed by the court or the  
10 department pursuant to this section during community custody, the  
11 department may transfer the offender to a more restrictive confinement  
12 status and impose other available sanctions as provided in RCW  
13 9.94A.737 and 9.94A.740.

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

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

33 (6) Within the funds available for community custody, the  
34 department shall determine conditions and duration of community custody  
35 on the basis of risk to community safety, and shall supervise offenders  
36 during community custody on the basis of risk to community safety and  
37 conditions imposed by the court. The secretary shall adopt rules to  
38 implement the provisions of this subsection.

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

8 **Making Subsequent Convictions Of Malicious Mischief 3 A Gross**  
9 **Misdemeanor Offense**

10 NEW SECTION. **Sec. 506.** A new section is added to chapter 9A.48  
11 RCW to read as follows:

12 (1) A person is guilty of criminal street gang tagging and graffiti  
13 if he or she commits malicious mischief in the third degree under RCW  
14 9A.48.090(1)(b) and he or she:

15 (a) Has multiple current convictions for malicious mischief in the  
16 third degree offenses under RCW 9A.48.090(1)(b); or

17 (b) Has previously been convicted for a malicious mischief in the  
18 third degree offense under RCW 9A.48.090(1)(b) or a comparable offense  
19 under a municipal code provision of any city or town; and

20 (c) The current offense or one of the current offenses is a  
21 "criminal street gang-related offense" as defined in RCW 9.94A.030.

22 (2) Criminal street gang tagging and graffiti is a gross  
23 misdemeanor offense.

24 **Civil Cause Of Action For Graffiti And Tagging**

25 NEW SECTION. **Sec. 507.** A new section is added to chapter 4.24 RCW  
26 to read as follows:

27 (1) An adult or emancipated minor who commits criminal street gang  
28 tagging and graffiti under section 506 of this act by causing physical  
29 damage to the property of another is liable in addition to actual  
30 damages, for a penalty to the owner in the amount of the value of the  
31 damaged property not to exceed one thousand dollars, plus an additional  
32 penalty of not less than one hundred dollars nor more than two hundred  
33 dollars, plus all reasonable attorneys' fees and court costs expended  
34 by the owner.

1 (2) A conviction for violation of section 506 of this act is not a  
2 condition precedent to maintenance of a civil action authorized by this  
3 section.

4 (3) An owner demanding payment of a penalty under subsection (1) of  
5 this section shall give written notice to the person or persons from  
6 whom the penalty is sought.

7 **Sec. 508.** RCW 10.22.010 and 1999 c 143 s 45 are each amended to  
8 read as follows:

9 When a defendant is prosecuted in a criminal action for a  
10 misdemeanor, other than a violation of section 506 of this act, for  
11 which the person injured by the act constituting the offense has a  
12 remedy by a civil action, the offense may be compromised as provided in  
13 RCW 10.22.020, except when it was committed:

- 14 (1) By or upon an officer while in the execution of the duties of  
15 his office(~~(-)~~);
- 16 (2) Riotously;
- 17 (3) With an intent to commit a felony; or
- 18 (4) By one family or household member against another as defined in  
19 RCW 10.99.020 and was a crime of domestic violence as defined in RCW  
20 10.99.020.

21 **Criminal Street Gang Definition**

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

25 Unless the context clearly requires otherwise, the definitions in  
26 this section apply throughout this chapter.

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

29 (2) "Collect," or any derivative thereof, "collect and remit," or  
30 "collect and deliver," when used with reference to the department,  
31 means that the department, either directly or through a collection  
32 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
33 and enforcing the offender's sentence with regard to the legal  
34 financial obligation, receiving payment thereof from the offender, and,

1 consistent with current law, delivering daily the entire payment to the  
2 superior court clerk without depositing it in a departmental account.

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

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

8 (5) "Community custody" means that portion of an offender's  
9 sentence of confinement in lieu of earned release time or imposed  
10 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
11 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
12 community subject to controls placed on the offender's movement and  
13 activities by the department. For offenders placed on community  
14 custody for crimes committed on or after July 1, 2000, the department  
15 shall assess the offender's risk of reoffense and may establish and  
16 modify conditions of community custody, in addition to those imposed by  
17 the court, based upon the risk to community safety.

18 (6) "Community custody range" means the minimum and maximum period  
19 of community custody included as part of a sentence under RCW  
20 9.94A.715, as established by the commission or the legislature under  
21 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

22 (7) "Community placement" means that period during which the  
23 offender is subject to the conditions of community custody and/or  
24 postrelease supervision, which begins either upon completion of the  
25 term of confinement (postrelease supervision) or at such time as the  
26 offender is transferred to community custody in lieu of earned release.  
27 Community placement may consist of entirely community custody, entirely  
28 postrelease supervision, or a combination of the two.

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

32 (9) "Community restitution" means compulsory service, without  
33 compensation, performed for the benefit of the community by the  
34 offender.

35 (10) "Community supervision" means a period of time during which a  
36 convicted offender is subject to crime-related prohibitions and other  
37 sentence conditions imposed by a court pursuant to this chapter or RCW  
38 16.52.200(6) or 46.61.524. Where the court finds that any offender has

1 a chemical dependency that has contributed to his or her offense, the  
2 conditions of supervision may, subject to available resources, include  
3 treatment. For purposes of the interstate compact for out-of-state  
4 supervision of parolees and probationers, RCW 9.95.270, community  
5 supervision is the functional equivalent of probation and should be  
6 considered the same as probation by other states.

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

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

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

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

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

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

29 (c) The determination of a defendant's criminal history is distinct  
30 from the determination of an offender score. A prior conviction that  
31 was not included in an offender score calculated pursuant to a former  
32 version of the sentencing reform act remains part of the defendant's  
33 criminal history.

34 (15) "Criminal street gang" means any ongoing organization,  
35 association, or group of three or more persons, whether formal or  
36 informal, having a common name or common identifying sign or symbol,  
37 having as one of its primary activities the commission of criminal  
38 acts, and whose members or associates individually or collectively

1 engage in or have engaged in a pattern of criminal street gang  
2 activity. This definition does not apply to employees engaged in  
3 concerted activities for their mutual aid and protection, or to the  
4 activities of labor and bona fide nonprofit organizations or their  
5 members or agents.

6 (16) "Criminal street gang associate or member" means any person  
7 who actively participates in any criminal street gang and who  
8 intentionally promotes, furthers, or assists in any criminal act by the  
9 criminal street gang.

10 (17) "Criminal street gang-related offense" means any felony or  
11 misdemeanor offense, whether in this state or elsewhere, that is  
12 committed for the benefit of, at the direction of, or in association  
13 with any criminal street gang, or is committed with the intent to  
14 promote, further, or assist in any criminal conduct by the gang, or is  
15 committed for one or more of the following reasons:

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

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

19 (c) To exact revenge or retribution for the gang or any member of  
20 the gang;

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

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

26 (f) To provide the gang with any advantage in, or any control or  
27 dominance over any criminal market sector, including, but not limited  
28 to, manufacturing, delivering, or selling any controlled substance  
29 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
30 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
31 RCW); human trafficking (RCW 9A.40.100); or promoting pornography  
32 (chapter 9.68 RCW).

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

37 ~~((+16+))~~ (19) "Day reporting" means a program of enhanced  
38 supervision designed to monitor the offender's daily activities and

1 compliance with sentence conditions, and in which the offender is  
2 required to report daily to a specific location designated by the  
3 department or the sentencing court.

4 ~~((+17+))~~ (20) "Department" means the department of corrections.

5 ~~((+18+))~~ (21) "Determinate sentence" means a sentence that states  
6 with exactitude the number of actual years, months, or days of total  
7 confinement, of partial confinement, of community supervision, the  
8 number of actual hours or days of community restitution work, or  
9 dollars or terms of a legal financial obligation. The fact that an  
10 offender through earned release can reduce the actual period of  
11 confinement shall not affect the classification of the sentence as a  
12 determinate sentence.

13 ~~((+19+))~~ (22) "Disposable earnings" means that part of the earnings  
14 of an offender remaining after the deduction from those earnings of any  
15 amount required by law to be withheld. For the purposes of this  
16 definition, "earnings" means compensation paid or payable for personal  
17 services, whether denominated as wages, salary, commission, bonuses, or  
18 otherwise, and, notwithstanding any other provision of law making the  
19 payments exempt from garnishment, attachment, or other process to  
20 satisfy a court-ordered legal financial obligation, specifically  
21 includes periodic payments pursuant to pension or retirement programs,  
22 or insurance policies of any type, but does not include payments made  
23 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
24 or Title 74 RCW.

25 ~~((+20+))~~ (23) "Drug offender sentencing alternative" is a  
26 sentencing option available to persons convicted of a felony offense  
27 other than a violent offense or a sex offense and who are eligible for  
28 the option under RCW 9.94A.660.

29 ~~((+21+))~~ (24) "Drug offense" means:

30 (a) Any felony violation of chapter 69.50 RCW except possession of  
31 a controlled substance (RCW 69.50.4013) or forged prescription for a  
32 controlled substance (RCW 69.50.403);

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

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



1        ~~((22))~~ (25) "Earned release" means earned release from  
2 confinement as provided in RCW 9.94A.728.

3        ~~((23))~~ (26) "Escape" means:

4        (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
5 first degree (RCW 9A.76.110), escape in the second degree (RCW  
6 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
7 willful failure to return from work release (RCW 72.65.070), or willful  
8 failure to be available for supervision by the department while in  
9 community custody (RCW 72.09.310); or

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

13        ~~((24))~~ (27) "Felony traffic offense" means:

14        (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
15 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
16 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
17 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
18 felony physical control of a vehicle while under the influence of  
19 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

23        ~~((25))~~ (28) "Fine" means a specific sum of money ordered by the  
24 sentencing court to be paid by the offender to the court over a  
25 specific period of time.

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

29        ~~((27))~~ (30) "Home detention" means a program of partial  
30 confinement available to offenders wherein the offender is confined in  
31 a private residence subject to electronic surveillance.

32        ~~((28))~~ (31) "Legal financial obligation" means a sum of money  
33 that is ordered by a superior court of the state of Washington for  
34 legal financial obligations which may include restitution to the  
35 victim, statutorily imposed crime victims' compensation fees as  
36 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
37 drug funds, court-appointed attorneys' fees, and costs of defense,  
38 fines, and any other financial obligation that is assessed to the

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

8 ~~((+29+))~~ (32) "Most serious offense" means any of the following  
9 felonies or a felony attempt to commit any of the following felonies:

10 (a) Any felony defined under any law as a class A felony or  
11 criminal solicitation of or criminal conspiracy to commit a class A  
12 felony;

13 (b) Assault in the second degree;

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

15 (d) Child molestation in the second degree;

16 (e) Controlled substance homicide;

17 (f) Extortion in the first degree;

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

19 (h) Indecent liberties;

20 (i) Kidnapping in the second degree;

21 (j) Leading organized crime;

22 (k) Manslaughter in the first degree;

23 (l) Manslaughter in the second degree;

24 (m) Promoting prostitution in the first degree;

25 (n) Rape in the third degree;

26 (o) Robbery in the second degree;

27 (p) Sexual exploitation;

28 (q) Vehicular assault, when caused by the operation or driving of  
29 a vehicle by a person while under the influence of intoxicating liquor  
30 or any drug or by the operation or driving of a vehicle in a reckless  
31 manner;

32 (r) Vehicular homicide, when proximately caused by the driving of  
33 any vehicle by any person while under the influence of intoxicating  
34 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
35 any vehicle in a reckless manner;

36 (s) Any other class B felony offense with a finding of sexual  
37 motivation;

1 (t) Any other felony with a deadly weapon verdict under RCW  
2 9.94A.602;

3 (u) Any felony offense in effect at any time prior to December 2,  
4 1993, that is comparable to a most serious offense under this  
5 subsection, or any federal or out-of-state conviction for an offense  
6 that under the laws of this state would be a felony classified as a  
7 most serious offense under this subsection;

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

13 (ii) A prior conviction for indecent liberties under RCW  
14 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
15 if: (A) The crime was committed against a child under the age of  
16 fourteen; or (B) the relationship between the victim and perpetrator is  
17 included in the definition of indecent liberties under RCW  
18 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
19 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
20 through July 27, 1997.

21 (~~(+30+)~~) (33) "Nonviolent offense" means an offense which is not a  
22 violent offense.

23 (~~(+31+)~~) (34) "Offender" means a person who has committed a felony  
24 established by state law and is eighteen years of age or older or is  
25 less than eighteen years of age but whose case is under superior court  
26 jurisdiction under RCW 13.04.030 or has been transferred by the  
27 appropriate juvenile court to a criminal court pursuant to RCW  
28 13.40.110. Throughout this chapter, the terms "offender" and  
29 "defendant" are used interchangeably.

30 (~~(+32+)~~) (35) "Partial confinement" means confinement for no more  
31 than one year in a facility or institution operated or utilized under  
32 contract by the state or any other unit of government, or, if home  
33 detention or work crew has been ordered by the court, in an approved  
34 residence, for a substantial portion of each day with the balance of  
35 the day spent in the community. Partial confinement includes work  
36 release, home detention, work crew, and a combination of work crew and  
37 home detention.

38 (~~(+33+)~~) (36) "Pattern of criminal street gang activity" means:

- 1       (a) The commission, attempt, conspiracy, or solicitation of, or any  
2 prior juvenile adjudication of or adult conviction of, two or more of  
3 the following criminal street gang-related offenses:
- 4       (i) Any "serious violent" felony offense as defined in RCW  
5 9.94A.030, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of  
6 a Child 1 (RCW 9A.36.120);
- 7       (ii) Any "violent" offense as defined by RCW 9.94A.030, excluding  
8 Assault of a Child 2 (RCW 9A.36.130);
- 9       (iii) Deliver or Possession with Intent to Deliver a Controlled  
10 Substance (chapter 69.50 RCW);
- 11       (iv) Any violation of the firearms and dangerous weapon act  
12 (chapter 9.41 RCW);
- 13       (v) Theft of a Firearm (RCW 9A.56.300);
- 14       (vi) Possession of a Stolen Firearm (RCW 9A.56.310);
- 15       (vii) Malicious Harassment (RCW 9A.36.080);
- 16       (viii) Harassment where a subsequent violation or deadly threat is  
17 made (RCW 9A.46.020(2)(b));
- 18       (ix) Criminal Gang Intimidation (RCW 9A.46.120);
- 19       (x) Any felony conviction by a person eighteen years of age or  
20 older with a special finding of involving a juvenile in a felony  
21 offense under section 502 of this act;
- 22       (xi) Residential Burglary (RCW 9A.52.025);
- 23       (xii) Burglary 2 (RCW 9A.52.030);
- 24       (xiii) Malicious Mischief 1 (RCW 9A.48.070);
- 25       (xiv) Malicious Mischief 2 (RCW 9A.48.080);
- 26       (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
- 27       (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
- 28       (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
- 29       (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
30 9A.56.075);
- 31       (xix) Extortion 1 (RCW 9A.56.120);
- 32       (xx) Extortion 2 (RCW 9A.56.130);
- 33       (xxi) Intimidating a Witness (RCW 9A.72.110);
- 34       (xxii) Tampering with a Witness (RCW 9A.72.120);
- 35       (xxiii) Reckless Endangerment (RCW 9A.36.050);
- 36       (xxiv) Coercion (RCW 9A.36.070);
- 37       (xxv) Harassment (RCW 9A.46.020); or
- 38       (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

1 (b) That at least one of the offenses listed in (a) of this  
2 subsection shall have occurred after July 1, 2008;

3 (c) That the most recent committed offense listed in (a) of this  
4 subsection occurred within three years of a prior offense listed in (a)  
5 of this subsection; and

6 (d) Of the offenses that were committed in (a) of this subsection,  
7 the offenses occurred on separate occasions or were committed by two or  
8 more persons.

9 (37) "Persistent offender" is an offender who:

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

12 (ii) Has, before the commission of the offense under (a) of this  
13 subsection, been convicted as an offender on at least two separate  
14 occasions, whether in this state or elsewhere, of felonies that under  
15 the laws of this state would be considered most serious offenses and  
16 would be included in the offender score under RCW 9.94A.525; provided  
17 that of the two or more previous convictions, at least one conviction  
18 must have occurred before the commission of any of the other most  
19 serious offenses for which the offender was previously convicted; or

20 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
21 of a child in the first degree, child molestation in the first degree,  
22 rape in the second degree, rape of a child in the second degree, or  
23 indecent liberties by forcible compulsion; (B) any of the following  
24 offenses with a finding of sexual motivation: Murder in the first  
25 degree, murder in the second degree, homicide by abuse, kidnapping in  
26 the first degree, kidnapping in the second degree, assault in the first  
27 degree, assault in the second degree, assault of a child in the first  
28 degree, assault of a child in the second degree, or burglary in the  
29 first degree; or (C) an attempt to commit any crime listed in this  
30 subsection (~~((+33+))~~) (37)(b)(i); and

31 (ii) Has, before the commission of the offense under (b)(i) of this  
32 subsection, been convicted as an offender on at least one occasion,  
33 whether in this state or elsewhere, of an offense listed in (b)(i) of  
34 this subsection or any federal or out-of-state offense or offense under  
35 prior Washington law that is comparable to the offenses listed in  
36 (b)(i) of this subsection. A conviction for rape of a child in the  
37 first degree constitutes a conviction under (b)(i) of this subsection  
38 only when the offender was sixteen years of age or older when the

1 offender committed the offense. A conviction for rape of a child in  
2 the second degree constitutes a conviction under (b)(i) of this  
3 subsection only when the offender was eighteen years of age or older  
4 when the offender committed the offense.

5 ~~((34))~~ (38) "Postrelease supervision" is that portion of an  
6 offender's community placement that is not community custody.

7 ~~((35))~~ (39) "Predatory" means: (a) The perpetrator of the crime  
8 was a stranger to the victim, as defined in this section; (b) the  
9 perpetrator established or promoted a relationship with the victim  
10 prior to the offense and the victimization of the victim was a  
11 significant reason the perpetrator established or promoted the  
12 relationship; or (c) the perpetrator was: (i) A teacher, counselor,  
13 volunteer, or other person in authority in any public or private school  
14 and the victim was a student of the school under his or her authority  
15 or supervision. For purposes of this subsection, "school" does not  
16 include home-based instruction as defined in RCW 28A.225.010; (ii) a  
17 coach, trainer, volunteer, or other person in authority in any  
18 recreational activity and the victim was a participant in the activity  
19 under his or her authority or supervision; or (iii) a pastor, elder,  
20 volunteer, or other person in authority in any church or religious  
21 organization, and the victim was a member or participant of the  
22 organization under his or her authority.

23 ~~((36))~~ (40) "Private school" means a school regulated under  
24 chapter 28A.195 or 28A.205 RCW.

25 ~~((37))~~ (41) "Public school" has the same meaning as in RCW  
26 28A.150.010.

27 ~~((38))~~ (42) "Restitution" means a specific sum of money ordered  
28 by the sentencing court to be paid by the offender to the court over a  
29 specified period of time as payment of damages. The sum may include  
30 both public and private costs.

31 ~~((39))~~ (43) "Risk assessment" means the application of an  
32 objective instrument supported by research and adopted by the  
33 department for the purpose of assessing an offender's risk of  
34 reoffense, taking into consideration the nature of the harm done by the  
35 offender, place and circumstances of the offender related to risk, the  
36 offender's relationship to any victim, and any information provided to  
37 the department by victims. The results of a risk assessment shall not  
38 be based on unconfirmed or unconfirmable allegations.

1           (~~(40)~~) (44) "Serious traffic offense" means:  
2           (a) Nonfelony driving while under the influence of intoxicating  
3 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
4 while under the influence of intoxicating liquor or any drug (RCW  
5 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
6 attended vehicle (RCW 46.52.020(5)); or  
7           (b) Any federal, out-of-state, county, or municipal conviction for  
8 an offense that under the laws of this state would be classified as a  
9 serious traffic offense under (a) of this subsection.

10          (~~(41)~~) (45) "Serious violent offense" is a subcategory of violent  
11 offense and means:  
12          (a)(i) Murder in the first degree;  
13               (ii) Homicide by abuse;  
14               (iii) Murder in the second degree;  
15               (iv) Manslaughter in the first degree;  
16               (v) Assault in the first degree;  
17               (vi) Kidnapping in the first degree;  
18               (vii) Rape in the first degree;  
19               (viii) Assault of a child in the first degree; or  
20               (ix) An attempt, criminal solicitation, or criminal conspiracy to  
21 commit one of these felonies; or  
22          (b) Any federal or out-of-state conviction for an offense that  
23 under the laws of this state would be a felony classified as a serious  
24 violent offense under (a) of this subsection.

25          (~~(42)~~) (46) "Sex offense" means:  
26          (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
27 RCW 9A.44.130(~~(11)~~) (12);  
28               (ii) A violation of RCW 9A.64.020;  
29               (iii) A felony that is a violation of chapter 9.68A RCW other than  
30 RCW 9.68A.080; or  
31               (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
32 criminal solicitation, or criminal conspiracy to commit such crimes;  
33          (b) Any conviction for a felony offense in effect at any time prior  
34 to July 1, 1976, that is comparable to a felony classified as a sex  
35 offense in (a) of this subsection;  
36          (c) A felony with a finding of sexual motivation under RCW  
37 9.94A.835 or 13.40.135; or

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

4 (~~(43)~~) (47) "Sexual motivation" means that one of the purposes  
5 for which the defendant committed the crime was for the purpose of his  
6 or her sexual gratification.

7 (~~(44)~~) (48) "Standard sentence range" means the sentencing  
8 court's discretionary range in imposing a nonappealable sentence.

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

13 (~~(46)~~) (50) "Stranger" means that the victim did not know the  
14 offender twenty-four hours before the offense.

15 (~~(47)~~) (51) "Total confinement" means confinement inside the  
16 physical boundaries of a facility or institution operated or utilized  
17 under contract by the state or any other unit of government for twenty-  
18 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

19 (~~(48)~~) (52) "Transition training" means written and verbal  
20 instructions and assistance provided by the department to the offender  
21 during the two weeks prior to the offender's successful completion of  
22 the work ethic camp program. The transition training shall include  
23 instructions in the offender's requirements and obligations during the  
24 offender's period of community custody.

25 (~~(49)~~) (53) "Victim" means any person who has sustained  
26 emotional, psychological, physical, or financial injury to person or  
27 property as a direct result of the crime charged.

28 (~~(50)~~) (54) "Violent offense" means:

29 (a) Any of the following felonies:

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

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

34 (iii) Manslaughter in the first degree;

35 (iv) Manslaughter in the second degree;

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

37 (vi) Kidnapping in the second degree;

38 (vii) Arson in the second degree;



- 1 (viii) Assault in the second degree;
- 2 (ix) Assault of a child in the second degree;
- 3 (x) Extortion in the first degree;
- 4 (xi) Robbery in the second degree;
- 5 (xii) Drive-by shooting;
- 6 (xiii) Vehicular assault, when caused by the operation or driving
- 7 of a vehicle by a person while under the influence of intoxicating
- 8 liquor or any drug or by the operation or driving of a vehicle in a
- 9 reckless manner; and
- 10 (xiv) Vehicular homicide, when proximately caused by the driving of
- 11 any vehicle by any person while under the influence of intoxicating
- 12 liquor or any drug as defined by RCW 46.61.502, or by the operation of
- 13 any vehicle in a reckless manner;
- 14 (b) Any conviction for a felony offense in effect at any time prior
- 15 to July 1, 1976, that is comparable to a felony classified as a violent
- 16 offense in (a) of this subsection; and
- 17 (c) Any federal or out-of-state conviction for an offense that
- 18 under the laws of this state would be a felony classified as a violent
- 19 offense under (a) or (b) of this subsection.
- 20 (~~(+51+)~~) (55) "Work crew" means a program of partial confinement
- 21 consisting of civic improvement tasks for the benefit of the community
- 22 that complies with RCW 9.94A.725.
- 23 (~~(+52+)~~) (56) "Work ethic camp" means an alternative incarceration
- 24 program as provided in RCW 9.94A.690 designed to reduce recidivism and
- 25 lower the cost of corrections by requiring offenders to complete a
- 26 comprehensive array of real-world job and vocational experiences,
- 27 character-building work ethics training, life management skills
- 28 development, substance abuse rehabilitation, counseling, literacy
- 29 training, and basic adult education.
- 30 (~~(+53+)~~) (57) "Work release" means a program of partial confinement
- 31 available to offenders who are employed or engaged as a student in a
- 32 regular course of study at school.

33 **Gangs In Schools**

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

- 36 (1) The task force on gangs in schools shall study and make

1 recommendations for the creation of a brochure to help teachers and  
2 parents learn about criminal street gangs and criminal street gang  
3 activity. In preparing the brochure, the task force, at a minimum,  
4 shall include provisions on:

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

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

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

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

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

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

27 **PART VI**

28 **STATE PREEMPTION**

29 NEW SECTION. **Sec. 601.** (1) The state of Washington hereby fully  
30 occupies and preempts the entire field of definitions used for purposes  
31 of substantive criminal law relating to criminal street gangs, criminal  
32 street gang-related offenses, criminal street gang associates and  
33 members, and pattern of criminal street gang activity. These  
34 definitions of "criminal street gang," "criminal street gang associate  
35 or member," "criminal street gang-related offense," and "pattern of  
36 criminal street gang activity" contained in RCW 9.94A.030 expressly

1 preempt any conflicting city or county codes or ordinances. Cities,  
2 towns, counties, or other municipalities may enact laws and ordinances  
3 relating to criminal street gangs that contain definitions that are  
4 consistent with definitions pursuant to RCW 9.94A.030. Local laws and  
5 ordinances that are inconsistent with the definitions shall not be  
6 enacted and are preempted and repealed, regardless of the nature of the  
7 code, charter, or home rule status of such city, town, county, or  
8 municipality.

9 (2) The preemption provided in this chapter does not apply to  
10 "gang" as defined in RCW 28A.600.455 under the common school provisions  
11 act or "gang" as defined in RCW 59.18.030 under the landlord-tenant  
12 act.

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

18 **PART VII**  
19 **TEMPORARY WITNESS RELOCATION PROGRAM**

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

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

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

30 (1) Subject to available funds, the department of community, trade,  
31 and economic development shall establish a temporary witness assistance  
32 grant program for witnesses of felony criminal street gang-related  
33 offenses. The department of community, trade, and economic development  
34 shall develop a formula for distributing temporary witness assistance

1 grants and consideration shall primarily be given to those county  
2 prosecutors that show that there is a significant gang problem in their  
3 jurisdiction.

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

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

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

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

23 (6) The cost for the department of community, trade, and economic  
24 development to administer the grants shall not exceed three percent of  
25 the total amount of funding appropriated to the temporary witness  
26 assistance grant program.

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

32 **PART VIII**  
33 **STUDY ON BEST PRACTICES TO REDUCE GANG INVOLVEMENT WHILE**  
34 **INCARCERATED**

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

3       (1) The department shall study and establish best practices to  
4 reduce gang involvement and recruitment among incarcerated offenders.  
5 The department shall study and make recommendations regarding the  
6 establishment of:

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

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

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

15                       **PART IX**  
16                       **MISCELLANEOUS**

17       NEW SECTION. **Sec. 901.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

21       NEW SECTION. **Sec. 902.** Part headings and subheadings used in this  
22 act are not any part of the law.

23       NEW SECTION. **Sec. 903.** Sections 402 and 403 of this act  
24 constitute a new chapter in Title 7 RCW.

25       NEW SECTION. **Sec. 904.** Section 601 of this act constitutes a new  
26 chapter in Title 9 RCW.

27       NEW SECTION. **Sec. 905.** If specific funding for the purposes of  
28 this act, referencing this act by bill or chapter number, is not  
29 provided by June 30, 2008, in the omnibus appropriations act, this act  
30 is null and void.

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