

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2712

60th Legislature
2008 Regular Session

Passed by the House March 10, 2008
Yeas 92 Nays 2

Speaker of the House of Representatives

Passed by the Senate March 7, 2008
Yeas 46 Nays 3

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2712** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

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

7 (2) Each grant applicant shall:

8 (a) Show a significant gang problem in the jurisdiction or
9 jurisdictions receiving the grant;

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

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

14 (d) Demonstrate community coordination focusing on prevention,
15 intervention, and suppression; and

16 (e) Collect data on performance pursuant to section 103 of this
17 act.

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

21 **Graffiti/Tagging Abatement Grant**

22 NEW SECTION. **Sec. 102.** A new section is added to chapter 36.28A
23 RCW to read as follows:

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

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

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

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

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

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

4 (e) Collect data on performance pursuant to section 103 of this
5 act.

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

9 NEW SECTION. **Sec. 103.** A new section is added to chapter 36.28A
10 RCW to read as follows:

11 For the grant programs created in sections 101 and 102 of this act
12 and within the funds provided for these programs, the Washington
13 association of sheriffs and police chiefs shall, upon consultation with
14 the Washington state institute for public policy, identify performance
15 measures, periodic reporting requirements, data needs, and a framework
16 for evaluating the effectiveness of grant programs in graffiti and
17 tagging abatement and reducing gang crime.

18 **PART II**

19 **STATEWIDE GANG INFORMATION DATABASE**

20 NEW SECTION. **Sec. 201.** A new section is added to chapter 43.43
21 RCW to read as follows:

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

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

31 (2) The Washington state patrol, in consultation with the
32 Washington state association of sheriffs and police chiefs, shall adopt
33 uniform state criteria for entering gangs, gang members, and gang
34 associates into the database. Data on individuals may be entered only

1 based on reasonable suspicion of criminal activity or actual criminal
2 activity and must be supported by documentation, where documentation is
3 available.

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

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

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

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

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

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

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

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

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

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

11 (9) Any public employee or public agency as defined in RCW
12 4.24.470, or units of local government and its employees, as provided
13 in RCW 36.28A.010, and the Washington association of sheriffs and
14 police chiefs and its employees are immune from civil liability for
15 damages arising from incidents involving a person who has been included
16 in the database, unless it is shown that an employee acted with gross
17 negligence or bad faith.

18 **Sec. 202.** RCW 42.56.240 and 2005 c 274 s 404 are each amended to
19 read as follows:

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

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

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

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

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

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

16 (6) The statewide gang database referenced in section 201 of this
17 act.

18 **PART III**

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

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

21 **Sec. 301.** RCW 9.94A.533 and 2007 c 368 s 9 are each amended to
22 read as follows:

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

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

31 (3) 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 firearm as defined in RCW
34 9.41.010 and the offender is being sentenced for one of the crimes
35 listed in this subsection as eligible for any firearm enhancements

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

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

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

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

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

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

37 (f) The firearm enhancements in this section shall apply to all
38 felony crimes except the following: Possession of a machine gun,

1 possessing a stolen firearm, drive-by shooting, theft of a firearm,
2 unlawful possession of a firearm in the first and second degree, and
3 use of a machine gun in a felony;

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

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

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

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

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

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

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

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

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

28 (5) The following additional times shall be added to the standard
29 sentence range if the offender or an accomplice committed the offense
30 while in a county jail or state correctional facility and the offender
31 is being sentenced for one of the crimes listed in this subsection. If
32 the offender or an accomplice committed one of the crimes listed in
33 this subsection while in a county jail or state correctional facility,
34 and the offender is being sentenced for an anticipatory offense under
35 chapter 9A.28 RCW to commit one of the crimes listed in this
36 subsection, the following additional times shall be added to the
37 standard sentence range determined under subsection (2) of this
38 section:

- 1 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
2 (a) or (b) or 69.50.410;
3 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
4 (c), (d), or (e);
5 (c) Twelve months for offenses committed under RCW 69.50.4013.

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

9 (6) An additional twenty-four months shall be added to the standard
10 sentence range for any ranked offense involving a violation of chapter
11 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
12 9.94A.605. All enhancements under this subsection shall run
13 consecutively to all other sentencing provisions, for all offenses
14 sentenced under this chapter.

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

19 (8)(a) The following additional times shall be added to the
20 standard sentence range for felony crimes committed on or after July 1,
21 2006, if the offense was committed with sexual motivation, as that term
22 is defined in RCW 9.94A.030. If the offender is being sentenced for
23 more than one offense, the sexual motivation enhancement must be added
24 to the total period of total confinement for all offenses, regardless
25 of which underlying offense is subject to a sexual motivation
26 enhancement. If the offender committed the offense with sexual
27 motivation and the offender is being sentenced for an anticipatory
28 offense under chapter 9A.28 RCW, the following additional times shall
29 be added to the standard sentence range determined under subsection (2)
30 of this section based on the felony crime of conviction as classified
31 under RCW 9A.28.020:

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

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

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

3 (iv) If the offender is being sentenced for any sexual motivation
4 enhancements under (i), (ii), and/or (iii) of this subsection and the
5 offender has previously been sentenced for any sexual motivation
6 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
7 this subsection, all sexual motivation enhancements under this
8 subsection shall be twice the amount of the enhancement listed;

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

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

19 (d) If the standard sentence range under this subsection exceeds
20 the statutory maximum sentence for the offense, the statutory maximum
21 sentence shall be the presumptive sentence unless the offender is a
22 persistent offender. If the addition of a sexual motivation
23 enhancement increases the sentence so that it would exceed the
24 statutory maximum for the offense, the portion of the sentence
25 representing the enhancement may not be reduced;

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

29 (f) Nothing in this subsection prevents a sentencing court from
30 imposing a sentence outside the standard sentence range pursuant to RCW
31 9.94A.535.

32 (9) An additional one-year enhancement shall be added to the
33 standard sentence range for the felony crimes of RCW 9A.44.073,
34 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
35 or after July 22, 2007, if the offender engaged, agreed, or offered to
36 engage the victim in the sexual conduct in return for a fee. If the
37 offender is being sentenced for more than one offense, the one-year
38 enhancement must be added to the total period of total confinement for

1 all offenses, regardless of which underlying offense is subject to the
2 enhancement. If the offender is being sentenced for an anticipatory
3 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
4 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
5 solicited another, or conspired to engage, agree, or offer to engage
6 the victim in (~~{the}~~) the sexual conduct in return for a fee, an
7 additional one-year enhancement shall be added to the standard sentence
8 range determined under subsection (2) of this section. For purposes of
9 this subsection, "sexual conduct" means sexual intercourse or sexual
10 contact, both as defined in chapter 9A.44 RCW.

11 (10)(a) For a person age eighteen or older convicted of any
12 criminal street gang-related felony offense for which the person
13 compensated, threatened, or solicited a minor in order to involve the
14 minor in the commission of the felony offense, the standard sentence
15 range is determined by locating the sentencing grid sentence range
16 defined by the appropriate offender score and the seriousness level of
17 the completed crime, and multiplying the range by one hundred twenty-
18 five percent. If the standard sentence range under this subsection
19 exceeds the statutory maximum sentence for the offense, the statutory
20 maximum sentence is the presumptive sentence unless the offender is a
21 persistent offender.

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

25 (c) The increased penalty specified in (a) of this subsection is
26 unavailable in the event that the prosecution gives notice that it will
27 seek an exceptional sentence based on an aggravating factor under RCW
28 9.94A.535.

29 NEW SECTION. Sec. 302. A new section is added to chapter 9.94A
30 RCW to read as follows:

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

36 (2) The state has the burden of proving a special allegation made
37 under this section beyond a reasonable doubt. If a jury is had, the

1 jury shall, if it finds the defendant guilty, also find a special
2 verdict as to whether the criminal street gang-related felony offense
3 involved the compensation, threatening, or solicitation of a minor in
4 order to involve that minor in the commission of the felony offense.
5 If no jury is had, the court shall make a finding of fact as to whether
6 the criminal street gang-related felony offense involved the
7 compensation, threatening, or solicitation of a minor in order to
8 involve that minor in the commission of the felony offense.

9 **Expansion Of The List Of Aggravating Factors**

10 **Sec. 303.** RCW 9.94A.535 and 2007 c 377 s 10 are each amended to
11 read as follows:

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

18 Whenever a sentence outside the standard sentence range is imposed,
19 the court shall set forth the reasons for its decision in written
20 findings of fact and conclusions of law. A sentence outside the
21 standard sentence range shall be a determinate sentence.

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

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

30 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

9 (e) The defendant's capacity to appreciate the wrongfulness of his
10 or her conduct, or to conform his or her conduct to the requirements of
11 the law, was significantly impaired. Voluntary use of drugs or alcohol
12 is excluded.

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

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

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

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

25 (a) The defendant and the state both stipulate that justice is best
26 served by the imposition of an exceptional sentence outside the
27 standard range, and the court finds the exceptional sentence to be
28 consistent with and in furtherance of the interests of justice and the
29 purposes of the sentencing reform act.

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

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

37 (d) The failure to consider the defendant's prior criminal history

1 which was omitted from the offender score calculation pursuant to RCW
2 9.94A.525 results in a presumptive sentence that is clearly too
3 lenient.

4 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
5 the Court

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

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

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

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

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

19 (i) The current offense involved multiple victims or multiple
20 incidents per victim;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (i) The offense resulted in the pregnancy of a child victim of
27 rape.

28 (j) The defendant knew that the victim of the current offense was
29 a youth who was not residing with a legal custodian and the defendant
30 established or promoted the relationship for the primary purpose of
31 victimization.

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

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

1 (m) The offense involved a high degree of sophistication or
2 planning.

3 (n) The defendant used his or her position of trust, confidence, or
4 fiduciary responsibility to facilitate the commission of the current
5 offense.

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

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

9 (q) The defendant demonstrated or displayed an egregious lack of
10 remorse.

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

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

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

18 (u) The current offense is a burglary and the victim of the
19 burglary was present in the building or residence when the crime was
20 committed.

21 (v) The offense was committed against a law enforcement officer who
22 was performing his or her official duties at the time of the offense,
23 the offender knew that the victim was a law enforcement officer, and
24 the victim's status as a law enforcement officer is not an element of
25 the offense.

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

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

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

34 (z)(i)(A) The current offense is theft in the first degree, theft
35 in the second degree, possession of stolen property in the first
36 degree, or possession of stolen property in the second degree; (B) the
37 stolen property involved is metal property; and (C) the property damage

1 to the victim caused in the course of the theft of metal property is
2 more than three times the value of the stolen metal property, or the
3 theft of the metal property creates a public hazard.

4 (ii) For purposes of this subsection, "metal property" means
5 commercial metal property or nonferrous metal property, as defined in
6 RCW 19.290.010.

7 (aa) The defendant committed the offense with the intent to
8 directly or indirectly cause any benefit, aggrandizement, gain, profit,
9 or other advantage to or for a criminal street gang as defined in RCW
10 9.94A.030, its reputation, influence, or membership.

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

12 **Sec. 304.** RCW 9.94A.545 and 2006 c 128 s 4 are each amended to
13 read as follows:

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

26 (2)(a) If the offender is guilty of failure to register under RCW
27 9A.44.130(~~(+10)~~) (11)(a), the court shall impose a term of community
28 custody under RCW 9.94A.715.

29 (b) If the offender is a criminal street gang associate or member
30 and is found guilty of unlawful possession of a firearm under RCW
31 9.41.040, the court shall impose a term of community custody under RCW
32 9.94A.715.

33 (c) In a criminal case in which there has been a special
34 allegation, the state shall prove by a preponderance of the evidence
35 that the accused is a criminal street gang member or associate as
36 defined in RCW 9.94A.030 and has committed the crime of unlawful

1 possession of a firearm. The court shall make a finding of fact of
2 whether or not the accused was a criminal street gang member or
3 associate at the time of the commission of the crime, or if a jury
4 trial is had, the jury shall, if it finds the defendant guilty, also
5 find a special verdict as to whether or not the accused was a criminal
6 street gang member or associate during the commission of the crime.

7 **Sec. 305.** RCW 9.94A.715 and 2006 c 130 s 2 and 2006 c 128 s 5 are
8 each reenacted and amended to read as follows:

9 (1) When a court sentences a person to the custody of the
10 department for a sex offense not sentenced under RCW 9.94A.712, a
11 violent offense, any crime against persons under RCW 9.94A.411(2), an
12 offense involving the unlawful possession of a firearm under RCW
13 9.41.040, where the offender is a criminal street gang member or
14 associate, or a felony offense under chapter 69.50 or 69.52 RCW,
15 committed on or after July 1, 2000, or when a court sentences a person
16 to a term of confinement of one year or less for a violation of RCW
17 9A.44.130(~~(+10)~~) (11)(a) committed on or after June 7, 2006, the court
18 shall in addition to the other terms of the sentence, sentence the
19 offender to community custody for the community custody range
20 established under RCW 9.94A.850 or up to the period of earned release
21 awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer.
22 The community custody shall begin: (a) Upon completion of the term of
23 confinement; (b) at such time as the offender is transferred to
24 community custody in lieu of earned release in accordance with RCW
25 9.94A.728 (1) and (2); or (c) with regard to offenders sentenced under
26 RCW 9.94A.660, upon failure to complete or administrative termination
27 from the special drug offender sentencing alternative program. Except
28 as provided in RCW 9.94A.501, the department shall supervise any
29 sentence of community custody imposed under this section.

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

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

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

26 (3) If an offender violates conditions imposed by the court or the
27 department pursuant to this section during community custody, the
28 department may transfer the offender to a more restrictive confinement
29 status and impose other available sanctions as provided in RCW
30 9.94A.737 and 9.94A.740.

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

36 (5) At any time prior to the completion or termination of a sex
37 offender's term of community custody, if the court finds that public
38 safety would be enhanced, the court may impose and enforce an order

1 extending any or all of the conditions imposed pursuant to this section
2 for a period up to the maximum allowable sentence for the crime as it
3 is classified in chapter 9A.20 RCW, regardless of the expiration of the
4 offender's term of community custody. If a violation of a condition
5 extended under this subsection occurs after the expiration of the
6 offender's term of community custody, it shall be deemed a violation of
7 the sentence for the purposes of RCW 9.94A.631 and may be punishable as
8 contempt of court as provided for in RCW 7.21.040. If the court
9 extends a condition beyond the expiration of the term of community
10 custody, the department is not responsible for supervision of the
11 offender's compliance with the condition.

12 (6) Within the funds available for community custody, the
13 department shall determine conditions and duration of community custody
14 on the basis of risk to community safety, and shall supervise offenders
15 during community custody on the basis of risk to community safety and
16 conditions imposed by the court. The secretary shall adopt rules to
17 implement the provisions of this subsection.

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

25 **Making Subsequent Convictions Of Malicious Mischief 3 A Gross**
26 **Misdemeanor Offense**

27 NEW SECTION. **Sec. 306.** A new section is added to chapter 9A.48
28 RCW to read as follows:

29 (1) A person is guilty of criminal street gang tagging and graffiti
30 if he or she commits malicious mischief in the third degree under RCW
31 9A.48.090(1)(b) and he or she:

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

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

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

3 (2) Criminal street gang tagging and graffiti is a gross
4 misdemeanor offense.

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

6 NEW SECTION. **Sec. 307.** A new section is added to chapter 4.24 RCW
7 to read as follows:

8 (1) An adult or emancipated minor who commits criminal street gang
9 tagging and graffiti under section 306 of this act by causing physical
10 damage to the property of another is liable in addition to actual
11 damages, for a penalty to the owner in the amount of the value of the
12 damaged property not to exceed one thousand dollars, plus an additional
13 penalty of not less than one hundred dollars nor more than two hundred
14 dollars, plus all reasonable attorneys' fees and court costs expended
15 by the owner.

16 (2) A conviction for violation of section 306 of this act is not a
17 condition precedent to maintenance of a civil action authorized by this
18 section.

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

22 **Sec. 308.** RCW 10.22.010 and 1999 c 143 s 45 are each amended to
23 read as follows:

24 When a defendant is prosecuted in a criminal action for a
25 misdemeanor, other than a violation of section 306 of this act, for
26 which the person injured by the act constituting the offense has a
27 remedy by a civil action, the offense may be compromised as provided in
28 RCW 10.22.020, except when it was committed:

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

31 (2) Riotously;

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

33 (4) By one family or household member against another as defined in
34 RCW 10.99.020 and was a crime of domestic violence as defined in RCW
35 10.99.020.

1 **Criminal Street Gang Definition**

2 **Sec. 309.** RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006
3 c 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and
4 amended to read as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

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

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

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

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

22 (5) "Community custody" means that portion of an offender's
23 sentence of confinement in lieu of earned release time or imposed
24 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
25 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
26 community subject to controls placed on the offender's movement and
27 activities by the department. For offenders placed on community
28 custody for crimes committed on or after July 1, 2000, the department
29 shall assess the offender's risk of reoffense and may establish and
30 modify conditions of community custody, in addition to those imposed by
31 the court, based upon the risk to community safety.

32 (6) "Community custody range" means the minimum and maximum period
33 of community custody included as part of a sentence under RCW
34 9.94A.715, as established by the commission or the legislature under
35 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

36 (7) "Community placement" means that period during which the
37 offender is subject to the conditions of community custody and/or
38 postrelease supervision, which begins either upon completion of the

1 term of confinement (postrelease supervision) or at such time as the
2 offender is transferred to community custody in lieu of earned release.
3 Community placement may consist of entirely community custody, entirely
4 postrelease supervision, or a combination of the two.

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

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

11 (10) "Community supervision" means a period of time during which a
12 convicted offender is subject to crime-related prohibitions and other
13 sentence conditions imposed by a court pursuant to this chapter or RCW
14 16.52.200(6) or 46.61.524. Where the court finds that any offender has
15 a chemical dependency that has contributed to his or her offense, the
16 conditions of supervision may, subject to available resources, include
17 treatment. For purposes of the interstate compact for out-of-state
18 supervision of parolees and probationers, RCW 9.95.270, community
19 supervision is the functional equivalent of probation and should be
20 considered the same as probation by other states.

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

22 (12) "Conviction" means an adjudication of guilt pursuant to Titles
23 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
24 acceptance of a plea of guilty.

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

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

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

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

5 (c) The determination of a defendant's criminal history is distinct
6 from the determination of an offender score. A prior conviction that
7 was not included in an offender score calculated pursuant to a former
8 version of the sentencing reform act remains part of the defendant's
9 criminal history.

10 (15) "Criminal street gang" means any ongoing organization,
11 association, or group of three or more persons, whether formal or
12 informal, having a common name or common identifying sign or symbol,
13 having as one of its primary activities the commission of criminal
14 acts, and whose members or associates individually or collectively
15 engage in or have engaged in a pattern of criminal street gang
16 activity. This definition does not apply to employees engaged in
17 concerted activities for their mutual aid and protection, or to the
18 activities of labor and bona fide nonprofit organizations or their
19 members or agents.

20 (16) "Criminal street gang associate or member" means any person
21 who actively participates in any criminal street gang and who
22 intentionally promotes, furthers, or assists in any criminal act by the
23 criminal street gang.

24 (17) "Criminal street gang-related offense" means any felony or
25 misdemeanor offense, whether in this state or elsewhere, that is
26 committed for the benefit of, at the direction of, or in association
27 with any criminal street gang, or is committed with the intent to
28 promote, further, or assist in any criminal conduct by the gang, or is
29 committed for one or more of the following reasons:

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

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

33 (c) To exact revenge or retribution for the gang or any member of
34 the gang;

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

37 (e) To directly or indirectly cause any benefit, aggrandizement,

1 gain, profit, or other advantage for the gang, its reputation,
2 influence, or membership; or

3 (f) To provide the gang with any advantage in, or any control or
4 dominance over any criminal market sector, including, but not limited
5 to, manufacturing, delivering, or selling any controlled substance
6 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
7 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
8 RCW); human trafficking (RCW 9A.40.100); or promoting pornography
9 (chapter 9.68 RCW).

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

14 ~~((16))~~ (19) "Day reporting" means a program of enhanced
15 supervision designed to monitor the offender's daily activities and
16 compliance with sentence conditions, and in which the offender is
17 required to report daily to a specific location designated by the
18 department or the sentencing court.

19 ~~((17))~~ (20) "Department" means the department of corrections.

20 ~~((18))~~ (21) "Determinate sentence" means a sentence that states
21 with exactitude the number of actual years, months, or days of total
22 confinement, of partial confinement, of community supervision, the
23 number of actual hours or days of community restitution work, or
24 dollars or terms of a legal financial obligation. The fact that an
25 offender through earned release can reduce the actual period of
26 confinement shall not affect the classification of the sentence as a
27 determinate sentence.

28 ~~((19))~~ (22) "Disposable earnings" means that part of the earnings
29 of an offender remaining after the deduction from those earnings of any
30 amount required by law to be withheld. For the purposes of this
31 definition, "earnings" means compensation paid or payable for personal
32 services, whether denominated as wages, salary, commission, bonuses, or
33 otherwise, and, notwithstanding any other provision of law making the
34 payments exempt from garnishment, attachment, or other process to
35 satisfy a court-ordered legal financial obligation, specifically
36 includes periodic payments pursuant to pension or retirement programs,
37 or insurance policies of any type, but does not include payments made

1 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
2 or Title 74 RCW.

3 ~~((+20))~~ (23) "Drug offender sentencing alternative" is a
4 sentencing option available to persons convicted of a felony offense
5 other than a violent offense or a sex offense and who are eligible for
6 the option under RCW 9.94A.660.

7 ~~((+21))~~ (24) "Drug offense" means:

8 (a) Any felony violation of chapter 69.50 RCW except possession of
9 a controlled substance (RCW 69.50.4013) or forged prescription for a
10 controlled substance (RCW 69.50.403);

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

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

17 ~~((+22))~~ (25) "Earned release" means earned release from
18 confinement as provided in RCW 9.94A.728.

19 ~~((+23))~~ (26) "Escape" means:

20 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
21 first degree (RCW 9A.76.110), escape in the second degree (RCW
22 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
23 willful failure to return from work release (RCW 72.65.070), or willful
24 failure to be available for supervision by the department while in
25 community custody (RCW 72.09.310); or

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

29 ~~((+24))~~ (27) "Felony traffic offense" means:

30 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
31 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
32 run injury-accident (RCW 46.52.020(4)), felony driving while under the
33 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
34 felony physical control of a vehicle while under the influence of
35 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

1 ~~((25))~~ (28) "Fine" means a specific sum of money ordered by the
2 sentencing court to be paid by the offender to the court over a
3 specific period of time.

4 ~~((26))~~ (29) "First-time offender" means any person who has no
5 prior convictions for a felony and is eligible for the first-time
6 offender waiver under RCW 9.94A.650.

7 ~~((27))~~ (30) "Home detention" means a program of partial
8 confinement available to offenders wherein the offender is confined in
9 a private residence subject to electronic surveillance.

10 ~~((28))~~ (31) "Legal financial obligation" means a sum of money
11 that is ordered by a superior court of the state of Washington for
12 legal financial obligations which may include restitution to the
13 victim, statutorily imposed crime victims' compensation fees as
14 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
15 drug funds, court-appointed attorneys' fees, and costs of defense,
16 fines, and any other financial obligation that is assessed to the
17 offender as a result of a felony conviction. Upon conviction for
18 vehicular assault while under the influence of intoxicating liquor or
19 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
20 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
21 legal financial obligations may also include payment to a public agency
22 of the expense of an emergency response to the incident resulting in
23 the conviction, subject to RCW 38.52.430.

24 ~~((29))~~ (32) "Most serious offense" means any of the following
25 felonies or a felony attempt to commit any of the following felonies:

26 (a) Any felony defined under any law as a class A felony or
27 criminal solicitation of or criminal conspiracy to commit a class A
28 felony;

29 (b) Assault in the second degree;

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

31 (d) Child molestation in the second degree;

32 (e) Controlled substance homicide;

33 (f) Extortion in the first degree;

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

35 (h) Indecent liberties;

36 (i) Kidnapping in the second degree;

37 (j) Leading organized crime;

38 (k) Manslaughter in the first degree;

1 (l) Manslaughter in the second degree;
2 (m) Promoting prostitution in the first degree;
3 (n) Rape in the third degree;
4 (o) Robbery in the second degree;
5 (p) Sexual exploitation;
6 (q) Vehicular assault, when caused by the operation or driving of
7 a vehicle by a person while under the influence of intoxicating liquor
8 or any drug or by the operation or driving of a vehicle in a reckless
9 manner;
10 (r) 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 (s) Any other class B felony offense with a finding of sexual
15 motivation;
16 (t) Any other felony with a deadly weapon verdict under RCW
17 9.94A.602;
18 (u) Any felony offense in effect at any time prior to December 2,
19 1993, that is comparable to a most serious offense under this
20 subsection, or any federal or out-of-state conviction for an offense
21 that under the laws of this state would be a felony classified as a
22 most serious offense under this subsection;
23 (v)(i) A prior conviction for indecent liberties under RCW
24 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
25 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
26 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
27 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
28 (ii) A prior conviction for indecent liberties under RCW
29 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
30 if: (A) The crime was committed against a child under the age of
31 fourteen; or (B) the relationship between the victim and perpetrator is
32 included in the definition of indecent liberties under RCW
33 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
34 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
35 through July 27, 1997.
36 ((+30+)) (33) "Nonviolent offense" means an offense which is not a
37 violent offense.

1 ~~((31))~~ (34) "Offender" means a person who has committed a felony
2 established by state law and is eighteen years of age or older or is
3 less than eighteen years of age but whose case is under superior court
4 jurisdiction under RCW 13.04.030 or has been transferred by the
5 appropriate juvenile court to a criminal court pursuant to RCW
6 13.40.110. Throughout this chapter, the terms "offender" and
7 "defendant" are used interchangeably.

8 ~~((32))~~ (35) "Partial confinement" means confinement for no more
9 than one year in a facility or institution operated or utilized under
10 contract by the state or any other unit of government, or, if home
11 detention or work crew has been ordered by the court, in an approved
12 residence, for a substantial portion of each day with the balance of
13 the day spent in the community. Partial confinement includes work
14 release, home detention, work crew, and a combination of work crew and
15 home detention.

16 ~~((33))~~ (36) "Pattern of criminal street gang activity" means:

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

20 (i) Any "serious violent" felony offense as defined in RCW
21 9.94A.030, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of
22 a Child 1 (RCW 9A.36.120);

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

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

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

29 (v) Theft of a Firearm (RCW 9A.56.300);

30 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);

31 (vii) Malicious Harassment (RCW 9A.36.080);

32 (viii) Harassment where a subsequent violation or deadly threat is
33 made (RCW 9A.46.020(2)(b));

34 (ix) Criminal Gang Intimidation (RCW 9A.46.120);

35 (x) Any felony conviction by a person eighteen years of age or
36 older with a special finding of involving a juvenile in a felony
37 offense under section 302 of this act;

38 (xi) Residential Burglary (RCW 9A.52.025);

1 (xii) Burglary 2 (RCW 9A.52.030);
2 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
3 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
4 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
5 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
6 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
7 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
8 9A.56.075);
9 (xix) Extortion 1 (RCW 9A.56.120);
10 (xx) Extortion 2 (RCW 9A.56.130);
11 (xxi) Intimidating a Witness (RCW 9A.72.110);
12 (xxii) Tampering with a Witness (RCW 9A.72.120);
13 (xxiii) Reckless Endangerment (RCW 9A.36.050);
14 (xxiv) Coercion (RCW 9A.36.070);
15 (xxv) Harassment (RCW 9A.46.020); or
16 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
17 (b) That at least one of the offenses listed in (a) of this
18 subsection shall have occurred after July 1, 2008;
19 (c) That the most recent committed offense listed in (a) of this
20 subsection occurred within three years of a prior offense listed in (a)
21 of this subsection; and
22 (d) Of the offenses that were committed in (a) of this subsection,
23 the offenses occurred on separate occasions or were committed by two or
24 more persons.
25 (37) "Persistent offender" is an offender who:
26 (a)(i) Has been convicted in this state of any felony considered a
27 most serious offense; and
28 (ii) Has, before the commission of the offense under (a) of this
29 subsection, been convicted as an offender on at least two separate
30 occasions, whether in this state or elsewhere, of felonies that under
31 the laws of this state would be considered most serious offenses and
32 would be included in the offender score under RCW 9.94A.525; provided
33 that of the two or more previous convictions, at least one conviction
34 must have occurred before the commission of any of the other most
35 serious offenses for which the offender was previously convicted; or
36 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
37 of a child in the first degree, child molestation in the first degree,
38 rape in the second degree, rape of a child in the second degree, or

1 indecent liberties by forcible compulsion; (B) any of the following
2 offenses with a finding of sexual motivation: Murder in the first
3 degree, murder in the second degree, homicide by abuse, kidnapping in
4 the first degree, kidnapping in the second degree, assault in the first
5 degree, assault in the second degree, assault of a child in the first
6 degree, assault of a child in the second degree, or burglary in the
7 first degree; or (C) an attempt to commit any crime listed in this
8 subsection (~~(+33+)~~) (37)(b)(i); and

9 (ii) Has, before the commission of the offense under (b)(i) of this
10 subsection, been convicted as an offender on at least one occasion,
11 whether in this state or elsewhere, of an offense listed in (b)(i) of
12 this subsection or any federal or out-of-state offense or offense under
13 prior Washington law that is comparable to the offenses listed in
14 (b)(i) of this subsection. A conviction for rape of a child in the
15 first degree constitutes a conviction under (b)(i) of this subsection
16 only when the offender was sixteen years of age or older when the
17 offender committed the offense. A conviction for rape of a child in
18 the second degree constitutes a conviction under (b)(i) of this
19 subsection only when the offender was eighteen years of age or older
20 when the offender committed the offense.

21 (~~(+34+)~~) (38) "Postrelease supervision" is that portion of an
22 offender's community placement that is not community custody.

23 (~~(+35+)~~) (39) "Predatory" means: (a) The perpetrator of the crime
24 was a stranger to the victim, as defined in this section; (b) the
25 perpetrator established or promoted a relationship with the victim
26 prior to the offense and the victimization of the victim was a
27 significant reason the perpetrator established or promoted the
28 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
29 volunteer, or other person in authority in any public or private school
30 and the victim was a student of the school under his or her authority
31 or supervision. For purposes of this subsection, "school" does not
32 include home-based instruction as defined in RCW 28A.225.010; (ii) a
33 coach, trainer, volunteer, or other person in authority in any
34 recreational activity and the victim was a participant in the activity
35 under his or her authority or supervision; or (iii) a pastor, elder,
36 volunteer, or other person in authority in any church or religious
37 organization, and the victim was a member or participant of the
38 organization under his or her authority.

1 (~~(36)~~) (40) "Private school" means a school regulated under
2 chapter 28A.195 or 28A.205 RCW.

3 (~~(37)~~) (41) "Public school" has the same meaning as in RCW
4 28A.150.010.

5 (~~(38)~~) (42) "Restitution" means a specific sum of money ordered
6 by the sentencing court to be paid by the offender to the court over a
7 specified period of time as payment of damages. The sum may include
8 both public and private costs.

9 (~~(39)~~) (43) "Risk assessment" means the application of an
10 objective instrument supported by research and adopted by the
11 department for the purpose of assessing an offender's risk of
12 reoffense, taking into consideration the nature of the harm done by the
13 offender, place and circumstances of the offender related to risk, the
14 offender's relationship to any victim, and any information provided to
15 the department by victims. The results of a risk assessment shall not
16 be based on unconfirmed or unconfirmable allegations.

17 (~~(40)~~) (44) "Serious traffic offense" means:

18 (a) Nonfelony driving while under the influence of intoxicating
19 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
20 while under the influence of intoxicating liquor or any drug (RCW
21 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
22 attended vehicle (RCW 46.52.020(5)); or

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

26 (~~(41)~~) (45) "Serious violent offense" is a subcategory of violent
27 offense and means:

28 (a)(i) Murder in the first degree;

29 (ii) Homicide by abuse;

30 (iii) Murder in the second degree;

31 (iv) Manslaughter in the first degree;

32 (v) Assault in the first degree;

33 (vi) Kidnapping in the first degree;

34 (vii) Rape in the first degree;

35 (viii) Assault of a child in the first degree; or

36 (ix) An attempt, criminal solicitation, or criminal conspiracy to
37 commit one of these felonies; or

1 (b) 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 serious
3 violent offense under (a) of this subsection.

4 (~~(42)~~) (46) "Sex offense" means:

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

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

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

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

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

15 (c) A felony with a finding of sexual motivation under RCW
16 9.94A.835 or 13.40.135; or

17 (d) 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 sex
19 offense under (a) of this subsection.

20 (~~(43)~~) (47) "Sexual motivation" means that one of the purposes
21 for which the defendant committed the crime was for the purpose of his
22 or her sexual gratification.

23 (~~(44)~~) (48) "Standard sentence range" means the sentencing
24 court's discretionary range in imposing a nonappealable sentence.

25 (~~(45)~~) (49) "Statutory maximum sentence" means the maximum length
26 of time for which an offender may be confined as punishment for a crime
27 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
28 the crime, or other statute defining the maximum penalty for a crime.

29 (~~(46)~~) (50) "Stranger" means that the victim did not know the
30 offender twenty-four hours before the offense.

31 (~~(47)~~) (51) "Total confinement" means confinement inside the
32 physical boundaries of a facility or institution operated or utilized
33 under contract by the state or any other unit of government for twenty-
34 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

35 (~~(48)~~) (52) "Transition training" means written and verbal
36 instructions and assistance provided by the department to the offender
37 during the two weeks prior to the offender's successful completion of

1 the work ethic camp program. The transition training shall include
2 instructions in the offender's requirements and obligations during the
3 offender's period of community custody.

4 ~~((49))~~ (53) "Victim" means any person who has sustained
5 emotional, psychological, physical, or financial injury to person or
6 property as a direct result of the crime charged.

7 ~~((50))~~ (54) "Violent offense" means:

8 (a) Any of the following felonies:

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

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

13 (iii) Manslaughter in the first degree;

14 (iv) Manslaughter in the second degree;

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

16 (vi) Kidnapping in the second degree;

17 (vii) Arson in the second degree;

18 (viii) Assault in the second degree;

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

20 (x) Extortion in the first degree;

21 (xi) Robbery in the second degree;

22 (xii) Drive-by shooting;

23 (xiii) Vehicular assault, when caused by the operation or driving
24 of a vehicle by a person while under the influence of intoxicating
25 liquor or any drug or by the operation or driving of a vehicle in a
26 reckless manner; and

27 (xiv) Vehicular homicide, when proximately caused by the driving of
28 any vehicle by any person while under the influence of intoxicating
29 liquor or any drug as defined by RCW 46.61.502, or by the operation of
30 any vehicle in a reckless manner;

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

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

37 ~~((51))~~ (55) "Work crew" means a program of partial confinement

1 consisting of civic improvement tasks for the benefit of the community
2 that complies with RCW 9.94A.725.

3 ~~((+52+))~~ (56) "Work ethic camp" means an alternative incarceration
4 program as provided in RCW 9.94A.690 designed to reduce recidivism and
5 lower the cost of corrections by requiring offenders to complete a
6 comprehensive array of real-world job and vocational experiences,
7 character-building work ethics training, life management skills
8 development, substance abuse rehabilitation, counseling, literacy
9 training, and basic adult education.

10 ~~((+53+))~~ (57) "Work release" means a program of partial confinement
11 available to offenders who are employed or engaged as a student in a
12 regular course of study at school.

13 **PART IV**
14 **STATE PREEMPTION**

15 NEW SECTION. **Sec. 401.** (1) The state of Washington hereby fully
16 occupies and preempts the entire field of definitions used for purposes
17 of substantive criminal law relating to criminal street gangs, criminal
18 street gang-related offenses, criminal street gang associates and
19 members, and pattern of criminal street gang activity. These
20 definitions of "criminal street gang," "criminal street gang associate
21 or member," "criminal street gang-related offense," and "pattern of
22 criminal street gang activity" contained in RCW 9.94A.030 expressly
23 preempt any conflicting city or county codes or ordinances. Cities,
24 towns, counties, or other municipalities may enact laws and ordinances
25 relating to criminal street gangs that contain definitions that are
26 consistent with definitions pursuant to RCW 9.94A.030. Local laws and
27 ordinances that are inconsistent with the definitions shall not be
28 enacted and are preempted and repealed, regardless of the nature of the
29 code, charter, or home rule status of such city, town, county, or
30 municipality.

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

35 (3) The preemption provided for in this chapter does not restrict
36 the adoption or use of a uniform state definition of "gang," "gang

1 member," or "gang associate," for purposes of the creation and
2 maintenance of the statewide gang database for law enforcement
3 intelligence purposes under section 201 of this act.

4 **PART V**

5 **TEMPORARY WITNESS RELOCATION PROGRAM**

6 NEW SECTION. **Sec. 501.** A new section is added to chapter 43.31
7 RCW to read as follows:

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

14 NEW SECTION. **Sec. 502.** A new section is added to chapter 43.31
15 RCW to read as follows:

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

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

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

34 (4) Based upon the prior approval of the department of community,

1 trade, and economic development, approved county prosecutor costs
2 incurred for providing temporary witness assistance shall be reimbursed
3 to the respective county prosecutor's office on a quarterly basis.

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

9 NEW SECTION. **Sec. 503.** If specific funding for purposes of
10 section 502 of this act, referencing section 502 of this act by bill or
11 chapter and section number, is not provided by June 30, 2008, in the
12 omnibus operating appropriations act, section 502 of this act is null
13 and void.

14 **PART VI**
15 **STUDY ON BEST PRACTICES TO REDUCE GANG INVOLVEMENT WHILE**
16 **INCARCERATED**

17 NEW SECTION. **Sec. 601.** A new section is added to chapter 72.09
18 RCW to read as follows:

19 (1) The department shall study and establish best practices to
20 reduce gang involvement and recruitment among incarcerated offenders.
21 The department shall study and make recommendations regarding the
22 establishment of:

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

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

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

31 **PART VII**
32 **MISCELLANEOUS**

1 NEW SECTION. **Sec. 701.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 702.** Part headings and subheadings used in this
6 act are not any part of the law.

7 NEW SECTION. **Sec. 703.** Section 401 of this act constitutes a new
8 chapter in Title 9 RCW.

9 NEW SECTION. **Sec. 704.** If specific funding for the purposes of
10 this act, referencing this act by bill or chapter number, is not
11 provided by June 30, 2008, in the omnibus appropriations act, this act
12 is null and void.

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