
SENATE BILL 5799

State of Washington

62nd Legislature

2011 Regular Session

By Senators King, Honeyford, Delvin, Holmquist Newbry, Becker, and Hewitt; by request of Attorney General

Read first time 02/14/11. Referred to Committee on Judiciary.

1 AN ACT Relating to criminal street gangs; amending RCW 13.40.127,
2 9A.46.120, 9A.48.105, 9.94A.829, 9.94A.702, 59.18.075, 26.50.160, and
3 70.41.440; reenacting and amending RCW 9.94A.030; adding new sections
4 to chapter 43.20A RCW; adding a new chapter to Title 7 RCW; adding a
5 new chapter to Title 10 RCW; creating a new section; and prescribing
6 penalties.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that gang violence is
9 an increasingly serious problem that threatens the long-term economic,
10 social, and public safety interests of the state, counties, and cities.
11 The scourge of gangs plaguing our streets is a clear and present danger
12 to our communities. Those who live where gang membership and activity
13 is on the rise find themselves living with the daily threat of
14 intimidation and harassment. Gangs terrorize neighborhoods and
15 adversely impact our quality of life by engaging in violence, drugs,
16 and associated criminal activities. Individual gang members, gang
17 cliques, or entire gang organizations traffic in drugs and gun running
18 and commit assault, rape, robbery, burglary, extortion, auto theft,
19 shootings, murder, and other felonies. Gang members are coming to

1 Washington from other states and foreign countries with many supported
2 by the sale of crack cocaine, heroin, and other illegal drugs. In many
3 neighborhoods, children are born into or must contend with second and
4 third-generation street gangs. The loss of life, property, happiness,
5 security, and a positive opportunity for growth caused by gang violence
6 has reached intolerable levels. Increased gang activity has seriously
7 strained the budgets of many local jurisdictions, as well as threatened
8 the ability of the educational system to educate our youth. The
9 destruction and fear generated by gangs in many communities have
10 greatly elevated the critical importance of enacting effective measures
11 to combat gang-related crime. Communities overwhelmed by violent gang
12 activity must have relief from the blight of gang crime before
13 revitalization, initiatives to strengthen families, school
14 improvements, and other desired interventions can succeed. Local
15 communities, law enforcement agencies, and prosecutors require
16 assistance to combat this clear and present danger to the law-abiding
17 residents of Washington. They must have the tools they need to
18 aggressively combat gang-related crime and build strong cases that
19 remove violent gang members from the streets. They need additional
20 prevention and intervention measures, civil remedies, and criminal
21 sanctions to ensure that our young are helped to avoid gang membership
22 and activities and that those who do commit gang-related crimes are
23 held fully accountable for the harm and suffering they inflict on
24 society. It is the intent of this act to provide the criminal justice
25 community and local communities with the effective tools they need to
26 better protect the citizens of Washington from gang-related crime.

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

29 Grants authorized.

30 (1) In general. The office of juvenile justice, in consultation
31 with the Washington state partnership council on juvenile justice,
32 shall award grants to carry out local projects focused on criminal
33 street gang prevention and intervention programs. The following
34 members shall serve on the grant application review committee: (a) The
35 secretary or the secretary's designee; (b) the chair of the Washington
36 state partnership council on juvenile justice or the chair's designee;
37 (c) the executive director of the Washington association of sheriffs

1 and police chiefs or the executive director's designee; (d) the
2 attorney general or the attorney general's designee; and (e)
3 representatives of local government and nongovernmental organizations,
4 appointed by the secretary. Each entity or organization has a vote
5 when determining awards.

6 (2) Eligible entities. The following entities are eligible to
7 apply for grants under this section:

8 (a) Nonprofit, nongovernmental organizations, or coalitions that
9 have a documented history of creating and administering effective
10 projects or that work in partnership with an organization that has a
11 documented history of creating and administering effective projects;
12 and

13 (b) Governmental entities that demonstrate a partnership with an
14 organization described in (a) of this subsection.

15 (3) Applications. (a) An eligible entity desiring a grant under
16 this section shall submit an application to the office of juvenile
17 justice at such time, in such form, and in such manner as the secretary
18 may prescribe. Applications, at a minimum, must demonstrate that:

19 (i) A significant gang problem exists in the jurisdiction or
20 jurisdictions that would receive the grant;

21 (ii) The funds will be used to offer services to prevent the
22 expansion of criminal street gang membership or support criminal street
23 gang membership intervention;

24 (iii) The funds will be used to provide services to a targeted
25 population; and

26 (iv) The costs of administration will not exceed four percent of
27 appropriated funding.

28 (b) Priority must be given to grant applications that:

29 (i) Demonstrate that gang violence is an increasing problem in the
30 applicant's jurisdiction;

31 (ii) Demonstrate that addressing the impact of criminal street
32 gangs is a high priority in the local community; and

33 (iii) Propose to implement a prevention or intervention program
34 using either proven evidence-based or innovative and culturally
35 relevant practices or propose to conduct a community gang assessment
36 using proven evidence-based practices, such as the office of juvenile
37 justice and office of delinquency programs comprehensive gang model.

1 (4) Term. Grant funds awarded under this section are limited to a
2 period of twelve calendar months.

3 (5) No supplanting. Grant funds awarded under this section must be
4 used to supplement, not supplant, other moneys that are available for
5 prevention and intervention programs.

6 (6) Reports. Each eligible entity that receives a grant under this
7 section shall submit a report describing the activities carried out
8 with the grant funds to the secretary within one month of the one-year
9 anniversary of receiving the award. The secretary shall report to the
10 appropriate committees of the legislature regarding the status of the
11 grant program established by this section by January 9, 2012.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.20A RCW
13 to read as follows:

14 (1) The gang violence prevention and intervention grant program
15 account is created in the state treasury. All receipts from the
16 following must be deposited into the account:

17 (a) Gifts, grants, bequests, devises, or other funds from public or
18 private sources to support the gang violence prevention and
19 intervention grant program established in section 2 of this act; and

20 (b) Recoveries from suits brought by the attorney general under RCW
21 19.86.080 for violations of RCW 19.86.020 in the form of: (i)
22 Settlements; (ii) civil penalties under RCW 19.86.140; and (iii)
23 recoveries under RCW 19.86.140 that a court orders placed in the
24 general fund. Deposits under this subsection (1)(b) shall not exceed
25 one million dollars per fiscal year.

26 (2) Moneys in the account may be spent only after appropriation.
27 Only the secretary or the secretary's designee may authorize
28 expenditures from the account. Expenditures from the account may be
29 made only for establishing, administering, funding, and maintaining the
30 gang violence prevention and intervention grant program established in
31 section 2 of this act.

32 **Sec. 4.** RCW 13.40.127 and 2009 c 236 s 1 are each amended to read
33 as follows:

34 (1) A juvenile is eligible for deferred disposition unless he or
35 she:

36 (a) Is charged with a sex or violent offense;

- 1 (b) Has a criminal history which includes any felony;
2 (c) Has a prior deferred disposition or deferred adjudication;
3 (~~(e)~~)
4 (d) Has two or more adjudications; or
5 (e) Is charged with a firearm offense under chapter 9.41 RCW and
6 the crime is alleged to be a criminal street gang-related offense as
7 defined in RCW 9.94A.030.

8 (2) The juvenile court may, upon motion at least fourteen days
9 before commencement of trial and, after consulting the juvenile's
10 custodial parent or parents or guardian and with the consent of the
11 juvenile, continue the case for disposition for a period not to exceed
12 one year from the date the juvenile is found guilty. The court shall
13 consider whether the offender and the community will benefit from a
14 deferred disposition before deferring the disposition.

15 (3) Any juvenile who agrees to a deferral of disposition shall:

16 (a) Stipulate to the admissibility of the facts contained in the
17 written police report;

18 (b) Acknowledge that the report will be entered and used to support
19 a finding of guilt and to impose a disposition if the juvenile fails to
20 comply with terms of supervision; and

21 (c) Waive the following rights to: (i) A speedy disposition; and
22 (ii) call and confront witnesses.

23 The adjudicatory hearing shall be limited to a reading of the
24 court's record.

25 (4) Following the stipulation, acknowledgment, waiver, and entry of
26 a finding or plea of guilt, the court shall defer entry of an order of
27 disposition of the juvenile.

28 (5) Any juvenile granted a deferral of disposition under this
29 section shall be placed under community supervision. The court may
30 impose any conditions of supervision that it deems appropriate
31 including posting a probation bond. Payment of restitution under RCW
32 13.40.190 shall be a condition of community supervision under this
33 section.

34 The court may require a juvenile offender convicted of animal
35 cruelty in the first degree to submit to a mental health evaluation to
36 determine if the offender would benefit from treatment and such
37 intervention would promote the safety of the community. After

1 consideration of the results of the evaluation, as a condition of
2 community supervision, the court may order the offender to attend
3 treatment to address issues pertinent to the offense.

4 (6) A parent who signed for a probation bond has the right to
5 notify the counselor if the juvenile fails to comply with the bond or
6 conditions of supervision. The counselor shall notify the court and
7 surety of any failure to comply. A surety shall notify the court of
8 the juvenile's failure to comply with the probation bond. The state
9 shall bear the burden to prove, by a preponderance of the evidence,
10 that the juvenile has failed to comply with the terms of community
11 supervision.

12 (7) A juvenile's lack of compliance shall be determined by the
13 judge upon written motion by the prosecutor or the juvenile's juvenile
14 court community supervision counselor. If a juvenile fails to comply
15 with terms of supervision, the court shall enter an order of
16 disposition.

17 (8) At any time following deferral of disposition the court may,
18 following a hearing, continue the case for an additional one-year
19 period for good cause.

20 (9) At the conclusion of the period set forth in the order of
21 deferral and upon a finding by the court of full compliance with
22 conditions of supervision and payment of full restitution, the
23 respondent's conviction shall be vacated and the court shall dismiss
24 the case with prejudice, except that a conviction under RCW 16.52.205
25 shall not be vacated.

26 (10)(a) Records of deferred disposition cases vacated under
27 subsection (9) of this section shall be sealed no later than thirty
28 days after the juvenile's eighteenth birthday provided that the
29 juvenile does not have any charges pending at that time. If a juvenile
30 has already reached his or her eighteenth birthday before July 26,
31 2009, and does not have any charges pending, he or she may request that
32 the court issue an order sealing the records of his or her deferred
33 disposition cases vacated under subsection (9) of this section, and
34 this request shall be granted. Nothing in this subsection shall
35 preclude a juvenile from petitioning the court to have the records of
36 his or her deferred dispositions sealed under RCW 13.50.050 (11) and
37 (12).

1 (b) Records sealed under this provision shall have the same legal
2 status as records sealed under RCW 13.50.050.

3 **Sec. 5.** RCW 9A.46.120 and 1997 c 266 s 3 are each amended to read
4 as follows:

5 (1) A person commits the offense of criminal gang intimidation if
6 the person threatens another person with bodily injury because the
7 other person refuses to join or has attempted to withdraw from a
8 criminal street gang, as defined in RCW (~~(28A.600.455, if the person~~
9 ~~who threatens the victim or the victim attends or is registered in a~~
10 ~~public or alternative school)) 9.94A.030.~~

11 (2) Criminal gang intimidation is a class C felony.

12 **Sec. 6.** RCW 9A.48.105 and 2008 c 276 s 306 are each amended to
13 read as follows:

14 (1) A person is guilty of criminal street gang tagging and graffiti
15 if he or she commits malicious mischief in the third degree under RCW
16 9A.48.090(1)(b) and he or she:

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

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

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

24 (2) Criminal street gang tagging and graffiti is a gross
25 misdemeanor offense.

26 (3) In addition to any other penalty imposed for a violation of
27 this section, the court may impose as a condition of the sentence that
28 the person perform up to one hundred hours of community service.

29 **Sec. 7.** RCW 9.94A.829 and 2009 c 28 s 16 are each amended to read
30 as follows:

31 (~~In a criminal case in which the defendant has been convicted of~~
32 ~~unlawful possession of a firearm under RCW 9.41.040, and there has been~~
33 ~~a special allegation pleaded and proven by a preponderance of the~~
34 ~~evidence that the accused is a criminal street gang member or associate~~
35 ~~as defined in RCW 9.94A.030, the court shall make a finding of fact of~~

1 ~~the special allegation, or if a jury trial is had, the jury shall, if~~
2 ~~it finds the defendant guilty, also find a special verdict as to~~
3 ~~whether or not the accused was a criminal street gang member or~~
4 ~~associate during the commission of the crime.)) (1) Where the~~
5 prosecuting attorney charges a person with a felony offense, the
6 prosecuting attorney may file a special allegation charging that the
7 offense is a criminal street gang-related offense as defined in RCW
8 9.94A.030.

9 (2) The facts supporting the criminal street gang-related offense
10 allegation must be proved to a jury beyond a reasonable doubt. The
11 jury's verdict on the allegation must be unanimous, and by special
12 interrogatory. If a jury is waived, proof must be to the court beyond
13 a reasonable doubt, unless the defendant stipulates to the special
14 allegation.

15 (3) Evidence regarding the criminal street gang-related offense
16 special allegation must be presented to the jury during the trial of
17 the alleged crime if:

18 (a) The facts supporting the allegation are part of the res gestae
19 of the crime or are otherwise admissible; and

20 (b) The probative value of the evidence to the criminal street
21 gang-related offense special allegation is not substantially outweighed
22 by its prejudicial effect on the jury's ability to determine guilt or
23 innocence for the underlying crime.

24 (4) If the evidence regarding the criminal street gang-related
25 offense special allegation is not presented to the jury during the
26 trial of the alleged crime, the court shall conduct a separate
27 proceeding to determine the existence of this special allegation. The
28 proceeding must immediately follow the trial on the underlying
29 conviction, if possible. If any person who served on the jury is
30 unable to continue, the court shall substitute an alternate juror.

31 **Sec. 8.** RCW 9.94A.702 and 2010 c 267 s 12 are each amended to read
32 as follows:

33 (1) If an offender is sentenced to a term of confinement for one
34 year or less for one of the following offenses, the court may impose up
35 to one year of community custody:

36 (a) A sex offense;

37 (b) A violent offense;

1 (c) A crime against a person under RCW 9.94A.411;

2 (d) A felony violation of chapter 69.50 or 69.52 RCW, or an
3 attempt, conspiracy, or solicitation to commit such a crime; (~~or~~)

4 (e) A felony violation of RCW 9A.44.132(1) (failure to register);
5 or

6 (f) A felony that is a criminal street gang-related offense under
7 RCW 9.94A.030.

8 (2) If an offender is sentenced to a first-time offender waiver,
9 the court may impose community custody as provided in RCW 9.94A.650.

10 **Sec. 9.** RCW 9.94A.030 and 2010 c 274 s 401, 2010 c 267 s 9, 2010
11 c 227 s 11, and 2010 c 224 s 1 are each reenacted and amended to read
12 as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter.

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

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

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

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

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

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

1 (7) "Community restitution" means compulsory service, without
2 compensation, performed for the benefit of the community by the
3 offender.

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

5 (9) "Conviction" means an adjudication of guilt pursuant to Title
6 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
7 acceptance of a plea of guilty.

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

15 (11) "Criminal history" means the list of a defendant's prior
16 convictions and juvenile adjudications, whether in this state, in
17 federal court, or elsewhere.

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

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

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

31 (12) "Criminal street gang" means any ongoing organization,
32 association, or group of three or more persons, whether formal or
33 informal, having a common name or common identifying sign or symbol,
34 having as one of its primary activities the commission of criminal
35 acts, and whose members or associates individually or collectively
36 engage in or have engaged in a pattern of criminal street gang
37 activity. This definition does not apply to employees engaged in

1 concerted activities for their mutual aid and protection, or to the
2 activities of labor and bona fide nonprofit organizations or their
3 members or agents.

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

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

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

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

17 (c) To exact revenge or retribution for the gang or any member of
18 the gang;

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

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

24 (f) To provide the gang with any advantage in, or any control or
25 dominance over any criminal market sector, including, but not limited
26 to, manufacturing, delivering, or selling any controlled substance
27 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
28 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
29 RCW); human trafficking (RCW 9A.40.100); ~~((or))~~ promoting pornography
30 (chapter 9.68 RCW); commercial sexual abuse of a minor (RCW 9.68A.100);
31 or promoting commercial sexual abuse of a minor (RCW 9.68A.101).

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

36 (16) "Day reporting" means a program of enhanced supervision
37 designed to monitor the offender's daily activities and compliance with

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

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

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

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

25 (20) "Domestic violence" has the same meaning as defined in RCW
26 10.99.020 and 26.50.010.

27 (21) "Drug offender sentencing alternative" is a sentencing option
28 available to persons convicted of a felony offense other than a violent
29 offense or a sex offense and who are eligible for the option under RCW
30 9.94A.660.

31 (22) "Drug offense" means:

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

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

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

4 (23) "Earned release" means earned release from confinement as
5 provided in RCW 9.94A.728.

6 (24) "Escape" means:

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

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

16 (25) "Felony traffic offense" means:

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

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

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

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

32 (28) "Home detention" means a program of partial confinement
33 available to offenders wherein the offender is confined in a private
34 residence subject to electronic surveillance.

35 (29) "Legal financial obligation" means a sum of money that is
36 ordered by a superior court of the state of Washington for legal
37 financial obligations which may include restitution to the victim,
38 statutorily imposed crime victims' compensation fees as assessed

1 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
2 court-appointed attorneys' fees, and costs of defense, fines, and any
3 other financial obligation that is assessed to the offender as a result
4 of a felony conviction. Upon conviction for vehicular assault while
5 under the influence of intoxicating liquor or any drug, RCW
6 46.61.522(1)(b), or vehicular homicide while under the influence of
7 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
8 obligations may also include payment to a public agency of the expense
9 of an emergency response to the incident resulting in the conviction,
10 subject to RCW 38.52.430.

11 (30) "Minor child" means a biological or adopted child of the
12 offender who is under age eighteen at the time of the offender's
13 current offense.

14 (31) "Most serious offense" means any of the following felonies or
15 a felony attempt to commit any of the following felonies:

16 (a) Any felony defined under any law as a class A felony or
17 criminal solicitation of or criminal conspiracy to commit a class A
18 felony;

19 (b) Assault in the second degree;

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

21 (d) Child molestation in the second degree;

22 (e) Controlled substance homicide;

23 (f) Extortion in the first degree;

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

25 (h) Indecent liberties;

26 (i) Kidnapping in the second degree;

27 (j) Leading organized crime;

28 (k) Manslaughter in the first degree;

29 (l) Manslaughter in the second degree;

30 (m) Promoting prostitution in the first degree;

31 (n) Rape in the third degree;

32 (o) Robbery in the second degree;

33 (p) Sexual exploitation;

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

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

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

7 (t) Any other felony with a deadly weapon verdict under RCW
8 9.94A.825;

9 (u) Any felony offense in effect at any time prior to December 2,
10 1993, that is comparable to a most serious offense under this
11 subsection, or any federal or out-of-state conviction for an offense
12 that under the laws of this state would be a felony classified as a
13 most serious offense under this subsection;

14 (v)(i) A prior conviction for indecent liberties under RCW
15 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
16 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
17 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
18 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

19 (ii) A prior conviction for indecent liberties under RCW
20 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
21 if: (A) The crime was committed against a child under the age of
22 fourteen; or (B) the relationship between the victim and perpetrator is
23 included in the definition of indecent liberties under RCW
24 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
25 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
26 through July 27, 1997;

27 (w) Any out-of-state conviction for a felony offense with a finding
28 of sexual motivation if the minimum sentence imposed was ten years or
29 more; provided that the out-of-state felony offense must be comparable
30 to a felony offense under Title 9 or 9A RCW and the out-of-state
31 definition of sexual motivation must be comparable to the definition of
32 sexual motivation contained in this section.

33 (32) "Nonviolent offense" means an offense which is not a violent
34 offense.

35 (33) "Offender" means a person who has committed a felony
36 established by state law and is eighteen years of age or older or is
37 less than eighteen years of age but whose case is under superior court
38 jurisdiction under RCW 13.04.030 or has been transferred by the

1 appropriate juvenile court to a criminal court pursuant to RCW
2 13.40.110. In addition, for the purpose of community custody
3 requirements under this chapter, "offender" also means a misdemeanor or
4 gross misdemeanor probationer convicted of an offense included in RCW
5 9.94A.501(1) and ordered by a superior court to probation under the
6 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or
7 9.95.210. Throughout this chapter, the terms "offender" and
8 "defendant" are used interchangeably.

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

18 (35) "Pattern of criminal street gang activity" means:

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

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

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

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

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

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

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

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

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

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

37 (x) Any felony conviction by a person eighteen years of age or

1 older with a special finding of involving a juvenile in a felony
2 offense under RCW 9.94A.833;

- 3 (xi) Residential Burglary (RCW 9A.52.025);
- 4 (xii) Burglary 2 (RCW 9A.52.030);
- 5 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
- 6 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
- 7 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
- 8 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
- 9 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
- 10 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
11 9A.56.075);
- 12 (xix) Extortion 1 (RCW 9A.56.120);
- 13 (xx) Extortion 2 (RCW 9A.56.130);
- 14 (xxi) Intimidating a Witness (RCW 9A.72.110);
- 15 (xxii) Tampering with a Witness (RCW 9A.72.120);
- 16 (xxiii) Reckless Endangerment (RCW 9A.36.050);
- 17 (xxiv) Coercion (RCW 9A.36.070);
- 18 (xxv) Harassment (RCW 9A.46.020); or
- 19 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

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

22 (c) That the most recent committed offense listed in (a) of this
23 subsection occurred within three years of a prior offense listed in (a)
24 of this subsection; and

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

28 (36) "Persistent offender" is an offender who:

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

31 (ii) Has, before the commission of the offense under (a) of this
32 subsection, been convicted as an offender on at least two separate
33 occasions, whether in this state or elsewhere, of felonies that under
34 the laws of this state would be considered most serious offenses and
35 would be included in the offender score under RCW 9.94A.525; provided
36 that of the two or more previous convictions, at least one conviction
37 must have occurred before the commission of any of the other most
38 serious offenses for which the offender was previously convicted; or

1 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
2 of a child in the first degree, child molestation in the first degree,
3 rape in the second degree, rape of a child in the second degree, or
4 indecent liberties by forcible compulsion; (B) any of the following
5 offenses with a finding of sexual motivation: Murder in the first
6 degree, murder in the second degree, homicide by abuse, kidnapping in
7 the first degree, kidnapping in the second degree, assault in the first
8 degree, assault in the second degree, assault of a child in the first
9 degree, assault of a child in the second degree, or burglary in the
10 first degree; or (C) an attempt to commit any crime listed in this
11 subsection (36)(b)(i); and

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

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

1 authority; or (iv) a teacher, counselor, volunteer, or other person in
2 authority providing home-based instruction and the victim was a student
3 receiving home-based instruction while under his or her authority or
4 supervision. For purposes of this subsection: (A) "Home-based
5 instruction" has the same meaning as defined in RCW 28A.225.010; and
6 (B) "teacher, counselor, volunteer, or other person in authority" does
7 not include the parent or legal guardian of the victim.

8 (38) "Private school" means a school regulated under chapter
9 28A.195 or 28A.205 RCW.

10 (39) "Public school" has the same meaning as in RCW 28A.150.010.

11 (40) "Repetitive domestic violence offense" means any:

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

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

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

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

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

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

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

30 (42) "Risk assessment" means the application of the risk instrument
31 recommended to the department by the Washington state institute for
32 public policy as having the highest degree of predictive accuracy for
33 assessing an offender's risk of reoffense.

34 (43) "Serious traffic offense" means:

35 (a) Nonfelony driving while under the influence of intoxicating
36 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
37 while under the influence of intoxicating liquor or any drug (RCW

1 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
2 attended vehicle (RCW 46.52.020(5)); or
3 (b) Any federal, out-of-state, county, or municipal conviction for
4 an offense that under the laws of this state would be classified as a
5 serious traffic offense under (a) of this subsection.
6 (44) "Serious violent offense" is a subcategory of violent offense
7 and means:
8 (a)(i) Murder in the first degree;
9 (ii) Homicide by abuse;
10 (iii) Murder in the second degree;
11 (iv) Manslaughter in the first degree;
12 (v) Assault in the first degree;
13 (vi) Kidnapping in the first degree;
14 (vii) Rape in the first degree;
15 (viii) Assault of a child in the first degree; or
16 (ix) An attempt, criminal solicitation, or criminal conspiracy to
17 commit one of these felonies; or
18 (b) Any federal or out-of-state conviction for an offense that
19 under the laws of this state would be a felony classified as a serious
20 violent offense under (a) of this subsection.
21 (45) "Sex offense" means:
22 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
23 RCW 9A.44.132;
24 (ii) A violation of RCW 9A.64.020;
25 (iii) A felony that is a violation of chapter 9.68A RCW other than
26 RCW 9.68A.080;
27 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
28 criminal solicitation, or criminal conspiracy to commit such crimes; or
29 (v) A felony violation of RCW 9A.44.132(1) (failure to register) if
30 the person has been convicted of violating RCW 9A.44.132(1) (failure to
31 register) on at least one prior occasion;
32 (b) Any conviction for a felony offense in effect at any time prior
33 to July 1, 1976, that is comparable to a felony classified as a sex
34 offense in (a) of this subsection;
35 (c) A felony with a finding of sexual motivation under RCW
36 9.94A.835 or 13.40.135; or
37 (d) Any federal or out-of-state conviction for an offense that

1 under the laws of this state would be a felony classified as a sex
2 offense under (a) of this subsection.

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

6 (47) "Standard sentence range" means the sentencing court's
7 discretionary range in imposing a nonappealable sentence.

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

12 (49) "Stranger" means that the victim did not know the offender
13 twenty-four hours before the offense.

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

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

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

27 (53) "Violent offense" means:

28 (a) Any of the following felonies:

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

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

33 (iii) Manslaughter in the first degree;

34 (iv) Manslaughter in the second degree;

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

36 (vi) Kidnapping in the second degree;

37 (vii) Arson in the second degree;

38 (viii) Assault in the second degree;

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

2 (x) Extortion in the first degree;

3 (xi) Robbery in the second degree;

4 (xii) Drive-by shooting;

5 (xiii) Vehicular assault, when caused by the operation or driving
6 of a vehicle by a person while under the influence of intoxicating
7 liquor or any drug or by the operation or driving of a vehicle in a
8 reckless manner; and

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

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

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

19 (54) "Work crew" means a program of partial confinement consisting
20 of civic improvement tasks for the benefit of the community that
21 complies with RCW 9.94A.725.

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

29 (56) "Work release" means a program of partial confinement
30 available to offenders who are employed or engaged as a student in a
31 regular course of study at school.

32 NEW SECTION. **Sec. 10.** (1) Every piece of real property, building,
33 or unit within a building upon or within which three or more unrelated
34 criminal street gang-related offenses, as defined in RCW 9.94A.030,
35 have occurred in the prior year is a nuisance that may be enjoined,
36 abated, and prevented, whether it is a public or private nuisance. In
37 a multiunit building, only the offending unit may be declared a

1 nuisance, and only the offending unit may be enjoined, abated, and
2 prevented. Nothing in this chapter applies to property used for the
3 purpose of, or actively involved in, providing health services, food
4 and financial assistance, treatment, counseling, training, religious
5 services, education, civic involvement, or any social service or
6 charitable assistance.

7 (2) As used in this chapter:

8 (a) "Building" includes, but is not limited to, any structure or
9 any separate part or portion thereof, whether permanent or not, or the
10 ground itself.

11 (b) "Unrelated" means offenses that are temporally separate and
12 distinct from one another and not part of the same criminal incident.
13 It does not require that different perpetrators commit the offenses.
14 Offenses that occur in retaliation for or in response to prior crimes
15 are unrelated to those prior crimes for purposes of this chapter.

16 NEW SECTION. **Sec. 11.** (1) The action provided for in this chapter
17 may be brought by a county or municipal government entity in the
18 superior court in the county in which the property is located. The
19 action is commenced by the filing of a complaint alleging the facts
20 constituting the nuisance.

21 (2) Any complaint filed under this chapter must be verified or
22 accompanied by affidavit. For purposes of showing that the owner of
23 the property or his or her agent has had an opportunity to abate the
24 nuisance, the affidavit must contain a description of all attempts by
25 the plaintiff to notify and locate the owner of the property or the
26 owner's agent.

27 (3) In addition, the affidavit must describe in detail the adverse
28 impact associated with the property on the surrounding neighborhood.
29 "Adverse impact" includes, but is not limited to, the following: Any
30 search warrants served on the property; investigative purchases of
31 controlled substances on or near the property by law enforcement or
32 their agents; arrests of persons who frequent the property for criminal
33 street gang-related offenses; the number of complaints made to law
34 enforcement of criminal street gang-related activity associated with
35 the property; and the existence of criminal street gang-related
36 graffiti within a one-eighth mile distance from the property.

1 (4) This chapter does not prevent county and municipal governments
2 from instituting similar abatement actions pursuant to local
3 ordinances.

4 NEW SECTION. **Sec. 12.** (1) Upon application for a temporary
5 restraining order or preliminary injunction, the court may, upon a
6 showing of good cause, issue an ex parte restraining order or
7 preliminary injunction, preventing the defendant and all other persons,
8 other than the legal owner, from removing or in any manner interfering
9 with the personal property and contents of the place where the nuisance
10 is alleged to exist. The court may grant such preliminary equitable
11 relief as is necessary to prevent the continuance or recurrence of the
12 nuisance pending final resolution of the matter on the merits. Such ex
13 parte restraining order or preliminary injunction may remain in effect
14 no more than fifteen days from the date of issuance, except as provided
15 in section 14 of this act.

16 (2) The restraining order or preliminary injunction must be served
17 on the defendant personally, or by leaving a copy with any person of
18 suitable age and discretion who is in charge of the property or who is
19 residing at the property. Where the defendant cannot with reasonable
20 diligence be served as described, the restraining order or preliminary
21 injunction may be served by posting a copy in a conspicuous place on
22 the property and thereafter mailing a copy by registered mail to the
23 defendant to be served at his or her usual mailing address.
24 Additionally, a copy of the restraining order or preliminary injunction
25 must be sent by registered mail to the owner of the real property,
26 building, or unit within a building.

27 NEW SECTION. **Sec. 13.** An action under this chapter has
28 precedence over all other actions, except prior matters of the same
29 character, criminal proceedings, child dependency hearings, election
30 contests, hearings on temporary restraining orders and injunctions, and
31 actions to forfeit vehicles used in violation of the uniform controlled
32 substances act.

33 NEW SECTION. **Sec. 14.** A copy of the complaint, together with a
34 notice of the time and place of the hearing of the action, must be
35 served upon the defendant at least six business days before the hearing

1 and as provided for in section 12 of this act. If the hearing is then
2 continued at the request of any defendant, all temporary orders and
3 injunctions must be extended as a matter of course.

4 NEW SECTION. **Sec. 15.** (1) Except as provided in subsection (2) of
5 this section, if the existence of the nuisance is established in the
6 action, an order of abatement must be entered as part of the final
7 judgment in the case. The plaintiff's costs in the action, including
8 those of abatement, are a lien upon the real property, building, or
9 unit within a building to the extent of the owner's interest. The lien
10 must be filed as a judgment summary stating the name of the owner and
11 the legal description of the real property. The lien must be recorded
12 and enforced as a judgment summary.

13 (2) If the court finds and concludes that the owner of the real
14 property, building, or unit within a building: (a) Had no knowledge of
15 the existence of the nuisance or has been making reasonable efforts to
16 abate the nuisance; (b) has not been guilty of any contempt of court in
17 the proceedings; and (c) will immediately abate any such nuisance that
18 may exist at the real property, building, or unit within a building and
19 prevent it from being a nuisance within a period of one year
20 thereafter, the court shall, if satisfied of the owner's good faith,
21 order the real property, building, or unit within a building to be
22 delivered to the owner, and no order of abatement may be entered. If
23 an order of abatement has been entered and the owner subsequently meets
24 the requirements of this subsection, the order of abatement must be
25 canceled.

26 (3) For the purposes of determining whether the owner of the real
27 property, building, or unit within a building made reasonable efforts
28 to abate the nuisance, the court shall consider such factors as whether
29 the owner: (a) Terminated or attempted to terminate the tenancy or
30 lease of a tenant or leaseholder where the nuisance is occurring, if
31 the tenant or leaseholder is involved in the criminal street gang
32 activity; (b) placed restrictions on the rental agreement or lease; (c)
33 adopted feasible measures on the property to try to prevent the
34 criminal street gang activity; (d) cooperated with law enforcement to
35 attempt to stop the criminal street gang activity; or (e) made other
36 efforts the court finds relevant.

1 NEW SECTION. **Sec. 16.** Any final order of abatement issued under
2 this chapter may:

3 (1) If the building or unit is not subject to the interests of
4 innocent legal owners, provide for the immediate closure of the real
5 property, building, or unit within a building against its use for any
6 purpose, and for keeping it closed for a period of one year unless
7 released sooner as provided in this chapter;

8 (2) State that while the order of abatement remains in effect the
9 building or unit within a building must remain in the custody of the
10 court;

11 (3) Authorize a law enforcement officer to enter the real property,
12 building, or unit within a building to create an inventory of the
13 personal property and contents located on or in the real property,
14 building, or unit within a building for submission to the court; and

15 (4) Provide for any other relief necessary and proper under the
16 circumstances.

17 NEW SECTION. **Sec. 17.** An intentional violation of a restraining
18 order, preliminary injunction, or order of abatement under this chapter
19 is contempt of court as provided in chapter 7.21 RCW.

20 NEW SECTION. **Sec. 18.** Whenever the owner of the real property,
21 building, or unit within a building upon which the act or acts
22 constituting the nuisance have been committed has been found in
23 contempt of court and fined in any proceedings under this chapter, the
24 fine is a lien upon the real property, building, or unit within a
25 building to the extent of the owner's interest. The lien must be filed
26 as a judgment summary stating the name of the owner and the legal
27 description of the real property. The lien must be recorded and
28 enforced as a judgment summary.

29 NEW SECTION. **Sec. 19.** An action may not be brought pursuant to
30 this section against any governmental entity or any charitable or
31 nonprofit organization that is conducting, with ordinary care and
32 skill, activities relating to prevention or education concerning
33 criminal street gangs.

1 NEW SECTION. **Sec. 20.** The abatement of a nuisance under this
2 chapter does not prejudice the right of any person to recover damages
3 for its past existence.

4 **Sec. 21.** RCW 59.18.075 and 1992 c 38 s 4 are each amended to read
5 as follows:

6 (1) Any law enforcement agency which seizes a legend drug pursuant
7 to a violation of chapter 69.41 RCW, a controlled substance pursuant to
8 a violation of chapter 69.50 RCW, or an imitation controlled substance
9 pursuant to a violation of chapter 69.52 RCW, shall make a reasonable
10 attempt to discover the identity of the landlord and shall notify the
11 landlord in writing, at the last address listed in the property tax
12 records and at any other address known to the law enforcement agency,
13 of the seizure and the location of the seizure of the illegal drugs or
14 substances.

15 (2) Any law enforcement agency which arrests a tenant for
16 threatening another tenant with a firearm or other deadly weapon, or
17 for some other unlawful use of a firearm or other deadly weapon on the
18 rental premises, or for physically assaulting another person on the
19 rental premises, shall make a reasonable attempt to discover the
20 identity of the landlord and notify the landlord about the arrest in
21 writing, at the last address listed in the property tax records and at
22 any other address known to the law enforcement agency.

23 (3)(a) A law enforcement agency that has probable cause to believe
24 that a tenant or other occupant of a rental unit has committed a
25 criminal street gang-related offense, as defined in RCW 9.94A.030,
26 shall make a reasonable attempt to discover the identity of the
27 landlord and notify the landlord in writing, at the last address listed
28 in the property tax records and at any other address known to the law
29 enforcement agency, of the criminal street gang-related offense on the
30 rental premises.

31 (b) For the purposes of this subsection (3), the law enforcement
32 agency shall include the following information with the notice:

33 (i) The name of the tenant and the individual or individuals who
34 were involved in the criminal street gang-related offense;

35 (ii) The rental unit where the incident occurred;

36 (iii) The date of the incident;

1 (iv) Actions taken by the law enforcement agency in response to the
2 incident;

3 (v) A statement outlining the authority of a landlord under chapter
4 59.12 RCW to commence an unlawful detainer action against a tenant who
5 has committed or permitted gang-related activity at the premises; and

6 (vi) Penalties the landlord may face for failure to abate a
7 nuisance.

8 NEW SECTION. Sec. 22. The legislature finds that the presence of
9 criminal street gangs and the gang-related crimes they commit is
10 increasing in Washington. In communities where criminal street gangs
11 have become established, the gangs' criminal activities have become a
12 blight on the community, endangering the physical safety of the
13 citizens living there, negatively affecting the communities' economic
14 vitality, and reducing the citizens' right to fully enjoy their liberty
15 and property rights. The legislature further finds that the government
16 has a compelling interest in protecting the physical safety and the
17 property and liberty interests of its citizens. Finally, the
18 legislature finds that these compelling interests will be served by
19 permitting a local or municipal government to apply for a protection
20 order that is narrowly tailored to a specific area where a gang and its
21 individual members have become a blight on the community in order to
22 break the gang's hold over that area.

23 NEW SECTION. Sec. 23. (1) "Criminal street gang" has the same
24 meaning as in RCW 9.94A.030.

25 (2) "Criminal street gang associate or member" has the same meaning
26 as in RCW 9.94A.030. However, in determining whether a person is a
27 criminal street gang associate or member, the court may also consider
28 all other relevant evidence including, but not limited to, admissions
29 by a person that he or she is an associate or member of a criminal
30 street gang.

31 (3) "Protection zone" means a specific geographic area within which
32 the provisions of the injunctive relief sought and ordered by the court
33 are operable and enforceable.

34 NEW SECTION. Sec. 24. An action seeking a protection order
35 against a criminal street gang and associates or members thereof may be

1 brought by the county prosecuting attorney or municipal attorney in any
2 county or municipality where the protection zone sought pursuant to the
3 action is located.

4 NEW SECTION. **Sec. 25.** (1) A party seeking a protection order
5 under this chapter may file a petition seeking such relief in superior
6 court in the county in which the protection zone sought pursuant to the
7 action is located.

8 (2) The petition must:

9 (a) Be supported with an affidavit providing the factual bases
10 supporting the issuance of a protection order including, but not
11 limited to, the factual bases of support for the issuance of the order
12 as to each respondent whose activities and behavior the petition seeks
13 to enjoin;

14 (b) Contain a specific description of the protection zone within
15 which the petitioner seeks to have the protection order operate; and

16 (c) Contain a specific list of the activities in the protection
17 zone sought to be enjoined.

18 (3) The court shall order a hearing on the petition, which must be
19 held not later than fourteen days after the petition is filed.

20 (4) All respondents must be personally served with a copy of the
21 petition, notice of the date and time of the hearing, and notice that
22 they are entitled to appear in person and respond to the allegations
23 contained in the petition not less than five court days before the
24 hearing. If timely personal service cannot be made, the court shall
25 set a new hearing date and shall either require additional attempts at
26 obtaining personal service or permit service by publication as provided
27 by RCW 10.14.085. If the court permits service by publication, the
28 court shall set the hearing date not later than twenty-four days from
29 the date the court enters the order permitting service by publication.

30 (5) At the hearing, the county prosecuting attorney or municipal
31 attorney must prove, and the court must find, that the evidence
32 presented establishes by clear and convincing evidence:

33 (a) That in a specific and delineated geographic area, there exists
34 the following:

35 (i) A criminal street gang;

36 (ii) Whose associates or members individually or collectively have

1 been convicted or adjudicated of committing, attempting, or conspiring
2 to commit, or soliciting the commitment of, two or more of the offenses
3 listed in RCW 9.94A.030(35); and

4 (iii) That at least one of the offenses listed in RCW 9.94A.030(35)
5 occurred after July 1, 2008;

6 (iv) That the most recent committed offense listed in RCW
7 9.94A.030(35) occurred within three years of a prior offense listed in
8 RCW 9.94A.030(35); and

9 (v) The offenses in RCW 9.94A.030(35) that were committed occurred
10 on separate occasions or were committed by two or more persons;

11 (b) A substantial amount of the criminal street gang's activities
12 have occurred in the specified geographic area; and

13 (c) The named respondent is a criminal street gang associate or
14 member of the criminal street gang established in (a) of this
15 subsection.

16 NEW SECTION. **Sec. 26.** If the court finds the petitioner has
17 satisfied the burden under section 25(5) of this act, the court shall
18 enter an order:

19 (1) Specifically describing the geographic boundaries within which
20 the protection order will apply;

21 (2) Providing for all relief necessary and proper under the
22 circumstances, including an order that any respondent who the court has
23 found to be a criminal street gang associate or member may not engage
24 in certain conduct, including but not limited to the following:

25 (a) Associating or communicating directly or indirectly with any
26 other person found by the court to be a criminal street gang associate
27 or member;

28 (b) Engaging in any intimidation of any person;

29 (c) Possessing firearms, imitation firearms, or dangerous weapons;

30 (d) Possessing or consuming drugs or alcohol;

31 (e) Trespassing;

32 (f) Engaging in gang-related graffiti or possessing graffiti tools;

33 (g) Forcibly recruiting any person into the criminal street gang or
34 preventing any criminal street gang associate or member from leaving
35 the criminal street gang;

36 (h) Violating any law;

37 (i) Violating any curfew set by the court;

- 1 (j) Going on the grounds of any named public and private schools,
2 not including home-based instruction, as defined in RCW 28A.225.010;
- 3 (k) Going to any other designated locations;
- 4 (l) Directly or indirectly contacting minors going to and from
5 schools;
- 6 (m) Wearing gang clothing in public; and
- 7 (n) Directly or indirectly contacting specified individuals such as
8 persons on probation or parole;
- 9 (3) Providing the expiration date of the order, which must be one
10 year from the date the order is entered;
- 11 (4) Providing that a respondent who knows of the order who
12 willfully violates the order may be criminally prosecuted pursuant to
13 section 28 of this act and, if convicted, may be punished by a fine of
14 not more than five thousand dollars, imprisonment for not more than one
15 year, or both;
- 16 (5) With respect to any condition imposed pursuant to subsection
17 (2)(a), (j), (k), (l), and (n) of this section, the condition may not
18 apply to enjoin a person from:
 - 19 (a) Communicating with another criminal street gang associate or
20 member who:
 - 21 (i) Resides with the person if they are related by blood or
22 marriage or have a dating relationship;
 - 23 (ii) Is married to the person;
 - 24 (iii) Has a child with the person, regardless of whether they have
25 been married; or
 - 26 (iv) Has a biological or legal parent-child, grandparent-child, or
27 sibling relationship with the person;
 - 28 (b) Communicating with a minor or another criminal street gang
29 associate or member on school grounds where the communication is
30 necessary for legitimate educational purposes;
 - 31 (c) Communicating with another criminal street gang associate or
32 member on the grounds of a church, synagogue, mosque, or similar
33 property where the communication is necessary for religious purposes;
 - 34 (d) Going on the grounds of any public or private school, not
35 including home-based instruction, where the visit is for legitimate
36 educational purposes; or
 - 37 (e) Going on the grounds of any church, synagogue, mosque, or
38 similar property where the visit is for religious purposes.

1 NEW SECTION. **Sec. 27.** (1) If the court issues a protection order
2 under this chapter, all respondents who are subject to the court's
3 order must be personally served with a copy of the order. However, if
4 the order issued by the court recites that the respondent appeared in
5 person before the court, the necessity for further service is waived
6 and proof of service of that order is not necessary.

7 (2) If personal service cannot be made, the petitioner may apply to
8 the court for permission to serve a copy of the order on the respondent
9 by publication consistent with the procedures found in RCW 10.14.085.

10 NEW SECTION. **Sec. 28.** (1) Any respondent who willfully violates
11 any protection order issued pursuant to this chapter is guilty of a
12 gross misdemeanor punishable by a fine of not more than five thousand
13 dollars, imprisonment for not more than one year, or both.

14 (2) However, the sentence imposed for any willful violation of such
15 an order must include at least seven days in jail for an adult or seven
16 days in detention for a juvenile if the violation occurs:

17 (a) In a school;

18 (b) On a school bus;

19 (c) Within three hundred feet of a school bus route stop designated
20 by the school district;

21 (d) Within one thousand feet of the perimeter of school grounds; or

22 (e) In a public park.

23 NEW SECTION. **Sec. 29.** (1) An order issued pursuant to this
24 chapter is effective for one year.

25 (2) The petitioner may reapply for a continuation of the order by
26 filing a new petition no more than thirty days prior to the expiration
27 of the current order. The petition must comply in all respects with
28 the procedures governing the issuance of the initial order found in
29 section 25 of this act.

30 NEW SECTION. **Sec. 30.** (1) Any respondent to whom an order issued
31 pursuant to this chapter applies may petition the court to modify the
32 terms and conditions of the order. The court may only consider such a
33 motion where the petitioner is provided notice consistent with the
34 provisions of this chapter. Where the requested modification is to
35 exempt from the provisions of the order a particular respondent, notice

1 of the motion and the contents thereof need not be served on other
2 respondents but only the petitioner and the respondent who seeks
3 exemption from the order.

4 (2) The petitioner may petition the court to modify the terms and
5 conditions of the order. The court may only consider such a motion
6 where any respondents to whom the modification would apply are provided
7 notice consistent with the provisions of this chapter.

8 (3) The court may grant any requested modifications of the terms
9 and conditions of the order that it deems necessary and proper under
10 the circumstances considering the evidence presented at the hearing at
11 which the order was issued, as well as the evidence presented at the
12 modification hearing.

13 NEW SECTION. **Sec. 31.** Nothing in this chapter precludes a
14 petitioner's right to utilize other existing civil remedies.

15 **Sec. 32.** RCW 26.50.160 and 2006 c 138 s 26 are each amended to
16 read as follows:

17 To prevent the issuance of competing protection orders in different
18 courts and to give courts needed information for issuance of orders,
19 the judicial information system shall be available in each district,
20 municipal, and superior court by July 1, 1997, and shall include a
21 database containing the following information:

22 (1) The names of the parties and the cause number for every order
23 of protection issued under this title, every sexual assault protection
24 order issued under chapter 7.90 RCW, every criminal no-contact order
25 issued under chapters 9A.46 and 10.99 RCW, every antiharassment order
26 issued under chapter 10.14 RCW, every dissolution action under chapter
27 26.09 RCW, every third-party custody action under chapter 26.10 RCW,
28 every parentage action under chapter 26.26 RCW, every restraining order
29 issued on behalf of an abused child or adult dependent person under
30 chapter 26.44 RCW, every foreign protection order filed under chapter
31 26.52 RCW, and every order for protection of a vulnerable adult under
32 chapter 74.34 RCW. When a guardian or the department of social and
33 health services has petitioned for relief on behalf of an abused child,
34 adult dependent person, or vulnerable adult, the name of the person on
35 whose behalf relief was sought shall be included in the database as a

1 party rather than the guardian or department. The names of the parties
2 and the cause number for a protection order issued under section 26 of
3 this act need not be entered in the judicial information system;

4 (2) A criminal history of the parties; and

5 (3) Other relevant information necessary to assist courts in
6 issuing orders under this chapter as determined by the judicial
7 information system committee.

8 **Sec. 33.** RCW 70.41.440 and 2009 c 359 s 2 are each amended to read
9 as follows:

10 (1) A hospital shall report to a local law enforcement authority as
11 soon as reasonably possible, taking into consideration a patient's
12 emergency care needs, when the hospital provides treatment for a bullet
13 wound, gunshot wound, or stab wound to a patient (~~who is~~
14 ~~unconscious~~). A hospital shall establish a written policy to identify
15 the person or persons responsible for making the report.

16 (2) The report required under subsection (1) of this section must
17 include the following information, if known:

18 (a) The name, residence, sex, and age of the patient;

19 (b) Whether the patient has received a bullet wound, gunshot wound,
20 or stab wound; and

21 (c) The name of the health care provider providing treatment for
22 the bullet wound, gunshot wound, or stab wound.

23 (3) Nothing in this section shall limit a person's duty to report
24 under RCW 26.44.030 or 74.34.035.

25 (4) Any bullets, clothing, or other foreign objects that are
26 removed from a patient for whom a hospital is required to make a report
27 pursuant to subsection (1) of this section shall be preserved and kept
28 in custody in such a way that the identity and integrity thereof are
29 reasonably maintained until the bullets, clothing, or other foreign
30 objects are taken into possession by a law enforcement authority or the
31 hospital's normal period for retention of such items expires, whichever
32 occurs first.

33 (5) Any hospital or person who in good faith, and without gross
34 negligence or willful or wanton misconduct, makes a report required by
35 this section, cooperates in an investigation or criminal or judicial
36 proceeding related to such report, or maintains bullets, clothing, or
37 other foreign objects, or provides such items to a law enforcement

1 authority as described in subsection (4) of this section, is immune
2 from civil or criminal liability or professional licensure action
3 arising out of or related to the report and its contents or the absence
4 of information in the report, cooperation in an investigation or
5 criminal or judicial proceeding, and the maintenance or provision to a
6 law enforcement authority of bullets, clothing, or other foreign
7 objects under subsection (4) of this section.

8 (6) The physician-patient privilege described in RCW 5.60.060(4),
9 the registered nurse-patient privilege described in RCW 5.62.020, and
10 any other health care provider-patient privilege created or recognized
11 by law are not a basis for excluding as evidence in any criminal
12 proceeding any report, or information contained in a report made under
13 this section.

14 (7) All reporting, preservation, or other requirements of this
15 section are secondary to patient care needs and may be delayed or
16 compromised without penalty to the hospital or person required to
17 fulfill the requirements of this section.

18 NEW SECTION. **Sec. 34.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 35.** Sections 10 through 20 of this act
23 constitute a new chapter in Title 7 RCW.

24 NEW SECTION. **Sec. 36.** Sections 22 through 31 of this act
25 constitute a new chapter in Title 10 RCW.

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