

ESHB 2777 - S COMM AMD
By Committee on Judiciary

ADOPTED AND ENGROSSED 03/03/2010

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

3 "PART ONE

4 INTENT

5 NEW SECTION. **Sec. 101.** The legislature intends to improve the
6 lives of persons who suffer from the adverse effects of domestic
7 violence and to require reasonable, coordinated measures to prevent
8 domestic violence from occurring. The legislature intends to give law
9 enforcement and the courts better tools to identify violent
10 perpetrators of domestic violence and hold them accountable. The
11 legislature intends to: Increase the safety afforded to individuals
12 who seek protection of public and private agencies involved in domestic
13 violence prevention; improve the ability of agencies to address the
14 needs of victims and their children and the delivery of services;
15 upgrade the quality of treatment programs; and enhance the ability of
16 the justice system to respond quickly and fairly to domestic violence.
17 In order to improve the lives of persons who have, or may suffer, the
18 effects of domestic violence the legislature intends to achieve more
19 uniformity in the decision-making processes at public and private
20 agencies that address domestic violence by reducing inconsistencies and
21 duplications allowing domestic violence victims to achieve safety and
22 stability in their lives.

23 PART TWO

24 LAW ENFORCEMENT/ARREST PROVISIONS

25 **Sec. 201.** RCW 10.31.100 and 2006 c 138 s 23 are each amended to
26 read as follows:

27 A police officer having probable cause to believe that a person has

1 committed or is committing a felony shall have the authority to arrest
2 the person without a warrant. A police officer may arrest a person
3 without a warrant for committing a misdemeanor or gross misdemeanor
4 only when the offense is committed in the presence of the officer,
5 except as provided in subsections (1) through (10) of this section.

6 (1) Any police officer having probable cause to believe that a
7 person has committed or is committing a misdemeanor or gross
8 misdemeanor, involving physical harm or threats of harm to any person
9 or property or the unlawful taking of property or involving the use or
10 possession of cannabis, or involving the acquisition, possession, or
11 consumption of alcohol by a person under the age of twenty-one years
12 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070
13 or 9A.52.080, shall have the authority to arrest the person.

14 (2) A police officer shall arrest and take into custody, pending
15 release on bail, personal recognizance, or court order, a person
16 without a warrant when the officer has probable cause to believe that:

17 (a) An order has been issued of which the person has knowledge
18 under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26,
19 26.50, or 74.34 RCW restraining the person and the person has violated
20 the terms of the order restraining the person from acts or threats of
21 violence, or restraining the person from going onto the grounds of or
22 entering a residence, workplace, school, or day care, or prohibiting
23 the person from knowingly coming within, or knowingly remaining within,
24 a specified distance of a location or, in the case of an order issued
25 under RCW 26.44.063, imposing any other restrictions or conditions upon
26 the person; or

27 (b) A foreign protection order, as defined in RCW 26.52.010, has
28 been issued of which the person under restraint has knowledge and the
29 person under restraint has violated a provision of the foreign
30 protection order prohibiting the person under restraint from contacting
31 or communicating with another person, or excluding the person under
32 restraint from a residence, workplace, school, or day care, or
33 prohibiting the person from knowingly coming within, or knowingly
34 remaining within, a specified distance of a location, or a violation of
35 any provision for which the foreign protection order specifically
36 indicates that a violation will be a crime; or

37 (c) The person is sixteen years or older and within the preceding
38 four hours has assaulted a family or household member as defined in RCW

1 10.99.020 and the officer believes: (i) A felonious assault has
2 occurred; (ii) an assault has occurred which has resulted in bodily
3 injury to the victim, whether the injury is observable by the
4 responding officer or not; or (iii) that any physical action has
5 occurred which was intended to cause another person reasonably to fear
6 imminent serious bodily injury or death. Bodily injury means physical
7 pain, illness, or an impairment of physical condition. When the
8 officer has probable cause to believe that family or household members
9 have assaulted each other, the officer is not required to arrest both
10 persons. The officer shall arrest the person whom the officer believes
11 to be the primary physical aggressor. In making this determination,
12 the officer shall make every reasonable effort to consider: (i) The
13 intent to protect victims of domestic violence under RCW 10.99.010;
14 (ii) the comparative extent of injuries inflicted or serious threats
15 creating fear of physical injury; and (iii) the history of domestic
16 violence (~~between the~~) of each person(s) involved, including
17 whether the conduct was part of an ongoing pattern of abuse.

18 (3) Any police officer having probable cause to believe that a
19 person has committed or is committing a violation of any of the
20 following traffic laws shall have the authority to arrest the person:

21 (a) RCW 46.52.010, relating to duty on striking an unattended car
22 or other property;

23 (b) RCW 46.52.020, relating to duty in case of injury to or death
24 of a person or damage to an attended vehicle;

25 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or
26 racing of vehicles;

27 (d) RCW 46.61.502 or 46.61.504, relating to persons under the
28 influence of intoxicating liquor or drugs;

29 (e) RCW 46.20.342, relating to driving a motor vehicle while
30 operator's license is suspended or revoked;

31 (f) RCW 46.61.5249, relating to operating a motor vehicle in a
32 negligent manner.

33 (4) A law enforcement officer investigating at the scene of a motor
34 vehicle accident may arrest the driver of a motor vehicle involved in
35 the accident if the officer has probable cause to believe that the
36 driver has committed in connection with the accident a violation of any
37 traffic law or regulation.

1 (5) Any police officer having probable cause to believe that a
2 person has committed or is committing a violation of RCW 79A.60.040
3 shall have the authority to arrest the person.

4 (6) An officer may act upon the request of a law enforcement
5 officer in whose presence a traffic infraction was committed, to stop,
6 detain, arrest, or issue a notice of traffic infraction to the driver
7 who is believed to have committed the infraction. The request by the
8 witnessing officer shall give an officer the authority to take
9 appropriate action under the laws of the state of Washington.

10 (7) Any police officer having probable cause to believe that a
11 person has committed or is committing any act of indecent exposure, as
12 defined in RCW 9A.88.010, may arrest the person.

13 (8) A police officer may arrest and take into custody, pending
14 release on bail, personal recognizance, or court order, a person
15 without a warrant when the officer has probable cause to believe that
16 an order has been issued of which the person has knowledge under
17 chapter 10.14 RCW and the person has violated the terms of that order.

18 (9) Any police officer having probable cause to believe that a
19 person has, within twenty-four hours of the alleged violation,
20 committed a violation of RCW 9A.50.020 may arrest such person.

21 (10) A police officer having probable cause to believe that a
22 person illegally possesses or illegally has possessed a firearm or
23 other dangerous weapon on private or public elementary or secondary
24 school premises shall have the authority to arrest the person.

25 For purposes of this subsection, the term "firearm" has the meaning
26 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning
27 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

28 (11) Except as specifically provided in subsections (2), (3), (4),
29 and (6) of this section, nothing in this section extends or otherwise
30 affects the powers of arrest prescribed in Title 46 RCW.

31 (12) No police officer may be held criminally or civilly liable for
32 making an arrest pursuant to (~~RCW 10.31.100~~) subsection (2) or (8) of
33 this section if the police officer acts in good faith and without
34 malice.

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

37 (1)(a) When funded, the Washington association of sheriffs and

1 police chiefs shall convene a work group to develop a model policy
2 regarding the reporting of domestic violence as defined in RCW
3 10.99.020 to law enforcement in cases where the victim is unable or
4 unwilling to make a report in the jurisdiction where the alleged crime
5 occurred.

6 (b) The model policy must include policies and procedures related
7 to:

- 8 (i) Collecting and securing evidence; and
- 9 (ii) Creating interlocal agreements between law enforcement
10 agencies.

11 (2) In developing the model policy under subsection (1)(a) of this
12 section, the association shall consult with appropriate stakeholders
13 and government agencies.

14 **PART THREE**
15 **NO-CONTACT AND PROTECTION ORDERS**

16 **Sec. 301.** RCW 10.99.045 and 2000 c 119 s 19 are each amended to
17 read as follows:

18 (1) A defendant arrested for an offense involving domestic violence
19 as defined by RCW 10.99.020 shall be required to appear in person
20 before a magistrate within one judicial day after the arrest.

21 (2) A defendant who is charged by citation, complaint, or
22 information with an offense involving domestic violence as defined by
23 RCW 10.99.020 and not arrested shall appear in court for arraignment in
24 person as soon as practicable, but in no event later than fourteen days
25 after the next day on which court is in session following the issuance
26 of the citation or the filing of the complaint or information.

27 (3)(a) At the time of the appearances provided in subsection (1) or
28 (2) of this section, the court shall determine the necessity of
29 imposing a no-contact order or other conditions of pretrial release
30 according to the procedures established by court rule for a preliminary
31 appearance or an arraignment. The court may include in the order any
32 conditions authorized under RCW 9.41.800 and 10.99.040.

33 (b) For the purposes of (a) of this subsection, the prosecutor
34 shall provide for the court's review:

35 (i) The defendant's criminal history, if any, that occurred in
36 Washington or any other state;

1 (ii) If available, the defendant's criminal history that occurred
2 in any tribal jurisdiction; and

3 (iii) The defendant's individual order history.

4 (c) For the purposes of (b) of this subsection, criminal history
5 includes all previous convictions and orders of deferred prosecution,
6 as reported through the judicial information system or otherwise
7 available to the court or prosecutor, current to within the period
8 specified in (d) of this subsection before the date of the appearance.

9 (d) The periods applicable to previous convictions and orders of
10 deferred prosecution are:

11 (i) One working day, in the case of previous actions of courts that
12 fully participate in the state judicial information system; and

13 (ii) Seven calendar days, in the case of previous actions of courts
14 that do not fully participate in the judicial information system. For
15 the purposes of this subsection, "fully participate" means regularly
16 providing records to and receiving records from the system by
17 electronic means on a daily basis.

18 (4) Appearances required pursuant to this section are mandatory and
19 cannot be waived.

20 (5) The no-contact order shall be issued and entered with the
21 appropriate law enforcement agency pursuant to the procedures outlined
22 in RCW 10.99.040 (2) and (~~(+4)~~) (6).

23 **Sec. 302.** RCW 26.50.020 and 1992 c 111 s 8 are each amended to
24 read as follows:

25 (1)(a) Any person may seek relief under this chapter by filing a
26 petition with a court alleging that the person has been the victim of
27 domestic violence committed by the respondent. The person may petition
28 for relief on behalf of himself or herself and on behalf of minor
29 family or household members.

30 (b) Any person thirteen years of age or older may seek relief under
31 this chapter by filing a petition with a court alleging that he or she
32 has been the victim of violence in a dating relationship and the
33 respondent is sixteen years of age or older.

34 (2)(a) A person under eighteen years of age who is sixteen years of
35 age or older may seek relief under this chapter and is not required to
36 seek relief by a guardian or next friend.

1 (b) A person under sixteen years of age who is seeking relief under
2 subsection (1)(b) of this section is required to seek relief by a
3 parent, guardian, guardian ad litem, or next friend.

4 (3) No guardian or guardian ad litem need be appointed on behalf of
5 a respondent to an action under this chapter who is under eighteen
6 years of age if such respondent is sixteen years of age or older.

7 (4) The court may, if it deems necessary, appoint a guardian ad
8 litem for a petitioner or respondent who is a party to an action under
9 this chapter.

10 (5) The courts defined in RCW 26.50.010(~~(+3)~~) (4) have
11 jurisdiction over proceedings under this chapter. The jurisdiction of
12 district and municipal courts under this chapter shall be limited to
13 enforcement of RCW 26.50.110(1), or the equivalent municipal ordinance,
14 and the issuance and enforcement of temporary orders for protection
15 provided for in RCW 26.50.070 if: (a) A superior court has exercised
16 or is exercising jurisdiction over a proceeding under this title or
17 chapter 13.34 RCW involving the parties; (b) the petition for relief
18 under this chapter presents issues of residential schedule of and
19 contact with children of the parties; or (c) the petition for relief
20 under this chapter requests the court to exclude a party from the
21 dwelling which the parties share. When the jurisdiction of a district
22 or municipal court is limited to the issuance and enforcement of a
23 temporary order, the district or municipal court shall set the full
24 hearing provided for in RCW 26.50.050 in superior court and transfer
25 the case. If the notice and order are not served on the respondent in
26 time for the full hearing, the issuing court shall have concurrent
27 jurisdiction with the superior court to extend the order for
28 protection.

29 (6) An action under this chapter shall be filed in the county or
30 the municipality where the petitioner resides, unless the petitioner
31 has left the residence or household to avoid abuse. In that case, the
32 petitioner may bring an action in the county or municipality of the
33 previous or the new household or residence.

34 (7) A person's right to petition for relief under this chapter is
35 not affected by the person leaving the residence or household to avoid
36 abuse.

37 (8) For the purposes of this section "next friend" means any

1 competent individual, over eighteen years of age, chosen by the minor
2 and who is capable of pursuing the minor's stated interest in the
3 action.

4 NEW SECTION. **Sec. 303.** A new section is added to chapter 26.50
5 RCW to read as follows:

6 (1) The administrative office of the courts shall update the law
7 enforcement information form which it provides for the use of a
8 petitioner who is seeking an ex parte protection order in such a
9 fashion as to prompt the person to disclose on the form whether the
10 person who the petitioner is seeking to restrain has a disability,
11 brain injury, or impairment requiring special assistance.

12 (2) Any peace officer who serves a protection order on a respondent
13 with the knowledge that the respondent requires special assistance due
14 to a disability, brain injury, or impairment shall make a reasonable
15 effort to accommodate the needs of the respondent to the extent
16 practicable without compromise to the safety of the petitioner.

17 **Sec. 304.** RCW 26.50.060 and 2009 c 439 s 2 are each amended to
18 read as follows:

19 (1) Upon notice and after hearing, the court may provide relief as
20 follows:

21 (a) Restrain the respondent from committing acts of domestic
22 violence;

23 (b) Exclude the respondent from the dwelling that the parties
24 share, from the residence, workplace, or school of the petitioner, or
25 from the day care or school of a child;

26 (c) Prohibit the respondent from knowingly coming within, or
27 knowingly remaining within, a specified distance from a specified
28 location;

29 (d) On the same basis as is provided in chapter 26.09 RCW, the
30 court shall make residential provision with regard to minor children of
31 the parties. However, parenting plans as specified in chapter 26.09
32 RCW shall not be required under this chapter;

33 (e) Order the respondent to participate in a domestic violence
34 perpetrator treatment program approved under RCW 26.50.150;

35 (f) Order other relief as it deems necessary for the protection of

1 the petitioner and other family or household members sought to be
2 protected, including orders or directives to a peace officer, as
3 allowed under this chapter;

4 (g) Require the respondent to pay the administrative court costs
5 and service fees, as established by the county or municipality
6 incurring the expense and to reimburse the petitioner for costs
7 incurred in bringing the action, including reasonable attorneys' fees;

8 (h) Restrain the respondent from having any contact with the victim
9 of domestic violence or the victim's children or members of the
10 victim's household;

11 (i) Restrain the respondent from harassing, following, keeping
12 under physical or electronic surveillance, cyberstalking as defined in
13 RCW 9.61.260, and using telephonic, audiovisual, or other electronic
14 means to monitor the actions, location, or communication of a victim of
15 domestic violence, the victim's children, or members of the victim's
16 household. For the purposes of this subsection, "communication"
17 includes both "wire communication" and "electronic communication" as
18 defined in RCW 9.73.260;

19 (j) Require the respondent to submit to electronic monitoring. The
20 order shall specify who shall provide the electronic monitoring
21 services and the terms under which the monitoring must be performed.
22 The order also may include a requirement that the respondent pay the
23 costs of the monitoring. The court shall consider the ability of the
24 respondent to pay for electronic monitoring;

25 ((+j)) (k) Consider the provisions of RCW 9.41.800;

26 ((+k)) (l) Order possession and use of essential personal effects.
27 The court shall list the essential personal effects with sufficient
28 specificity to make it clear which property is included. Personal
29 effects may include pets. The court may order that a petitioner be
30 granted the exclusive custody or control of any pet owned, possessed,
31 leased, kept, or held by the petitioner, respondent, or minor child
32 residing with either the petitioner or respondent and may prohibit the
33 respondent from interfering with the petitioner's efforts to remove the
34 pet. The court may also prohibit the respondent from knowingly coming
35 within, or knowingly remaining within, a specified distance of
36 specified locations where the pet is regularly found; and

37 ((+l)) (m) Order use of a vehicle.

1 (2) If a protection order restrains the respondent from contacting
2 the respondent's minor children the restraint shall be for a fixed
3 period not to exceed one year. This limitation is not applicable to
4 orders for protection issued under chapter 26.09, 26.10, or 26.26 RCW.
5 With regard to other relief, if the petitioner has petitioned for
6 relief on his or her own behalf or on behalf of the petitioner's family
7 or household members or minor children, and the court finds that the
8 respondent is likely to resume acts of domestic violence against the
9 petitioner or the petitioner's family or household members or minor
10 children when the order expires, the court may either grant relief for
11 a fixed period or enter a permanent order of protection.

12 If the petitioner has petitioned for relief on behalf of the
13 respondent's minor children, the court shall advise the petitioner that
14 if the petitioner wants to continue protection for a period beyond one
15 year the petitioner may either petition for renewal pursuant to the
16 provisions of this chapter or may seek relief pursuant to the
17 provisions of chapter 26.09 or 26.26 RCW.

18 (3) If the court grants an order for a fixed time period, the
19 petitioner may apply for renewal of the order by filing a petition for
20 renewal at any time within the three months before the order expires.
21 The petition for renewal shall state the reasons why the petitioner
22 seeks to renew the protection order. Upon receipt of the petition for
23 renewal the court shall order a hearing which shall be not later than
24 fourteen days from the date of the order. Except as provided in RCW
25 26.50.085, personal service shall be made on the respondent not less
26 than five days before the hearing. If timely service cannot be made
27 the court shall set a new hearing date and shall either require
28 additional attempts at obtaining personal service or permit service by
29 publication as provided in RCW 26.50.085 or by mail as provided in RCW
30 26.50.123. If the court permits service by publication or mail, the
31 court shall set the new hearing date not later than twenty-four days
32 from the date of the order. If the order expires because timely
33 service cannot be made the court shall grant an ex parte order of
34 protection as provided in RCW 26.50.070. The court shall grant the
35 petition for renewal unless the respondent proves by a preponderance of
36 the evidence that the respondent will not resume acts of domestic
37 violence against the petitioner or the petitioner's children or family
38 or household members when the order expires. The court may renew the

1 protection order for another fixed time period or may enter a permanent
2 order as provided in this section. The court may award court costs,
3 service fees, and reasonable attorneys' fees as provided in subsection
4 (1)(g) of this section.

5 (4) In providing relief under this chapter, the court may realign
6 the designation of the parties as "petitioner" and "respondent" where
7 the court finds that the original petitioner is the abuser and the
8 original respondent is the victim of domestic violence and may issue an
9 ex parte temporary order for protection in accordance with RCW
10 26.50.070 on behalf of the victim until the victim is able to prepare
11 a petition for an order for protection in accordance with RCW
12 26.50.030.

13 (5) Except as provided in subsection (4) of this section, no order
14 for protection shall grant relief to any party except upon notice to
15 the respondent and hearing pursuant to a petition or counter-petition
16 filed and served by the party seeking relief in accordance with RCW
17 26.50.050.

18 (6) The court order shall specify the date the order expires if
19 any. The court order shall also state whether the court issued the
20 protection order following personal service, service by publication, or
21 service by mail and whether the court has approved service by
22 publication or mail of an order issued under this section.

23 (7) If the court declines to issue an order for protection or
24 declines to renew an order for protection, the court shall state in
25 writing on the order the particular reasons for the court's denial.

26 **Sec. 305.** RCW 26.50.070 and 2000 c 119 s 16 are each amended to
27 read as follows:

28 (1) Where an application under this section alleges that
29 irreparable injury could result from domestic violence if an order is
30 not issued immediately without prior notice to the respondent, the
31 court may grant an ex parte temporary order for protection, pending a
32 full hearing, and grant relief as the court deems proper, including an
33 order:

34 (a) Restraining any party from committing acts of domestic
35 violence;

36 (b) Restraining any party from going onto the grounds of or

1 entering the dwelling that the parties share, from the residence,
2 workplace, or school of the other, or from the day care or school of a
3 child until further order of the court;

4 (c) Prohibiting any party from knowingly coming within, or
5 knowingly remaining within, a specified distance from a specified
6 location;

7 (d) Restraining any party from interfering with the other's custody
8 of the minor children or from removing the children from the
9 jurisdiction of the court;

10 (e) Restraining any party from having any contact with the victim
11 of domestic violence or the victim's children or members of the
12 victim's household; (~~and~~)

13 (f) Considering the provisions of RCW 9.41.800; and

14 (g) Restraining the respondent from harassing, following, keeping
15 under physical or electronic surveillance, cyberstalking as defined in
16 RCW 9.61.260, and using telephonic, audiovisual, or other electronic
17 means to monitor the actions, location, or communication of a victim of
18 domestic violence, the victim's children, or members of the victim's
19 household. For the purposes of this subsection, "communication"
20 includes both "wire communication" and "electronic communication" as
21 defined in RCW 9.73.260.

22 (2) Irreparable injury under this section includes but is not
23 limited to situations in which the respondent has recently threatened
24 petitioner with bodily injury or has engaged in acts of domestic
25 violence against the petitioner.

26 (3) The court shall hold an ex parte hearing in person or by
27 telephone on the day the petition is filed or on the following judicial
28 day.

29 (4) An ex parte temporary order for protection shall be effective
30 for a fixed period not to exceed fourteen days or twenty-four days if
31 the court has permitted service by publication under RCW 26.50.085 or
32 by mail under RCW 26.50.123. The ex parte order may be reissued. A
33 full hearing, as provided in this chapter, shall be set for not later
34 than fourteen days from the issuance of the temporary order or not
35 later than twenty-four days if service by publication or by mail is
36 permitted. Except as provided in RCW 26.50.050, 26.50.085, and
37 26.50.123, the respondent shall be personally served with a copy of the

1 ex parte order along with a copy of the petition and notice of the date
2 set for the hearing.

3 (5) Any order issued under this section shall contain the date and
4 time of issuance and the expiration date and shall be entered into a
5 statewide judicial information system by the clerk of the court within
6 one judicial day after issuance.

7 (6) If the court declines to issue an ex parte temporary order for
8 protection the court shall state the particular reasons for the court's
9 denial. The court's denial of a motion for an ex parte order of
10 protection shall be filed with the court.

11 NEW SECTION. **Sec. 306.** A new section is added to chapter 26.50
12 RCW to read as follows:

13 (1) In a proceeding in which a petition for an order for protection
14 under this chapter is sought, a court of this state may exercise
15 personal jurisdiction over a nonresident individual if:

16 (a) The individual is personally served with a petition within this
17 state;

18 (b) The individual submits to the jurisdiction of this state by
19 consent, entering a general appearance, or filing a responsive document
20 having the effect of waiving any objection to consent to personal
21 jurisdiction;

22 (c) The act or acts of the individual or the individual's agent
23 giving rise to the petition or enforcement of an order for protection
24 occurred within this state;

25 (d)(i) The act or acts of the individual or the individual's agent
26 giving rise to the petition or enforcement of an order for protection
27 occurred outside this state and are part of an ongoing pattern of
28 domestic violence or stalking that has an adverse effect on the
29 petitioner or a member of the petitioner's family or household and the
30 petitioner resides in this state; or

31 (ii) As a result of acts of domestic violence or stalking, the
32 petitioner or a member of the petitioner's family or household has
33 sought safety or protection in this state and currently resides in this
34 state; or

35 (e) There is any other basis consistent with RCW 4.28.185 or with
36 the Constitutions of this state and the United States.

1 (2) For jurisdiction to be exercised under subsection (1)(d)(i) or
2 (ii) of this section, the individual must have communicated with the
3 petitioner or a member of the petitioner's family, directly or
4 indirectly, or made known a threat to the safety of the petitioner or
5 member of the petitioner's family while the petitioner or family member
6 resides in this state. For the purposes of subsection (1)(d)(i) or
7 (ii) of this section, "communicated or made known" includes, but is not
8 limited to, through the mail, telephonically, or a posting on an
9 electronic communication site or medium. Communication on any
10 electronic medium that is generally available to any individual
11 residing in the state shall be sufficient to exercise jurisdiction
12 under subsection (1)(d)(i) or (ii) of this section.

13 (3) For the purposes of this section, an act or acts that "occurred
14 within this state" includes, but is not limited to, an oral or written
15 statement made or published by a person outside of this state to any
16 person in this state by means of the mail, interstate commerce, or
17 foreign commerce. Oral or written statements sent by electronic mail
18 or the internet are deemed to have "occurred within this state."

19 NEW SECTION. **Sec. 307.** A new section is added to chapter 7.90 RCW
20 to read as follows:

21 (1) In a proceeding in which a petition for a sexual assault
22 protection order is sought under this chapter, a court of this state
23 may exercise personal jurisdiction over a nonresident individual if:

24 (a) The individual is personally served with a petition within this
25 state;

26 (b) The individual submits to the jurisdiction of this state by
27 consent, entering a general appearance, or filing a responsive document
28 having the effect of waiving any objection to consent to personal
29 jurisdiction;

30 (c) The act or acts of the individual or the individual's agent
31 giving rise to the petition or enforcement of a sexual assault
32 protection order occurred within this state;

33 (d)(i) The act or acts of the individual or the individual's agent
34 giving rise to the petition or enforcement of a sexual assault
35 protection order occurred outside this state and are part of an ongoing
36 pattern of sexual assaults or stalking that has an adverse effect on

1 the petitioner or a member of the petitioner's family or household and
2 the petitioner resides in this state; or

3 (ii) As a result of acts of stalking or a sexual assault, the
4 petitioner or a member of the petitioner's family or household has
5 sought safety or protection in this state and currently resides in this
6 state; or

7 (e) There is any other basis consistent with RCW 4.28.185 or with
8 the constitutions of this state and the United States.

9 (2) For jurisdiction to be exercised under subsection (1)(d)(i) or
10 (ii) of this section, the individual must have communicated with the
11 petitioner or a member of the petitioner's family, directly or
12 indirectly, or made known a threat to the safety of the petitioner or
13 member of the petitioner's family while the petitioner or family member
14 resides in this state. For the purposes of subsection (1)(d)(i) or
15 (ii) of this section, "communicated or made known" includes, but is not
16 limited to, through the mail, telephonically, or a posting on an
17 electronic communication site or medium. Communication on any
18 electronic medium that is generally available to any individual
19 residing in the state shall be sufficient to exercise jurisdiction
20 under subsection (1)(d)(i) or (ii) of this section.

21 (3) For the purposes of this section, an act or acts that "occurred
22 within this state" includes, but is not limited to, an oral or written
23 statement made or published by a person outside of this state to any
24 person in this state by means of the mail, interstate commerce, or
25 foreign commerce. Oral or written statements sent by electronic mail
26 or the internet are deemed to have "occurred within this state."

27 NEW SECTION. **Sec. 308.** A new section is added to chapter 10.14
28 RCW to read as follows:

29 (1) In a proceeding in which a petition for an order for protection
30 under this chapter is sought, a court of this state may exercise
31 personal jurisdiction over a nonresident individual if:

32 (a) The individual is personally served with a petition within this
33 state;

34 (b) The individual submits to the jurisdiction of this state by
35 consent, entering a general appearance, or filing a responsive document
36 having the effect of waiving any objection to consent to personal
37 jurisdiction;

1 (c) The act or acts of the individual or the individual's agent
2 giving rise to the petition or enforcement of an order for protection
3 occurred within this state;

4 (d)(i) The act or acts of the individual or the individual's agent
5 giving rise to the petition or enforcement of an order for protection
6 occurred outside this state and are part of an ongoing pattern of
7 harassment that has an adverse effect on the petitioner or a member of
8 the petitioner's family or household and the petitioner resides in this
9 state; or

10 (ii) As a result of acts of harassment, the petitioner or a member
11 of the petitioner's family or household has sought safety or protection
12 in this state and currently resides in this state; or

13 (e) There is any other basis consistent with RCW 4.28.185 or with
14 the constitutions of this state and the United States.

15 (2) For jurisdiction to be exercised under subsection (1)(d)(i) or
16 (ii) of this section, the individual must have communicated with the
17 petitioner or a member of the petitioner's family, directly or
18 indirectly, or made known a threat to the safety of the petitioner or
19 member of the petitioner's family while the petitioner or family member
20 resides in this state. For the purposes of subsection (1)(d)(i) or
21 (ii) of this section, "communicated or made known" includes, but is not
22 limited to, through the mail, telephonically, or a posting on an
23 electronic communication site or medium. Communication on any
24 electronic medium that is generally available to any individual
25 residing in the state shall be sufficient to exercise jurisdiction
26 under subsection (1)(d)(i) or (ii) of this section.

27 (3) For the purposes of this section, an act or acts that "occurred
28 within this state" includes, but is not limited to, an oral or written
29 statement made or published by a person outside of this state to any
30 person in this state by means of the mail, interstate commerce, or
31 foreign commerce. Oral or written statements sent by electronic mail
32 or the internet are deemed to have "occurred within this state."

33 **Sec. 309.** RCW 10.99.040 and 2000 c 119 s 18 are each amended to
34 read as follows:

35 (1) Because of the serious nature of domestic violence, the court
36 in domestic violence actions:

1 (a) Shall not dismiss any charge or delay disposition because of
2 concurrent dissolution or other civil proceedings;

3 (b) Shall not require proof that either party is seeking a
4 dissolution of marriage prior to instigation of criminal proceedings;

5 (c) Shall waive any requirement that the victim's location be
6 disclosed to any person, other than the attorney of a criminal
7 defendant, upon a showing that there is a possibility of further
8 violence: PROVIDED, That the court may order a criminal defense
9 attorney not to disclose to his or her client the victim's location;
10 and

11 (d) Shall identify by any reasonable means on docket sheets those
12 criminal actions arising from acts of domestic violence.

13 (2)(a) Because of the likelihood of repeated violence directed at
14 those who have been victims of domestic violence in the past, when any
15 person charged with or arrested for a crime involving domestic violence
16 is released from custody before arraignment or trial on bail or
17 personal recognizance, the court authorizing the release may prohibit
18 that person from having any contact with the victim. The jurisdiction
19 authorizing the release shall determine whether that person should be
20 prohibited from having any contact with the victim. If there is no
21 outstanding restraining or protective order prohibiting that person
22 from having contact with the victim, the court authorizing release may
23 issue, by telephone, a no-contact order prohibiting the person charged
24 or arrested from having contact with the victim or from knowingly
25 coming within, or knowingly remaining within, a specified distance of
26 a location.

27 (b) In issuing the order, the court shall consider the provisions
28 of RCW 9.41.800.

29 (c) The no-contact order shall also be issued in writing as soon as
30 possible. By January 1, 2011, the administrative office of the courts
31 shall develop a pattern form for all no-contact orders issued under
32 this chapter. A no-contact order issued under this chapter must
33 substantially comply with the pattern form developed by the
34 administrative office of the courts.

35 (3) At the time of arraignment the court shall determine whether a
36 no-contact order shall be issued or extended. The no-contact order
37 shall terminate if the defendant is acquitted or the charges are
38 dismissed. If a no-contact order is issued or extended, the court may

1 also include in the conditions of release a requirement that the
2 defendant submit to electronic monitoring. If electronic monitoring is
3 ordered, the court shall specify who shall provide the monitoring
4 services, and the terms under which the monitoring shall be performed.
5 Upon conviction, the court may require as a condition of the sentence
6 that the defendant reimburse the providing agency for the costs of the
7 electronic monitoring.

8 (4)(a) Willful violation of a court order issued under subsection
9 (2) or (3) of this section is punishable under RCW 26.50.110.

10 (b) The written order releasing the person charged or arrested
11 shall contain the court's directives and shall bear the legend:
12 "Violation of this order is a criminal offense under chapter 26.50 RCW
13 and will subject a violator to arrest; any assault, drive-by shooting,
14 or reckless endangerment that is a violation of this order is a felony.
15 You can be arrested even if any person protected by the order invites
16 or allows you to violate the order's prohibitions. You have the sole
17 responsibility to avoid or refrain from violating the order's
18 provisions. Only the court can change the order."

19 (c) A certified copy of the order shall be provided to the victim.

20 (5) If a no-contact order has been issued prior to charging, that
21 order shall expire at arraignment or within seventy-two hours if
22 charges are not filed. Such orders need not be entered into the
23 computer-based criminal intelligence information system in this state
24 which is used by law enforcement agencies to list outstanding warrants.

25 (6) Whenever a no-contact order is issued, modified, or terminated
26 under subsection (2) or (3) of this section, the clerk of the court
27 shall forward a copy of the order on or before the next judicial day to
28 the appropriate law enforcement agency specified in the order. Upon
29 receipt of the copy of the order the law enforcement agency shall enter
30 the order for one year or until the expiration date specified on the
31 order into any computer-based criminal intelligence information system
32 available in this state used by law enforcement agencies to list
33 outstanding warrants. Entry into the computer-based criminal
34 intelligence information system constitutes notice to all law
35 enforcement agencies of the existence of the order. The order is fully
36 enforceable in any jurisdiction in the state. Upon receipt of notice
37 that an order has been terminated under subsection (3) of this section,

1 the law enforcement agency shall remove the order from the computer-
2 based criminal intelligence information system.

3 (7) All courts shall develop policies and procedures by January 1,
4 2011, to grant victims a process to modify or rescind a no-contact
5 order issued under this chapter. The administrative office of the
6 courts shall develop a model policy to assist the courts in
7 implementing the requirements of this subsection.

8 NEW SECTION. Sec. 310. A new section is added to chapter 2.56 RCW
9 to read as follows:

10 (1) The administrative office of the courts shall develop
11 guidelines by December 1, 2011, for all courts to establish a process
12 to reconcile duplicate or conflicting no-contact or protection orders
13 issued by courts in this state.

14 (2) The guidelines developed under subsection (1) of this section
15 must include:

16 (a) A process to allow any party named in a no-contact or
17 protection order to petition for the purpose of reconciling duplicate
18 or conflicting orders; and

19 (b) A procedure to address no-contact and protection order data
20 sharing between court jurisdictions in this state.

21 (3) By January 1, 2011, the administrative office of the courts
22 shall provide a report back to the legislature concerning the progress
23 made to develop the guidelines required by this section.

24 **PART FOUR**
25 **SENTENCING REFORMS**

26 **Sec. 401.** RCW 9.94A.030 and 2009 c 375 s 4 are each amended to
27 read as follows:

28 Unless the context clearly requires otherwise, the definitions in
29 this section apply throughout this chapter.

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

32 (2) "Collect," or any derivative thereof, "collect and remit," or
33 "collect and deliver," when used with reference to the department,
34 means that the department, either directly or through a collection
35 agreement authorized by RCW 9.94A.760, is responsible for monitoring

1 and enforcing the offender's sentence with regard to the legal
2 financial obligation, receiving payment thereof from the offender, and,
3 consistent with current law, delivering daily the entire payment to the
4 superior court clerk without depositing it in a departmental account.

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

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

10 (5) "Community custody" means that portion of an offender's
11 sentence of confinement in lieu of earned release time or imposed as
12 part of a sentence under this chapter and served in the community
13 subject to controls placed on the offender's movement and activities by
14 the department.

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

18 (7) "Community restitution" means compulsory service, without
19 compensation, performed for the benefit of the community by the
20 offender.

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

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

25 (10) "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 (11) "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 (12) "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 (13) "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 (14) "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 (15) "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) "Day reporting" means a program of enhanced supervision
15 designed to monitor the offender's daily activities and compliance with
16 sentence conditions, and in which the offender is required to report
17 daily to a specific location designated by the department or the
18 sentencing court.

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

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

28 (19) "Disposable earnings" means that part of the earnings of an
29 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) "Domestic violence" has the same meaning as defined in RCW
4 10.99.020 and 26.50.010.

5 (21) "Drug offender sentencing alternative" is a sentencing option
6 available to persons convicted of a felony offense other than a violent
7 offense or a sex offense and who are eligible for the option under RCW
8 9.94A.660.

9 ((+21+)) (22) "Drug offense" means:

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

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

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

19 ((+22+)) (23) "Earned release" means earned release from
20 confinement as provided in RCW 9.94A.728.

21 ((+23+)) (24) "Escape" means:

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

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

31 ((+24+)) (25) "Felony traffic offense" means:

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

4 ~~((+25+))~~ (26) "Fine" means a specific sum of money ordered by the
5 sentencing court to be paid by the offender to the court over a
6 specific period of time.

7 ~~((+26+))~~ (27) "First-time offender" means any person who has no
8 prior convictions for a felony and is eligible for the first-time
9 offender waiver under RCW 9.94A.650.

10 ~~((+27+))~~ (28) "Home detention" means a program of partial
11 confinement available to offenders wherein the offender is confined in
12 a private residence subject to electronic surveillance.

13 ~~((+28+))~~ (29) "Legal financial obligation" means a sum of money
14 that is ordered by a superior court of the state of Washington for
15 legal financial obligations which may include restitution to the
16 victim, statutorily imposed crime victims' compensation fees as
17 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
18 drug funds, court-appointed attorneys' fees, and costs of defense,
19 fines, and any other financial obligation that is assessed to the
20 offender as a result of a felony conviction. Upon conviction for
21 vehicular assault while under the influence of intoxicating liquor or
22 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
23 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
24 legal financial obligations may also include payment to a public agency
25 of the expense of an emergency response to the incident resulting in
26 the conviction, subject to RCW 38.52.430.

27 ~~((+29+))~~ (30) "Most serious offense" means any of the following
28 felonies or a felony attempt to commit any of the following felonies:

29 (a) Any felony defined under any law as a class A felony or
30 criminal solicitation of or criminal conspiracy to commit a class A
31 felony;

32 (b) Assault in the second degree;

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

34 (d) Child molestation in the second degree;

35 (e) Controlled substance homicide;

36 (f) Extortion in the first degree;

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

38 (h) Indecent liberties;

- 1 (i) Kidnapping in the second degree;
- 2 (j) Leading organized crime;
- 3 (k) Manslaughter in the first degree;
- 4 (l) Manslaughter in the second degree;
- 5 (m) Promoting prostitution in the first degree;
- 6 (n) Rape in the third degree;
- 7 (o) Robbery in the second degree;
- 8 (p) Sexual exploitation;
- 9 (q) Vehicular assault, when caused by the operation or driving of
10 a vehicle by a person while under the influence of intoxicating liquor
11 or any drug or by the operation or driving of a vehicle in a reckless
12 manner;
- 13 (r) Vehicular homicide, when proximately caused by the driving of
14 any vehicle by any person while under the influence of intoxicating
15 liquor or any drug as defined by RCW 46.61.502, or by the operation of
16 any vehicle in a reckless manner;
- 17 (s) Any other class B felony offense with a finding of sexual
18 motivation;
- 19 (t) Any other felony with a deadly weapon verdict under RCW
20 9.94A.825;
- 21 (u) Any felony offense in effect at any time prior to December 2,
22 1993, that is comparable to a most serious offense under this
23 subsection, or any federal or out-of-state conviction for an offense
24 that under the laws of this state would be a felony classified as a
25 most serious offense under this subsection;
- 26 (v)(i) A prior conviction for indecent liberties under RCW
27 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
28 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
29 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
30 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- 31 (ii) A prior conviction for indecent liberties under RCW
32 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
33 if: (A) The crime was committed against a child under the age of
34 fourteen; or (B) the relationship between the victim and perpetrator is
35 included in the definition of indecent liberties under RCW
36 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
37 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
38 through July 27, 1997;

1 (w) Any out-of-state conviction for a felony offense with a finding
2 of sexual motivation if the minimum sentence imposed was ten years or
3 more; provided that the out-of-state felony offense must be comparable
4 to a felony offense under Title 9 or 9A RCW and the out-of-state
5 definition of sexual motivation must be comparable to the definition of
6 sexual motivation contained in this section.

7 ~~((+30+))~~ (31) "Nonviolent offense" means an offense which is not a
8 violent offense.

9 ~~((+31+))~~ (32) "Offender" means a person who has committed a felony
10 established by state law and is eighteen years of age or older or is
11 less than eighteen years of age but whose case is under superior court
12 jurisdiction under RCW 13.04.030 or has been transferred by the
13 appropriate juvenile court to a criminal court pursuant to RCW
14 13.40.110. In addition, for the purpose of community custody
15 requirements under this chapter, "offender" also means a misdemeanor or
16 gross misdemeanor probationer convicted of an offense included in RCW
17 9.94A.501(1) and ordered by a superior court to probation under the
18 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or
19 9.95.210. Throughout this chapter, the terms "offender" and
20 "defendant" are used interchangeably.

21 ~~((+32+))~~ (33) "Partial confinement" means confinement for no more
22 than one year in a facility or institution operated or utilized under
23 contract by the state or any other unit of government, or, if home
24 detention or work crew has been ordered by the court, in an approved
25 residence, for a substantial portion of each day with the balance of
26 the day spent in the community. Partial confinement includes work
27 release, home detention, work crew, and a combination of work crew and
28 home detention.

29 ~~((+33+))~~ (34) "Pattern of criminal street gang activity" means:

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

33 (i) Any "serious violent" felony offense as defined in this
34 section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a
35 Child 1 (RCW 9A.36.120);

36 (ii) Any "violent" offense as defined by this section, excluding
37 Assault of a Child 2 (RCW 9A.36.130);

1 (iii) Deliver or Possession with Intent to Deliver a Controlled
2 Substance (chapter 69.50 RCW);
3 (iv) Any violation of the firearms and dangerous weapon act
4 (chapter 9.41 RCW);
5 (v) Theft of a Firearm (RCW 9A.56.300);
6 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);
7 (vii) Malicious Harassment (RCW 9A.36.080);
8 (viii) Harassment where a subsequent violation or deadly threat is
9 made (RCW 9A.46.020(2)(b));
10 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
11 (x) Any felony conviction by a person eighteen years of age or
12 older with a special finding of involving a juvenile in a felony
13 offense under RCW 9.94A.833;
14 (xi) Residential Burglary (RCW 9A.52.025);
15 (xii) Burglary 2 (RCW 9A.52.030);
16 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
17 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
18 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
19 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
20 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
21 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
22 9A.56.075);
23 (xix) Extortion 1 (RCW 9A.56.120);
24 (xx) Extortion 2 (RCW 9A.56.130);
25 (xxi) Intimidating a Witness (RCW 9A.72.110);
26 (xxii) Tampering with a Witness (RCW 9A.72.120);
27 (xxiii) Reckless Endangerment (RCW 9A.36.050);
28 (xxiv) Coercion (RCW 9A.36.070);
29 (xxv) Harassment (RCW 9A.46.020); or
30 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
31 (b) That at least one of the offenses listed in (a) of this
32 subsection shall have occurred after July 1, 2008;
33 (c) That the most recent committed offense listed in (a) of this
34 subsection occurred within three years of a prior offense listed in (a)
35 of this subsection; and
36 (d) Of the offenses that were committed in (a) of this subsection,
37 the offenses occurred on separate occasions or were committed by two or
38 more persons.

1 (~~(+34+)~~) (35) "Persistent offender" is an offender who:

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

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

12 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
13 of a child in the first degree, child molestation in the first degree,
14 rape in the second degree, rape of a child in the second degree, or
15 indecent liberties by forcible compulsion; (B) any of the following
16 offenses with a finding of sexual motivation: Murder in the first
17 degree, murder in the second degree, homicide by abuse, kidnapping in
18 the first degree, kidnapping in the second degree, assault in the first
19 degree, assault in the second degree, assault of a child in the first
20 degree, assault of a child in the second degree, or burglary in the
21 first degree; or (C) an attempt to commit any crime listed in this
22 subsection (~~(+34+)~~) (35)(b)(i); and

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

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

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

13 ~~((+36+))~~ (37) "Private school" means a school regulated under
14 chapter 28A.195 or 28A.205 RCW.

15 ~~((+37+))~~ (38) "Public school" has the same meaning as in RCW
16 28A.150.010.

17 ~~((+38+))~~ (39) "Repetitive domestic violence offense" means any:

18 (a)(i) Domestic violence assault that is not a felony offense under
19 RCW 9A.36.041;

20 (ii) Domestic violence violation of a no contact order under
21 chapter 10.99 RCW that is not a felony offense;

22 (iii) Domestic violence violation of a protection order under
23 chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony offense;

24 (iv) Domestic violence harassment offense under RCW 9A.46.020 that
25 is not a felony offense; or

26 (v) Domestic violence stalking offense under RCW 9A.46.110 that is
27 not a felony offense; or

28 (b) Any federal, out-of-state, tribal court, military, county, or
29 municipal conviction for an offense that under the laws of this state
30 would be classified as a repetitive domestic violence offense under (a)
31 of this subsection.

32 (40) "Restitution" means a specific sum of money ordered by the
33 sentencing court to be paid by the offender to the court over a
34 specified period of time as payment of damages. The sum may include
35 both public and private costs.

36 ~~((+39+))~~ (41) "Risk assessment" means the application of the risk
37 instrument recommended to the department by the Washington state

1 institute for public policy as having the highest degree of predictive
2 accuracy for assessing an offender's risk of reoffense.

3 ~~((40))~~ (42) "Serious traffic offense" means:

4 (a) Nonfelony driving while under the influence of intoxicating
5 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
6 while under the influence of intoxicating liquor or any drug (RCW
7 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
8 attended vehicle (RCW 46.52.020(5)); or

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

12 ~~((41))~~ (43) "Serious violent offense" is a subcategory of violent
13 offense and means:

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

15 (ii) Homicide by abuse;

16 (iii) Murder in the second degree;

17 (iv) Manslaughter in the first degree;

18 (v) Assault in the first degree;

19 (vi) Kidnapping in the first degree;

20 (vii) Rape in the first degree;

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

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

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

27 ~~((42))~~ (44) "Sex offense" means:

28 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
29 RCW 9A.44.130(12);

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

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

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

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

1 (c) A felony with a finding of sexual motivation under RCW
2 9.94A.835 or 13.40.135; or

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

6 ~~((43))~~ (45) "Sexual motivation" means that one of the purposes
7 for which the defendant committed the crime was for the purpose of his
8 or her sexual gratification.

9 ~~((44))~~ (46) "Standard sentence range" means the sentencing
10 court's discretionary range in imposing a nonappealable sentence.

11 ~~((45))~~ (47) "Statutory maximum sentence" means the maximum length
12 of time for which an offender may be confined as punishment for a crime
13 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
14 the crime, or other statute defining the maximum penalty for a crime.

15 ~~((46))~~ (48) "Stranger" means that the victim did not know the
16 offender twenty-four hours before the offense.

17 ~~((47))~~ (49) "Total confinement" means confinement inside the
18 physical boundaries of a facility or institution operated or utilized
19 under contract by the state or any other unit of government for twenty-
20 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

21 ~~((48))~~ (50) "Transition training" means written and verbal
22 instructions and assistance provided by the department to the offender
23 during the two weeks prior to the offender's successful completion of
24 the work ethic camp program. The transition training shall include
25 instructions in the offender's requirements and obligations during the
26 offender's period of community custody.

27 ~~((49))~~ (51) "Victim" means any person who has sustained
28 emotional, psychological, physical, or financial injury to person or
29 property as a direct result of the crime charged.

30 ~~((50))~~ (52) "Violent offense" means:

- 31 (a) Any of the following felonies:
 - 32 (i) Any felony defined under any law as a class A felony or an
33 attempt to commit a class A felony;
 - 34 (ii) Criminal solicitation of or criminal conspiracy to commit a
35 class A felony;
 - 36 (iii) Manslaughter in the first degree;
 - 37 (iv) Manslaughter in the second degree;
 - 38 (v) Indecent liberties if committed by forcible compulsion;

1 (vi) Kidnapping in the second degree;
2 (vii) Arson in the second degree;
3 (viii) Assault in the second degree;
4 (ix) Assault of a child in the second degree;
5 (x) Extortion in the first degree;
6 (xi) Robbery in the second degree;
7 (xii) Drive-by shooting;
8 (xiii) Vehicular assault, when caused by the operation or driving
9 of a vehicle by a person while under the influence of intoxicating
10 liquor or any drug or by the operation or driving of a vehicle in a
11 reckless manner; and

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

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

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

22 ~~((+51+))~~ (53) "Work crew" means a program of partial confinement
23 consisting of civic improvement tasks for the benefit of the community
24 that complies with RCW 9.94A.725.

25 ~~((+52+))~~ (54) "Work ethic camp" means an alternative incarceration
26 program as provided in RCW 9.94A.690 designed to reduce recidivism and
27 lower the cost of corrections by requiring offenders to complete a
28 comprehensive array of real-world job and vocational experiences,
29 character-building work ethics training, life management skills
30 development, substance abuse rehabilitation, counseling, literacy
31 training, and basic adult education.

32 ~~((+53+))~~ (55) "Work release" means a program of partial confinement
33 available to offenders who are employed or engaged as a student in a
34 regular course of study at school.

35 **Sec. 402.** RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9
36 are each reenacted and amended to read as follows:

37 The court may impose a sentence outside the standard sentence range

1 for an offense if it finds, considering the purpose of this chapter,
2 that there are substantial and compelling reasons justifying an
3 exceptional sentence. Facts supporting aggravated sentences, other
4 than the fact of a prior conviction, shall be determined pursuant to
5 the provisions of RCW 9.94A.537.

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

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

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

18 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

37 (f) The offense was principally accomplished by another person and

1 the defendant manifested extreme caution or sincere concern for the
2 safety or well-being of the victim.

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

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

9 (i) The current offense involved domestic violence, as defined in
10 RCW 10.99.020, and the defendant suffered a continuing pattern of
11 coercion, control, or abuse by the victim of the offense and the
12 offense is a response to that coercion, control, or abuse.

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

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

16 (a) The defendant and the state both stipulate that justice is best
17 served by the imposition of an exceptional sentence outside the
18 standard range, and the court finds the exceptional sentence to be
19 consistent with and in furtherance of the interests of justice and the
20 purposes of the sentencing reform act.

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

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

28 (d) The failure to consider the defendant's prior criminal history
29 which was omitted from the offender score calculation pursuant to RCW
30 9.94A.525 results in a presumptive sentence that is clearly too
31 lenient.

32 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
33 the Court

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

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

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

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

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

10 (i) The current offense involved multiple victims or multiple
11 incidents per victim;

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

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

16 (iv) The defendant used his or her position of trust, confidence,
17 or fiduciary responsibility to facilitate the commission of the current
18 offense.

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

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

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

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

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

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

37 (vi) The offender used his or her position or status to facilitate

1 the commission of the current offense, including positions of trust,
2 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
3 other medical professional).

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

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

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

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

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

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

18 (i) The offense resulted in the pregnancy of a child victim of
19 rape.

20 (j) The defendant knew that the victim of the current offense was
21 a youth who was not residing with a legal custodian and the defendant
22 established or promoted the relationship for the primary purpose of
23 victimization.

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

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

30 (m) The offense involved a high degree of sophistication or
31 planning.

32 (n) The defendant used his or her position of trust, confidence, or
33 fiduciary responsibility to facilitate the commission of the current
34 offense.

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

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

1 (q) The defendant demonstrated or displayed an egregious lack of
2 remorse.

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

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

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

10 (u) The current offense is a burglary and the victim of the
11 burglary was present in the building or residence when the crime was
12 committed.

13 (v) The offense was committed against a law enforcement officer who
14 was performing his or her official duties at the time of the offense,
15 the offender knew that the victim was a law enforcement officer, and
16 the victim's status as a law enforcement officer is not an element of
17 the offense.

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

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

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

26 (z)(i)(A) The current offense is theft in the first degree, theft
27 in the second degree, possession of stolen property in the first
28 degree, or possession of stolen property in the second degree; (B) the
29 stolen property involved is metal property; and (C) the property damage
30 to the victim caused in the course of the theft of metal property is
31 more than three times the value of the stolen metal property, or the
32 theft of the metal property creates a public hazard.

33 (ii) For purposes of this subsection, "metal property" means
34 commercial metal property, private metal property, or nonferrous metal
35 property, as defined in RCW 19.290.010.

36 (aa) The defendant committed the offense with the intent to
37 directly or indirectly cause any benefit, aggrandizement, gain, profit,

1 or other advantage to or for a criminal street gang as defined in RCW
2 9.94A.030, its reputation, influence, or membership.

3 **Sec. 403.** RCW 9.94A.525 and 2008 c 231 s 3 are each amended to
4 read as follows:

5 The offender score is measured on the horizontal axis of the
6 sentencing grid. The offender score rules are as follows:

7 The offender score is the sum of points accrued under this section
8 rounded down to the nearest whole number.

9 (1) A prior conviction is a conviction which exists before the date
10 of sentencing for the offense for which the offender score is being
11 computed. Convictions entered or sentenced on the same date as the
12 conviction for which the offender score is being computed shall be
13 deemed "other current offenses" within the meaning of RCW 9.94A.589.

14 (2)(a) Class A and sex prior felony convictions shall always be
15 included in the offender score.

16 (b) Class B prior felony convictions other than sex offenses shall
17 not be included in the offender score, if since the last date of
18 release from confinement (including full-time residential treatment)
19 pursuant to a felony conviction, if any, or entry of judgment and
20 sentence, the offender had spent ten consecutive years in the community
21 without committing any crime that subsequently results in a conviction.

22 (c) Except as provided in (e) of this subsection, class C prior
23 felony convictions other than sex offenses shall not be included in the
24 offender score if, since the last date of release from confinement
25 (including full-time residential treatment) pursuant to a felony
26 conviction, if any, or entry of judgment and sentence, the offender had
27 spent five consecutive years in the community without committing any
28 crime that subsequently results in a conviction.

29 (d) Except as provided in (e) of this subsection, serious traffic
30 convictions shall not be included in the offender score if, since the
31 last date of release from confinement (including full-time residential
32 treatment) pursuant to a felony conviction, if any, or entry of
33 judgment and sentence, the offender spent five years in the community
34 without committing any crime that subsequently results in a conviction.

35 (e) If the present conviction is felony driving while under the
36 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
37 felony physical control of a vehicle while under the influence of

1 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions
2 of felony driving while under the influence of intoxicating liquor or
3 any drug, felony physical control of a vehicle while under the
4 influence of intoxicating liquor or any drug, and serious traffic
5 offenses shall be included in the offender score if: (i) The prior
6 convictions were committed within five years since the last date of
7 release from confinement (including full-time residential treatment) or
8 entry of judgment and sentence; or (ii) the prior convictions would be
9 considered "prior offenses within ten years" as defined in RCW
10 46.61.5055.

11 (f) This subsection applies to both adult and juvenile prior
12 convictions.

13 (3) Out-of-state convictions for offenses shall be classified
14 according to the comparable offense definitions and sentences provided
15 by Washington law. Federal convictions for offenses shall be
16 classified according to the comparable offense definitions and
17 sentences provided by Washington law. If there is no clearly
18 comparable offense under Washington law or the offense is one that is
19 usually considered subject to exclusive federal jurisdiction, the
20 offense shall be scored as a class C felony equivalent if it was a
21 felony under the relevant federal statute.

22 (4) Score prior convictions for felony anticipatory offenses
23 (attempts, criminal solicitations, and criminal conspiracies) the same
24 as if they were convictions for completed offenses.

25 (5)(a) In the case of multiple prior convictions, for the purpose
26 of computing the offender score, count all convictions separately,
27 except:

28 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
29 encompass the same criminal conduct, shall be counted as one offense,
30 the offense that yields the highest offender score. The current
31 sentencing court shall determine with respect to other prior adult
32 offenses for which sentences were served concurrently or prior juvenile
33 offenses for which sentences were served consecutively, whether those
34 offenses shall be counted as one offense or as separate offenses using
35 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
36 if the court finds that they shall be counted as one offense, then the
37 offense that yields the highest offender score shall be used. The
38 current sentencing court may presume that such other prior offenses

1 were not the same criminal conduct from sentences imposed on separate
2 dates, or in separate counties or jurisdictions, or in separate
3 complaints, indictments, or informations;

4 (ii) In the case of multiple prior convictions for offenses
5 committed before July 1, 1986, for the purpose of computing the
6 offender score, count all adult convictions served concurrently as one
7 offense, and count all juvenile convictions entered on the same date as
8 one offense. Use the conviction for the offense that yields the
9 highest offender score.

10 (b) As used in this subsection (5), "served concurrently" means
11 that: (i) The latter sentence was imposed with specific reference to
12 the former; (ii) the concurrent relationship of the sentences was
13 judicially imposed; and (iii) the concurrent timing of the sentences
14 was not the result of a probation or parole revocation on the former
15 offense.

16 (6) If the present conviction is one of the anticipatory offenses
17 of criminal attempt, solicitation, or conspiracy, count each prior
18 conviction as if the present conviction were for a completed offense.
19 When these convictions are used as criminal history, score them the
20 same as a completed crime.

21 (7) If the present conviction is for a nonviolent offense and not
22 covered by subsection (11), (12), or (13) of this section, count one
23 point for each adult prior felony conviction and one point for each
24 juvenile prior violent felony conviction and 1/2 point for each
25 juvenile prior nonviolent felony conviction.

26 (8) If the present conviction is for a violent offense and not
27 covered in subsection (9), (10), (11), (12), or (13) of this section,
28 count two points for each prior adult and juvenile violent felony
29 conviction, one point for each prior adult nonviolent felony
30 conviction, and 1/2 point for each prior juvenile nonviolent felony
31 conviction.

32 (9) If the present conviction is for a serious violent offense,
33 count three points for prior adult and juvenile convictions for crimes
34 in this category, two points for each prior adult and juvenile violent
35 conviction (not already counted), one point for each prior adult
36 nonviolent felony conviction, and 1/2 point for each prior juvenile
37 nonviolent felony conviction.

1 (10) If the present conviction is for Burglary 1, count prior
2 convictions as in subsection (8) of this section; however count two
3 points for each prior adult Burglary 2 or residential burglary
4 conviction, and one point for each prior juvenile Burglary 2 or
5 residential burglary conviction.

6 (11) If the present conviction is for a felony traffic offense
7 count two points for each adult or juvenile prior conviction for
8 Vehicular Homicide or Vehicular Assault; for each felony offense count
9 one point for each adult and 1/2 point for each juvenile prior
10 conviction; for each serious traffic offense, other than those used for
11 an enhancement pursuant to RCW 46.61.520(2), count one point for each
12 adult and 1/2 point for each juvenile prior conviction; count one point
13 for each adult and 1/2 point for each juvenile prior conviction for
14 operation of a vessel while under the influence of intoxicating liquor
15 or any drug.

16 (12) If the present conviction is for homicide by watercraft or
17 assault by watercraft count two points for each adult or juvenile prior
18 conviction for homicide by watercraft or assault by watercraft; for
19 each felony offense count one point for each adult and 1/2 point for
20 each juvenile prior conviction; count one point for each adult and 1/2
21 point for each juvenile prior conviction for driving under the
22 influence of intoxicating liquor or any drug, actual physical control
23 of a motor vehicle while under the influence of intoxicating liquor or
24 any drug, or operation of a vessel while under the influence of
25 intoxicating liquor or any drug.

26 (13) If the present conviction is for manufacture of
27 methamphetamine count three points for each adult prior manufacture of
28 methamphetamine conviction and two points for each juvenile manufacture
29 of methamphetamine offense. If the present conviction is for a drug
30 offense and the offender has a criminal history that includes a sex
31 offense or serious violent offense, count three points for each adult
32 prior felony drug offense conviction and two points for each juvenile
33 drug offense. All other adult and juvenile felonies are scored as in
34 subsection (8) of this section if the current drug offense is violent,
35 or as in subsection (7) of this section if the current drug offense is
36 nonviolent.

37 (14) If the present conviction is for Escape from Community

1 Custody, RCW 72.09.310, count only prior escape convictions in the
2 offender score. Count adult prior escape convictions as one point and
3 juvenile prior escape convictions as 1/2 point.

4 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or
5 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
6 juvenile prior convictions as 1/2 point.

7 (16) If the present conviction is for Burglary 2 or residential
8 burglary, count priors as in subsection (7) of this section; however,
9 count two points for each adult and juvenile prior Burglary 1
10 conviction, two points for each adult prior Burglary 2 or residential
11 burglary conviction, and one point for each juvenile prior Burglary 2
12 or residential burglary conviction.

13 (17) If the present conviction is for a sex offense, count priors
14 as in subsections (7) through (11) and (13) through (16) of this
15 section; however count three points for each adult and juvenile prior
16 sex offense conviction.

17 (18) If the present conviction is for failure to register as a sex
18 offender under RCW 9A.44.130(11), count priors as in subsections (7)
19 through (11) and (13) through (16) of this section; however count three
20 points for each adult and juvenile prior sex offense conviction,
21 excluding prior convictions for failure to register as a sex offender
22 under RCW 9A.44.130(11), which shall count as one point.

23 (19) If the present conviction is for an offense committed while
24 the offender was under community custody, add one point. For purposes
25 of this subsection, community custody includes community placement or
26 postrelease supervision, as defined in chapter 9.94B RCW.

27 (20) If the present conviction is for Theft of a Motor Vehicle,
28 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
29 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
30 priors as in subsections (7) through (18) of this section; however
31 count one point for prior convictions of Vehicle Prowling 2, and three
32 points for each adult and juvenile prior Theft 1 (of a motor vehicle),
33 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a
34 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),
35 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a
36 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without
37 Permission 2 conviction.

1 (21) If the present conviction is for a felony domestic violence
2 offense where domestic violence as defined in RCW 9.94A.030 was plead
3 and proven, count priors as in subsections (7) through (20) of this
4 section; however, count points as follows:

5 (a) Count two points for each adult prior conviction where domestic
6 violence as defined in RCW 9.94A.030 was plead and proven after August
7 1, 2011, for the following offenses: A violation of a no contact order
8 that is a felony offense, a violation of a protection order that is a
9 felony offense, a felony domestic violence harassment offense, a felony
10 domestic violence stalking offense, a domestic violence Burglary 1
11 offense, a domestic violence Kidnapping 1 offense, a domestic violence
12 Kidnapping 2 offense, a domestic violence unlawful imprisonment
13 offense, a domestic violence Robbery 1 offense, a domestic violence
14 Robbery 2 offense, a domestic violence Assault 1 offense, a domestic
15 violence Assault 2 offense, a domestic violence Assault 3 offense, a
16 domestic violence Arson 1 offense, or a domestic violence Arson 2
17 offense; and

18 (b) Count one point for each second and subsequent juvenile
19 conviction where domestic violence as defined in RCW 9.94A.030 was
20 plead and proven after August 1, 2011, for the offenses listed in (a)
21 of this subsection.

22 (c) Count one point for each adult prior conviction for a
23 repetitive domestic violence offense as defined in RCW 9.94A.030, where
24 domestic violence as defined in RCW 9.94A.030, was plead and proven
25 after August 1, 2011.

26 (22) The fact that a prior conviction was not included in an
27 offender's offender score or criminal history at a previous sentencing
28 shall have no bearing on whether it is included in the criminal history
29 or offender score for the current offense. Prior convictions that were
30 not counted in the offender score or included in criminal history under
31 repealed or previous versions of the sentencing reform act shall be
32 included in criminal history and shall count in the offender score if
33 the current version of the sentencing reform act requires including or
34 counting those convictions. Prior convictions that were not included
35 in criminal history or in the offender score shall be included upon any
36 resentencing to ensure imposition of an accurate sentence.

1 NEW SECTION. **Sec. 404.** A new section is added to chapter 10.99
2 RCW to read as follows:

3 (1) In sentencing for a crime of domestic violence as defined in
4 this chapter, courts of limited jurisdiction shall consider, among
5 other factors, whether:

6 (a) The defendant suffered a continuing pattern of coercion,
7 control, or abuse by the victim of the offense and the offense is a
8 response to that coercion, control, or abuse;

9 (b) The offense was part of an ongoing pattern of psychological,
10 physical, or sexual abuse of a victim or multiple victims manifested by
11 multiple incidents over a prolonged period of time; and

12 (c) The offense occurred within sight or sound of the victim's or
13 the offender's minor children under the age of eighteen years.

14 (2)(a) In sentencing for a crime of domestic violence as defined in
15 this chapter, the prosecutor shall provide for the court's review:

16 (i) The defendant's criminal history, if any, that occurred in
17 Washington or any other state;

18 (ii) If available, the defendant's prior criminal history that
19 occurred in any tribal jurisdiction; and

20 (iii) The defendant's individual order history.

21 (b) For the purposes of (a) of this subsection, criminal history
22 includes all previous convictions and orders of deferred prosecution,
23 as reported through the judicial information system or otherwise
24 available to the court or prosecutor, current to within the period
25 specified in (c) of this subsection before the date of sentencing.

26 (c) The periods applicable to previous convictions and orders of
27 deferred prosecution are:

28 (i) One working day, in the case of previous actions of courts that
29 fully participate in the state judicial information system; and

30 (ii) Seven calendar days, in the case of previous actions of courts
31 that do not fully participate in the judicial information system. For
32 the purposes of this subsection, "fully participate" means regularly
33 providing records to and receiving records from the system by
34 electronic means on a daily basis.

35 **Sec. 405.** RCW 3.66.068 and 2001 c 94 s 2 are each amended to read
36 as follows:

37 For a period not to exceed five years after imposition of sentence

1 for a defendant sentenced for a domestic violence offense or under RCW
2 46.61.5055 and two years after imposition of sentence for all other
3 offenses, the court has continuing jurisdiction and authority to
4 suspend or defer the execution of all or any part of its sentence upon
5 stated terms, including installment payment of fines. A defendant who
6 has been sentenced, or whose sentence has been deferred, and who then
7 fails to appear for any hearing to address the defendant's compliance
8 with the terms of probation when ordered to do so by the court, shall
9 have the term of probation tolled until such time as the defendant
10 makes his or her presence known to the court on the record. However,
11 the jurisdiction period in this section does not apply to the
12 enforcement of orders issued under RCW 46.20.720. For the purposes of
13 this section, "domestic violence offense" means a crime listed in RCW
14 10.99.020 that is not a felony offense.

15 **Sec. 406.** RCW 3.50.330 and 2001 c 94 s 5 are each amended to read
16 as follows:

17 For a period not to exceed five years after imposition of sentence
18 for a defendant sentenced for a domestic violence offense or under RCW
19 46.61.5055 and two years after imposition of sentence for all other
20 offenses, the court shall have continuing jurisdiction and authority to
21 suspend or defer the execution of all or any part of the sentence upon
22 stated terms, including installment payment of fines. A defendant who
23 has been sentenced, or whose sentence has been deferred, and who then
24 fails to appear for any hearing to address the defendant's compliance
25 with the terms of probation when ordered to do so by the court, shall
26 have the term of probation tolled until such time as the defendant
27 makes his or her presence known to the court on the record. However,
28 the jurisdiction period in this section does not apply to the
29 enforcement of orders issued under RCW 46.20.720. Any time before
30 entering an order terminating probation, the court may modify or revoke
31 its order suspending or deferring the imposition or execution of the
32 sentence. For the purposes of this section, "domestic violence
33 offense" means a crime listed in RCW 10.99.020 that is not a felony
34 offense.

35 **Sec. 407.** RCW 35.20.255 and 2005 c 400 s 5 are each amended to
36 read as follows:

1 (1) Judges of the municipal court, in their discretion, shall have
2 the power in all criminal proceedings within their jurisdiction
3 including violations of city ordinances, to defer imposition of any
4 sentence, suspend all or part of any sentence including installment
5 payment of fines, fix the terms of any such deferral or suspension, and
6 provide for such probation as in their opinion is reasonable and
7 necessary under the circumstances of the case, but in no case shall it
8 extend for more than five years from the date of conviction for a
9 defendant to be sentenced for a domestic violence offense or under RCW
10 46.61.5055 and two years from the date of conviction for all other
11 offenses. A defendant who has been sentenced, or whose sentence has
12 been deferred, and who then fails to appear for any hearing to address
13 the defendant's compliance with the terms of probation when ordered to
14 do so by the court, shall have the term of probation tolled until such
15 time as the defendant makes his or her presence known to the court on
16 the record. However, the jurisdiction period in this section does not
17 apply to the enforcement of orders issued under RCW 46.20.720. Any
18 time before entering an order terminating probation, the court may
19 modify or revoke its order suspending or deferring the imposition or
20 execution of the sentence. For the purposes of this subsection,
21 "domestic violence offense" means a crime listed in RCW 10.99.020 that
22 is not a felony offense.

23 (2)(a) If a defendant whose sentence has been deferred requests
24 permission to travel or transfer to another state, the director of
25 probation services or a designee thereof shall determine whether such
26 request is subject to RCW 9.94A.745, the interstate compact for adult
27 offender supervision. If such request is subject to the compact, the
28 director or designee shall:

29 (i) Notify the department of corrections of the defendant's
30 request;

31 (ii) Provide the department of corrections with the supporting
32 documentation it requests for processing an application for transfer;

33 (iii) Notify the defendant of the fee due to the department of
34 corrections for processing an application under the compact;

35 (iv) Cease supervision of the defendant while another state
36 supervises the defendant pursuant to the compact;

37 (v) Resume supervision if the defendant returns to this state
38 before the period of deferral expires.

1 (b) The defendant shall receive credit for time served while being
2 supervised by another state.

3 (c) If the probationer is returned to the state at the request of
4 the receiving state under rules of the interstate compact for adult
5 offender supervision, the department of corrections is responsible for
6 the cost of returning the probationer.

7 (d) The state of Washington, the department of corrections and its
8 employees, and any city and its employees are not liable for civil
9 damages resulting from any act or omission authorized or required under
10 this section unless the act or omission constitutes gross negligence.

11 **PART FIVE**

12 **TREATMENT/SERVICES FOR PERPETRATORS AND VICTIMS**

13 **Sec. 501.** RCW 26.50.150 and 1999 c 147 s 1 are each amended to
14 read as follows:

15 Any program that provides domestic violence treatment to
16 perpetrators of domestic violence must be certified by the department
17 of social and health services and meet minimum standards for domestic
18 violence treatment purposes. The department of social and health
19 services shall adopt rules for standards of approval of domestic
20 violence perpetrator programs (~~(that accept perpetrators of domestic~~
21 ~~violence into treatment to satisfy court orders or that represent the~~
22 ~~programs as ones that treat domestic violence perpetrators)~~). The
23 treatment must meet the following minimum qualifications:

24 (1) All treatment must be based upon a full, complete clinical
25 intake including but not limited to: Current and past violence
26 history; a lethality risk assessment; history of treatment from past
27 domestic violence perpetrator treatment programs; a complete diagnostic
28 evaluation; a substance abuse assessment; criminal history; assessment
29 of cultural issues, learning disabilities, literacy, and special
30 language needs; and a treatment plan that adequately and appropriately
31 addresses the treatment needs of the individual.

32 (2) To facilitate communication necessary for periodic safety
33 checks and case monitoring, the program must require the perpetrator to
34 sign the following releases:

35 (a) A release for the program to inform the victim and victim's

1 community and legal advocates that the perpetrator is in treatment with
2 the program, and to provide information, for safety purposes, to the
3 victim and victim's community and legal advocates;

4 (b) A release to prior and current treatment agencies to provide
5 information on the perpetrator to the program; and

6 (c) A release for the program to provide information on the
7 perpetrator to relevant legal entities including: Lawyers, courts,
8 parole, probation, child protective services, and child welfare
9 services.

10 (3) Treatment must be for a minimum treatment period defined by the
11 secretary of the department by rule. The weekly treatment sessions
12 must be in a group unless there is a documented, clinical reason for
13 another modality. Any other therapies, such as individual, marital, or
14 family therapy, substance abuse evaluations or therapy, medication
15 reviews, or psychiatric interviews, may be concomitant with the weekly
16 group treatment sessions described in this section but not a substitute
17 for it.

18 (4) The treatment must focus primarily on ending the violence,
19 holding the perpetrator accountable for his or her violence, and
20 changing his or her behavior. The treatment must be based on
21 nonvictim-blaming strategies and philosophies and shall include
22 education about the individual, family, and cultural dynamics of
23 domestic violence. If the perpetrator or the victim has a minor child,
24 treatment must specifically include education regarding the effects of
25 domestic violence on children, such as the emotional impacts of
26 domestic violence on children and the long-term consequences that
27 exposure to incidents of domestic violence may have on children.

28 (5) Satisfactory completion of treatment must be contingent upon
29 the perpetrator meeting specific criteria, defined by rule by the
30 secretary of the department, and not just upon the end of a certain
31 period of time or a certain number of sessions.

32 (6) The program must have policies and procedures for dealing with
33 reoffenses and noncompliance.

34 (7) All evaluation and treatment services must be provided by, or
35 under the supervision of, qualified personnel.

36 (8) The secretary of the department may adopt rules and establish
37 fees as necessary to implement this section.

1 (4) The work group shall report its recommendations to the affected
2 entities and the legislature not later than December 1, 2010. All
3 agency representatives shall cooperate fully with the work group's
4 efforts.

5 **Sec. 602.** RCW 68.50.160 and 2007 c 156 s 24 are each amended to
6 read as follows:

7 (1) A person has the right to control the disposition of his or her
8 own remains without the predeath or postdeath consent of another
9 person. A valid written document expressing the decedent's wishes
10 regarding the place or method of disposition of his or her remains,
11 signed by the decedent in the presence of a witness, is sufficient
12 legal authorization for the procedures to be accomplished.

13 (2) Prearrangements that are prepaid, or filed with a licensed
14 funeral establishment or cemetery authority, under RCW 18.39.280
15 through 18.39.345 and chapter 68.46 RCW are not subject to cancellation
16 or substantial revision by survivors. Absent actual knowledge of
17 contrary legal authorization under this section, a licensed funeral
18 establishment or cemetery authority shall not be held criminally nor
19 civilly liable for acting upon such prearrangements.

20 (3) If the decedent has not made a prearrangement as set forth in
21 subsection (2) of this section or the costs of executing the decedent's
22 wishes regarding the disposition of the decedent's remains exceeds a
23 reasonable amount or directions have not been given by the decedent,
24 the right to control the disposition of the remains of a deceased
25 person vests in, and the duty of disposition and the liability for the
26 reasonable cost of preparation, care, and disposition of such remains
27 devolves upon the following in the order named:

28 (a) The surviving spouse or state registered domestic partner.

29 (b) The surviving adult children of the decedent.

30 (c) The surviving parents of the decedent.

31 (d) The surviving siblings of the decedent.

32 (e) A person acting as a representative of the decedent under the
33 signed authorization of the decedent.

34 (4) If any person to whom the right of control has vested pursuant
35 to subsection (3) of this section has been arrested or charged with
36 first or second degree murder or first degree manslaughter in

1 connection with the decedent's death, the right of control is
2 relinquished and passed on in accordance with subsection (3) of this
3 section.

4 (5) If a cemetery authority as defined in RCW 68.04.190 or a
5 funeral establishment licensed under chapter 18.39 RCW has made a good
6 faith effort to locate the person cited in subsection (3)(a) through
7 (e) of this section or the legal representative of the decedent's
8 estate, the cemetery authority or funeral establishment shall have the
9 right to rely on an authority to bury or cremate the human remains,
10 executed by the most responsible party available, and the cemetery
11 authority or funeral establishment may not be held criminally or
12 civilly liable for burying or cremating the human remains. In the
13 event any government agency provides the funds for the disposition of
14 any human remains and the government agency elects to provide funds for
15 cremation only, the cemetery authority or funeral establishment may not
16 be held criminally or civilly liable for cremating the human remains.

17 ((+5)) (6) The liability for the reasonable cost of preparation,
18 care, and disposition devolves jointly and severally upon all kin of
19 the decedent in the same degree of kindred, in the order listed in
20 subsection (3) of this section, and upon the estate of the decedent."

ESHB 2777 - S COMM AMD
By Committee on Judiciary

ADOPTED AND ENGROSSED 03/03/2010

21 On page 1, line 1 of the title, after "provisions;" strike the
22 remainder of the title and insert "amending RCW 10.31.100, 10.99.045,
23 26.50.020, 26.50.060, 26.50.070, 10.99.040, 9.94A.030, 9.94A.525,
24 3.66.068, 3.50.330, 35.20.255, 26.50.150, and 68.50.160; reenacting and
25 amending RCW 9.94A.535; adding a new section to chapter 36.28A RCW;
26 adding new sections to chapter 26.50 RCW; adding a new section to
27 chapter 7.90 RCW; adding a new section to chapter 10.14 RCW; adding new
28 sections to chapter 2.56 RCW; adding a new section to chapter 10.99
29 RCW; and creating a new section."

--- END ---