

CERTIFICATION OF ENROLLMENT
SECOND ENGROSSED SUBSTITUTE HOUSE BILL 1553

64th Legislature
2016 Regular Session

Passed by the House February 16, 2016
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 3, 2016
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND ENGROSSED SUBSTITUTE HOUSE BILL 1553** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SECOND ENGROSSED SUBSTITUTE HOUSE BILL 1553

Passed Legislature - 2016 Regular Session

State of Washington

64th Legislature

2015 Regular Session

By House Public Safety (originally sponsored by Representatives Walkinshaw, MacEwen, Ryu, Appleton, Moscoso, Holy, Gregerson, Zeiger, Peterson, Farrell, Walsh, Reykdal, Orwall, Pettigrew, Tharinger, Fitzgibbon, and Kagi)

READ FIRST TIME 02/10/15.

1 AN ACT Relating to certificates of restoration of opportunity;
2 amending RCW 10.97.030, 14.20.090, 9.96A.020, 9.96A.050, 18.11.160,
3 18.39.410, 18.64.165, 18.108.085, 18.130.055, 18.235.110, 18.145.120,
4 18.160.080, and 18.130.160; reenacting and amending RCW 18.130.050
5 and 9.94A.030; adding a new chapter to Title 9 RCW; and creating new
6 sections.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that employment is a
9 key factor to the successful reintegration to society of people with
10 criminal histories, and is critical to reducing recidivism, promoting
11 public safety, and encouraging personal responsibility.

12 Occupational licensing and employment laws regulate many
13 professions as well as unskilled and semiskilled
14 occupations. Examples of regulated occupations include alcohol
15 servers, barbers and cosmetologists, body piercers, commercial
16 fishers, contractors, drivers, embalmers, engineers, health care
17 workers, insurance adjusters, real estate professionals, tattoo
18 artists, and waste management workers. Individuals with criminal
19 histories may meet the competency requirements for these occupations
20 through training, experience, or education, but may be disqualified
21 from them based on their criminal history.

1 Certificates of restoration of opportunity help reduce some
2 barriers to employment for adults and juveniles by providing an
3 opportunity for individuals to become more employable and to more
4 successfully reintegrate into society after they have served their
5 sentence, demonstrated a period of law-abiding behavior consistent
6 with successful reentry, and have turned their lives around following
7 a conviction. Applicants for a certificate must also meet all other
8 statutory licensing requirements.

9 Certificates of restoration of opportunity offer potential public
10 and private employers or housing providers concrete and objective
11 information about an individual under consideration for an
12 opportunity. These certificates can facilitate the successful
13 societal reintegration of individuals with a criminal history whose
14 behavior demonstrates that they are taking responsibility for their
15 past criminal conduct and pursuing a positive law-abiding future. A
16 certificate of restoration of opportunity provides a process for
17 people previously sentenced by a Washington court who have
18 successfully changed their lives to seek a court document confirming
19 their changed circumstances.

20 A certificate of restoration of opportunity does not affect any
21 employer's or housing provider's discretion to individually assess
22 every applicant and to hire or rent to the applicants of their
23 choice. Employers will not have to forego hiring their chosen
24 applicants because they face statutory bars that prevent obtaining
25 the necessary occupational credentials.

26 NEW SECTION. **Sec. 2.** The definitions in this section apply
27 throughout this chapter unless the context clearly requires
28 otherwise.

29 (1) "Qualified applicant" means any adult or juvenile who meets
30 the following requirements:

31 (a)(i) One year has passed from sentencing for those sentenced by
32 a Washington state court to probation, or receiving a deferred
33 sentence or other noncustodial sentencing for a misdemeanor or gross
34 misdemeanor offense or an equivalent juvenile adjudication; or

35 (ii) Eighteen months have passed from release from total or
36 partial confinement from a Washington prison or jail or juvenile
37 facility for those sentenced by a Washington state court to
38 incarceration for a misdemeanor or gross misdemeanor or an equivalent
39 juvenile adjudication; or

1 (iii) Two years have passed from sentencing for those sentenced
2 by a Washington state court to probation, or receiving a deferred
3 sentence or other noncustodial sentencing for a class B or C felony
4 or an equivalent juvenile adjudication; or

5 (iv) Two years have passed from release from total or partial
6 confinement from a Washington prison or jail or juvenile facility for
7 those sentenced by a Washington state court for a class B or C felony
8 or an equivalent juvenile adjudication; or

9 (v) Five years have passed from sentencing for those sentenced by
10 a Washington state court to probation, or receiving a deferred
11 sentence or other noncustodial sentencing for a violent offense as
12 defined in RCW 9.94A.030 or an equivalent juvenile adjudication; or

13 (vi) Five years have passed from release from total or partial
14 confinement from a Washington prison or jail or juvenile facility for
15 those sentenced by a Washington state court for a violent offense as
16 defined in RCW 9.94A.030 or an equivalent juvenile adjudication;

17 (b) Is in compliance with or has completed all sentencing
18 requirements imposed by a court including:

19 (i) Has paid in full all court-ordered legal financial
20 obligations;

21 (ii) Is fully compliant with a payment plan for court-ordered
22 legal financial obligations; or

23 (iii) Is out of compliance with a payment plan for court-ordered
24 legal financial obligations but has established good cause with the
25 court for any noncompliance with the payment plan;

26 (c) Has never been convicted of a class A felony, an attempt to
27 commit a class A felony, criminal solicitation of or criminal
28 conspiracy to commit a class A felony, a sex offense as defined in
29 RCW 9.94A.030, a crime that includes sexual motivation pursuant to
30 RCW 9.94A.835, 13.40.135, or 9.94A.535(3)(f), extortion in the first
31 degree under RCW 9A.56.120, drive-by shooting under RCW 9A.36.045,
32 vehicular assault under RCW 46.61.522(1) (a) or (b), or luring under
33 RCW 9A.40.090, and is not required to register as a sex offender
34 pursuant to RCW 9A.44.130; and

35 (d) Has not been arrested for nor convicted of a new crime and
36 has no pending criminal charge, and there is no information presented
37 to a qualified court that such a charge is imminent.

38 (2) "Qualified court" means any Washington superior court in the
39 county where an applicant resides or that has sentenced or
40 adjudicated the applicant. If the sentencing or adjudicating court

1 was a court of limited jurisdiction then a qualified court is the
2 superior court in the county of the applicant's conviction or
3 adjudication.

4 NEW SECTION. **Sec. 3.** (1) Except as provided in this section, no
5 state, county, or municipal department, board, officer, or agency
6 authorized to assess the qualifications of any applicant for a
7 license, certificate of authority, qualification to engage in the
8 practice of a profession or business, or for admission to an
9 examination to qualify for such a license or certificate may
10 disqualify a qualified applicant, solely based on the applicant's
11 criminal history, if the qualified applicant has obtained a
12 certificate of restoration of opportunity and the applicant meets all
13 other statutory and regulatory requirements, except as required by
14 federal law or exempted under this subsection. Nothing in this
15 section is interpreted as restoring or creating a means to restore
16 any firearms rights or eligibility to obtain a firearm dealer license
17 pursuant to RCW 9.41.110 or requiring the removal of a protection
18 order.

19 (a)(i) Criminal justice agencies, as defined in RCW 10.97.030,
20 and the Washington state bar association are exempt from this
21 section.

22 (ii) This section does not apply to the licensing, certification,
23 or qualification of the following professionals: Accountants, RCW
24 18.04.295; assisted living facilities employees, RCW 18.20.125; bail
25 bond agents, RCW 18.185.020; escrow agents, RCW 18.44.241; long-term
26 care workers, RCW 18.88B.080; nursing home administrators, RCW
27 18.52.071; nursing, chapter 18.79 RCW; physicians and physician
28 assistants, chapters 18.71 and 18.71A RCW; private investigators, RCW
29 18.165.030; receivers, RCW 7.60.035; teachers, chapters 28A.405 and
30 28A.410 RCW; notaries public, chapter 42.44 RCW; private
31 investigators, chapter 18.165 RCW; real estate brokers and
32 salespersons, chapters 18.85 and 18.86 RCW; security guards, chapter
33 18.170 RCW; and vulnerable adult care providers, RCW 43.43.842.

34 (iii) To the extent this section conflicts with the requirements
35 for receipt of federal funding under the adoption and safe families
36 act, 42 U.S.C. Sec. 671, this section does not apply.

37 (b) Unless otherwise addressed in statute, in cases where an
38 applicant would be disqualified under RCW 43.20A.710, and the
39 applicant has obtained a certificate of restoration of opportunity,

1 the department of social and health services may, after review of
2 relevant factors, including the nature and seriousness of the
3 offense, time that has passed since conviction, changed circumstances
4 since the offense occurred, and the nature of the employment or
5 license sought, at its discretion:

6 (i) Allow the applicant to have unsupervised access to children,
7 vulnerable adults, or individuals with mental illness or
8 developmental disabilities if the applicant is otherwise qualified
9 and suitable; or

10 (ii) Disqualify the applicant solely based on the applicant's
11 criminal history.

12 (c) If the practice of a profession or business involves
13 unsupervised contact with vulnerable adults, children, or individuals
14 with mental illness or developmental disabilities, or populations
15 otherwise defined by statute as vulnerable, the department of health
16 may, after review of relevant factors, including the nature and
17 seriousness of the offense, time that has passed since conviction,
18 changed circumstances since the offense occurred, and the nature of
19 the employment or license sought, at its discretion:

20 (i) Disqualify an applicant who has obtained a certificate of
21 restoration of opportunity, for a license, certification, or
22 registration to engage in the practice of a health care profession or
23 business solely based on the applicant's criminal history; or

24 (ii) If such applicant is otherwise qualified and suitable,
25 credential or credential with conditions an applicant who has
26 obtained a certificate of restoration of opportunity for a license,
27 certification, or registration to engage in the practice of a health
28 care profession or business.

29 (d) The state of Washington, any of its counties, cities, towns,
30 municipal corporations, or quasi-municipal corporations, the
31 department of health, and its officers, employees, contractors, and
32 agents are immune from suit in law, equity, or any action under the
33 administrative procedure act based upon its exercise of discretion
34 under this section. This section does not create a protected class;
35 private right of action; any right, privilege, or duty; or change to
36 any right, privilege, or duty existing under law. This section does
37 not modify a licensing or certification applicant's right to a review
38 of an agency's decision under the administrative procedure act or
39 other applicable statute or agency rule. A certificate of restoration
40 of opportunity does not remove or alter citizenship or legal

1 residency requirements already in place for state agencies and
2 employers.

3 (2) A qualified court has jurisdiction to issue a certificate of
4 restoration of opportunity to a qualified applicant.

5 (a) A court must determine, in its discretion whether the
6 certificate:

7 (i) Applies to all past criminal history; or

8 (ii) Applies only to the convictions or adjudications in the
9 jurisdiction of the court.

10 (b) The certificate does not apply to any future criminal justice
11 involvement that occurs after the certificate is issued.

12 (c) A court must determine whether to issue a certificate by
13 determining whether the applicant is a qualified applicant as defined
14 in section 2 of this act.

15 (3) An employer or housing provider may, in its sole discretion,
16 determine whether to consider a certificate of restoration of
17 opportunity issued under this chapter in making employment or rental
18 decisions. An employer or housing provider is immune from suit in
19 law, equity, or under the administrative procedure act for damages
20 based upon its exercise of discretion under this section or the
21 refusal to exercise such discretion. In any action at law against an
22 employer or housing provider arising out of the employment of or
23 provision of housing to the recipient of a certificate of restoration
24 of opportunity, evidence of the crime for which a certificate of
25 restoration of opportunity has been issued may not be introduced as
26 evidence of negligence or intentionally tortious conduct on the part
27 of the employer or housing provider. This subsection does not create
28 a protected class, private right of action, any right, privilege, or
29 duty, or to change any right, privilege, or duty existing under law
30 related to employment or housing except as provided in RCW 7.60.035.

31 (4)(a) Department of social and health services: A certificate of
32 restoration of opportunity does not apply to the state abuse and
33 neglect registry. No finding of abuse, neglect, or misappropriation
34 of property may be removed from the registry based solely on a
35 certificate. The department must include such certificates as part of
36 its criminal history record reports, qualifying letters, or other
37 assessments pursuant to RCW 43.43.830 through 43.43.838. The
38 department shall adopt rules to implement this subsection.

39 (b) Washington state patrol: The Washington state patrol is not
40 required to remove any records based solely on a certificate of

1 restoration of opportunity. The state patrol must include a
2 certificate as part of its criminal history record report.

3 (c) Court records:

4 (i) A certificate of restoration of opportunity has no effect on
5 any other court records, including records in the judicial
6 information system. The court records related to a certificate of
7 restoration of opportunity must be processed and recorded in the same
8 manner as any other record.

9 (ii) The qualified court where the applicant seeks the
10 certificate of restoration of opportunity must administer the court
11 records regarding the certificate in the same manner as it does
12 regarding all other proceedings.

13 (d) Effect in other judicial proceedings: A certificate of
14 restoration of opportunity may only be submitted to a court to
15 demonstrate that the individual met the specific requirements of this
16 section and not for any other procedure, including evidence of
17 character, reputation, or conduct. A certificate is not an equivalent
18 procedure under Rule of Evidence 609(c).

19 (e) Department of health: The department of health must include a
20 certificate of restoration of opportunity on its public web site if:

21 (i) Its web site includes an order, stipulation to informal
22 disposition, or notice of decision related to the conviction
23 identified in the certificate of restoration of opportunity; and

24 (ii) The credential holder has provided a certified copy of the
25 certificate of restoration of opportunity to the department of
26 health.

27 (5) In all cases, an applicant must provide notice to the
28 prosecutor in the county where he or she seeks a certificate of
29 restoration of opportunity of the pendency of such application. If
30 the applicant has been sentenced by any other jurisdiction in the
31 five years preceding the application for a certificate, the applicant
32 must also notify the prosecuting attorney in those jurisdictions. The
33 prosecutor in the county where an applicant applies for a certificate
34 shall provide the court with a report of the applicant's criminal
35 history.

36 (6) Application for a certificate of restoration of opportunity
37 must be filed as a civil action.

38 (7) A superior court in the county in which the applicant resides
39 may decline to consider the application for certificate of
40 restoration of opportunity. If the superior court in which the

1 applicant resides declines to consider the application, the court
2 must dismiss the application without prejudice and the applicant may
3 refile the application in another qualified court. The court must
4 state the reason for the dismissal on the order. If the court
5 determines that the applicant does not meet the required
6 qualifications, then the court must dismiss the application without
7 prejudice and state the reason(s) on the order. The superior court in
8 the county of the applicant's conviction or adjudication may not
9 decline to consider the application.

10 (8) Unless the qualified court determines that a hearing on an
11 application for certificate of restoration is necessary, the court
12 must decide without a hearing whether to grant the certificate of
13 restoration of opportunity based on a review of the application filed
14 by the applicant and pleadings filed by the prosecuting attorney.

15 (9) The clerk of the court in which the certificate of
16 restoration of opportunity is granted shall transmit the certificate
17 of restoration of opportunity to the Washington state patrol
18 identification section, which holds criminal history information for
19 the person who is the subject of the conviction. The Washington state
20 patrol shall update its records to reflect the certificate of
21 restoration of opportunity.

22 (10)(a) The administrative office of the courts shall develop and
23 prepare instructions, forms, and an informational brochure designed
24 to assist applicants applying for a certificate of restoration of
25 opportunity.

26 (b) The instructions must include, at least, a sample of a
27 standard application and a form order for a certificate of
28 restoration of opportunity.

29 (c) The administrative office of the courts shall distribute a
30 master copy of the instructions, informational brochure, and sample
31 application and form order to all county clerks and a master copy of
32 the application and order to all superior courts by January 1, 2017.

33 (d) The administrative office of the courts shall determine the
34 significant non-English-speaking or limited English-speaking
35 populations in the state. The administrator shall then arrange for
36 translation of the instructions, which shall contain a sample of the
37 standard application and order, and the informational brochure into
38 languages spoken by those significant non-English-speaking
39 populations and shall distribute a master copy of the translated

1 instructions and informational brochures to the county clerks by
2 January 1, 2017.

3 (e) The administrative office of the courts shall update the
4 instructions, brochures, standard application and order, and
5 translations when changes in the law make an update necessary.

6 **Sec. 4.** RCW 10.97.030 and 2012 c 125 s 1 are each amended to
7 read as follows:

8 For purposes of this chapter, the definitions of terms in this
9 section shall apply.

10 (1) "Criminal history record information" means information
11 contained in records collected by criminal justice agencies, other
12 than courts, on individuals, consisting of identifiable descriptions
13 and notations of arrests, detentions, indictments, informations, or
14 other formal criminal charges, and any disposition arising therefrom,
15 including acquittals by reason of insanity, dismissals based on lack
16 of competency, sentences, correctional supervision, and release.

17 The term includes any issued certificates of restoration of
18 opportunities and any information contained in records maintained by
19 or obtained from criminal justice agencies, other than courts, which
20 records provide individual identification of a person together with
21 any portion of the individual's record of involvement in the criminal
22 justice system as an alleged or convicted offender, except:

23 (a) Posters, announcements, or lists for identifying or
24 apprehending fugitives or wanted persons;

25 (b) Original records of entry maintained by criminal justice
26 agencies to the extent that such records are compiled and maintained
27 chronologically and are accessible only on a chronological basis;

28 (c) Court indices and records of public judicial proceedings,
29 court decisions, and opinions, and information disclosed during
30 public judicial proceedings;

31 (d) Records of traffic violations which are not punishable by a
32 maximum term of imprisonment of more than ninety days;

33 (e) Records of any traffic offenses as maintained by the
34 department of licensing for the purpose of regulating the issuance,
35 suspension, revocation, or renewal of drivers' or other operators'
36 licenses and pursuant to RCW 46.52.130;

37 (f) Records of any aviation violations or offenses as maintained
38 by the department of transportation for the purpose of regulating
39 pilots or other aviation operators, and pursuant to RCW 47.68.330;

1 (g) Announcements of executive clemency;

2 (h) Intelligence, analytical, or investigative reports and files.

3 (2) "Nonconviction data" consists of all criminal history record
4 information relating to an incident which has not led to a conviction
5 or other disposition adverse to the subject, and for which
6 proceedings are no longer actively pending. There shall be a
7 rebuttable presumption that proceedings are no longer actively
8 pending if more than one year has elapsed since arrest, citation,
9 charge, or service of warrant and no disposition has been entered.

10 (3) "Conviction record" means criminal history record information
11 relating to an incident which has led to a conviction or other
12 disposition adverse to the subject.

13 (4) "Conviction or other disposition adverse to the subject"
14 means any disposition of charges other than: (a) A decision not to
15 prosecute; (b) a dismissal; or (c) acquittal; with the following
16 exceptions, which shall be considered dispositions adverse to the
17 subject: An acquittal due to a finding of not guilty by reason of
18 insanity and a dismissal by reason of incompetency, pursuant to
19 chapter 10.77 RCW; and a dismissal entered after a period of
20 probation, suspension, or deferral of sentence.

21 (5) "Criminal justice agency" means: (a) A court; or (b) a
22 government agency which performs the administration of criminal
23 justice pursuant to a statute or executive order and which allocates
24 a substantial part of its annual budget to the administration of
25 criminal justice.

26 (6) "The administration of criminal justice" means performance of
27 any of the following activities: Detection, apprehension, detention,
28 pretrial release, post-trial release, prosecution, adjudication,
29 correctional supervision, or rehabilitation of accused persons or
30 criminal offenders. The term also includes criminal identification
31 activities and the collection, storage, dissemination of criminal
32 history record information, and the compensation of victims of crime.

33 (7) "Disposition" means the formal conclusion of a criminal
34 proceeding at whatever stage it occurs in the criminal justice
35 system.

36 (8) "Dissemination" means disclosing criminal history record
37 information or disclosing the absence of criminal history record
38 information to any person or agency outside the agency possessing the
39 information, subject to the following exceptions:

1 (a) When criminal justice agencies jointly participate in the
2 maintenance of a single recordkeeping department as an alternative to
3 maintaining separate records, the furnishing of information by that
4 department to personnel of any participating agency is not a
5 dissemination;

6 (b) The furnishing of information by any criminal justice agency
7 to another for the purpose of processing a matter through the
8 criminal justice system, such as a police department providing
9 information to a prosecutor for use in preparing a charge, is not a
10 dissemination;

11 (c) The reporting of an event to a recordkeeping agency for the
12 purpose of maintaining the record is not a dissemination.

13 **Sec. 5.** RCW 14.20.090 and 2010 c 8 s 5012 are each amended to
14 read as follows:

15 The secretary shall refuse to issue an aircraft dealer's license
16 or shall suspend or revoke an aircraft dealer's license whenever he
17 or she has reasonable grounds to believe that the dealer has:

18 (1) Forged or altered any federal certificate, permit, rating, or
19 license relating to ownership and airworthiness of an aircraft;

20 (2) Sold or disposed of an aircraft which he or she knows or has
21 reason to know has been stolen or appropriated without the consent of
22 the owner;

23 (3) Willfully misrepresented any material fact in the application
24 for an aircraft dealer's license, aircraft dealer's certificate, or
25 registration certificate;

26 (4) Willfully withheld or caused to be withheld from a purchaser
27 of an aircraft any document referred to in subsection (1) of this
28 section if applicable, or an affidavit to the effect that there are
29 no liens, mortgages, or encumbrances of any type on the aircraft
30 other than noted thereon, if the document or affidavit has been
31 requested by the purchaser;

32 (5) Suffered or permitted the cancellation of his or her bond or
33 the exhaustion of the penalty thereof;

34 (6) Used an aircraft dealer's certificate for any purpose other
35 than those permitted by this chapter or RCW 47.68.250 and 82.48.100;

36 (7) Except as provided in section 3 of this act, been adjudged
37 guilty of a crime that directly relates to the business of an
38 aircraft dealer and the time elapsed since the conviction is less
39 than ten years, or had a judgment entered against the dealer within

1 the preceding five years in any civil action involving fraud,
2 misrepresentation, or conversion. For the purpose of this section,
3 the term "adjudged guilty" means, in addition to a final conviction
4 in either a state or municipal court, an unvacated forfeiture of bail
5 or collateral deposited to secure a defendant's appearance in court,
6 the payment of a fine, a plea of guilty, or a finding of guilt
7 regardless of whether the imposition of the sentence is deferred or
8 the penalty is suspended.

9 **Sec. 6.** RCW 9.96A.020 and 2009 c 396 s 7 are each amended to
10 read as follows:

11 (1) Subject to the exceptions in subsections (3) through (5) of
12 this section, and unless there is another provision of law to the
13 contrary, a person is not disqualified from employment by the state
14 of Washington or any of its counties, cities, towns, municipal
15 corporations, or quasi-municipal corporations, nor is a person
16 disqualified to practice, pursue or engage in any occupation, trade,
17 vocation, or business for which a license, permit, certificate or
18 registration is required to be issued by the state of Washington or
19 any of its counties, cities, towns, municipal corporations, or quasi-
20 municipal corporations solely because of a prior conviction of a
21 felony. However, this section does not preclude the fact of any prior
22 conviction of a crime from being considered.

23 (2) A person may be denied employment by the state of Washington
24 or any of its counties, cities, towns, municipal corporations, or
25 quasi-municipal corporations, or a person may be denied a license,
26 permit, certificate or registration to pursue, practice or engage in
27 an occupation, trade, vocation, or business by reason of the prior
28 conviction of a felony if the felony for which he or she was
29 convicted directly relates to the position of employment sought or to
30 the specific occupation, trade, vocation, or business for which the
31 license, permit, certificate or registration is sought, and the time
32 elapsed since the conviction is less than ten years, except as
33 provided in section 3 of this act. However, for positions in the
34 county treasurer's office, a person may be disqualified from
35 employment because of a prior guilty plea or conviction of a felony
36 involving embezzlement or theft, even if the time elapsed since the
37 guilty plea or conviction is ten years or more.

38 (3) A person is disqualified for any certificate required or
39 authorized under chapters 28A.405 or 28A.410 RCW, because of a prior

1 guilty plea or the conviction of a felony crime specified under RCW
2 28A.400.322, even if the time elapsed since the guilty plea or
3 conviction is ten years or more.

4 (4) A person is disqualified from employment by school districts,
5 educational service districts, and their contractors hiring employees
6 who will have regularly scheduled unsupervised access to children,
7 because of a prior guilty plea or conviction of a felony crime
8 specified under RCW 28A.400.322, even if the time elapsed since the
9 guilty plea or conviction is ten years or more, except as provided in
10 section 3 of this act.

11 (5) The provisions of this chapter do not apply to issuance of
12 licenses or credentials for professions regulated under chapter
13 18.130 RCW.

14 (6) Subsections (3) and (4) of this section as they pertain to
15 felony crimes specified under RCW 28A.400.322(1) apply to a person
16 applying for a certificate or for employment on or after July 25,
17 1993, and before July 26, 2009. Subsections (3) and (4) of this
18 section as they pertain to all felony crimes specified under RCW
19 28A.400.322(2) apply to a person applying for a certificate or for
20 employment on or after July 26, 2009. Subsection (5) of this section
21 only applies to a person applying for a license or credential on or
22 after June 12, 2008.

23 **Sec. 7.** RCW 9.96A.050 and 1973 c 135 s 5 are each amended to
24 read as follows:

25 Except as provided in section 3 of this act, the provisions of
26 this chapter shall prevail over any other provisions of law which
27 purport to govern the denial of licenses, permits, certificates,
28 registrations, or other means to engage in a business, on the grounds
29 of a lack of good moral character, or which purport to govern the
30 suspension or revocation of such a license, permit, certificate, or
31 registration on the grounds of conviction of a crime.

32 **Sec. 8.** RCW 18.11.160 and 2002 c 86 s 209 are each amended to
33 read as follows:

34 (1) Except as provided in section 3 of this act, no license shall
35 be issued by the department to any person who has been convicted of
36 forgery, embezzlement, obtaining money under false pretenses,
37 extortion, criminal conspiracy, fraud, theft, receiving stolen goods,
38 unlawful issuance of checks or drafts, or other similar offense, or

1 to any partnership of which the person is a member, or to any
2 association or corporation of which the person is an officer or in
3 which as a stockholder the person has or exercises a controlling
4 interest either directly or indirectly.

5 (2) In addition to the unprofessional conduct described in RCW
6 18.235.130, the director has the authority to take disciplinary
7 action for any of the following conduct, acts, or conditions:

8 (a) Underreporting to the department of sales figures so that the
9 auctioneer or auction company surety bond is in a lower amount than
10 required by law;

11 (b) Nonpayment of an administrative fine prior to renewal of a
12 license; and

13 (c) Any other violations of this chapter.

14 (3) The department shall immediately suspend the license of a
15 person who has been certified pursuant to RCW 74.20A.320 by the
16 department of social and health services as a person who is not in
17 compliance with a support order. If the person has continued to meet
18 all other requirements for reinstatement during the suspension,
19 reissuance of the license shall be automatic upon the department's
20 receipt of a release issued by the department of social and health
21 services stating that the licensee is in compliance with the order.

22 **Sec. 9.** RCW 18.39.410 and 2005 c 365 s 24 are each amended to
23 read as follows:

24 In addition to the unprofessional conduct described in RCW
25 18.235.130, the board may take disciplinary action and may impose any
26 of the sanctions specified in RCW 18.235.110 for the following
27 conduct, acts, or conditions, except as provided in section 3 of this
28 act:

29 (1) Solicitation of human remains by a licensee, registrant,
30 endorsement, or permit holder, or agent, assistant, or employee of
31 the licensee, registrant, endorsement, or permit holder whether the
32 solicitation occurs after death or while death is impending. This
33 chapter does not prohibit general advertising or the sale of
34 prearrangement funeral service contracts;

35 (2) Solicitation may include employment of solicitors, payment of
36 commission, bonus, rebate, or any form of gratuity or payment of a
37 finders fee, referral fee, or other consideration given for the
38 purpose of obtaining or providing the services for human remains or
39 where death is impending;

1 (3) Acceptance by a licensee, registrant, endorsement, or permit
2 holder or other employee of a funeral establishment of a commission,
3 bonus, rebate, or gratuity in consideration of directing business to
4 a cemetery, crematory, mausoleum, columbarium, florist, or other
5 person providing goods and services to the disposition of human
6 remains;

7 (4) Using a casket or part of a casket that has previously been
8 used as a receptacle for, or in connection with, the burial or other
9 disposition of human remains without the written consent of the
10 person lawfully entitled to control the disposition of remains of the
11 deceased person in accordance with RCW 68.50.160. This subsection
12 does not prohibit the use of rental caskets, such as caskets of which
13 the outer shell portion is rented and the inner insert that contains
14 the human remains is purchased and used for the disposition, that are
15 disclosed as such in the statement of funeral goods and services;

16 (5) Violation of a state law, municipal law, or county ordinance
17 or regulation affecting the handling, custody, care, transportation,
18 or disposition of human remains, except as provided in section 3 of
19 this act;

20 (6) Refusing to promptly surrender the custody of human remains
21 upon the expressed order of the person lawfully entitled to its
22 custody under RCW 68.50.160;

23 (7) Selling, or offering for sale, a share, certificate, or an
24 interest in the business of a funeral establishment, or in a
25 corporation, firm, or association owning or operating a funeral
26 establishment that promises or purports to give to purchasers a right
27 to the services of a licensee, registrant, endorsement, or permit
28 holder at a charge or cost less than offered or given to the public;

29 (8) Violation of any state or federal statute or administrative
30 ruling relating to funeral practice, except as provided in section 3
31 of this act;

32 (9) Knowingly concealing information concerning a violation of
33 this title.

34 **Sec. 10.** RCW 18.64.165 and 2013 c 19 s 14 are each amended to
35 read as follows:

36 The commission shall have the power to refuse, suspend, or revoke
37 the license of any manufacturer, wholesaler, pharmacy, shopkeeper,
38 itinerant vendor, peddler, poison distributor, health care entity, or
39 precursor chemical distributor upon proof that:

1 (1) The license was procured through fraud, misrepresentation, or
2 deceit;

3 (2) Except as provided in section 3 of this act, the licensee has
4 violated or has permitted any employee to violate any of the laws of
5 this state or the United States relating to drugs, controlled
6 substances, cosmetics, or nonprescription drugs, or has violated any
7 of the rules and regulations of the commission or has been convicted
8 of a felony.

9 **Sec. 11.** RCW 18.108.085 and 2012 c 137 s 14 are each amended to
10 read as follows:

11 (1) In addition to any other authority provided by law, the
12 secretary may:

13 (a) Adopt rules, in accordance with chapter 34.05 RCW necessary
14 to implement this chapter;

15 (b) Set all license, certification, examination, and renewal fees
16 in accordance with RCW 43.70.250;

17 (c) Establish forms and procedures necessary to administer this
18 chapter;

19 (d) Issue a massage practitioner's license to any applicant who
20 has met the education, training, and examination requirements for
21 licensure and deny licensure to applicants who do not meet the
22 requirements of this chapter;

23 (e) Issue a reflexology certification to any applicant who has
24 met the requirements for certification and deny certification to
25 applicants who do not meet the requirements of this chapter; and

26 (f) Hire clerical, administrative, and investigative staff as
27 necessary to implement this chapter.

28 (2) The Uniform Disciplinary Act, chapter 18.130 RCW, governs
29 unlicensed and uncertified practice, the issuance and denial of
30 licenses and certifications, and the disciplining of persons under
31 this chapter. The secretary shall be the disciplining authority under
32 this chapter.

33 (3) Any license or certification issued under this chapter to a
34 person who is or has been convicted of violating RCW 9A.88.030,
35 9A.88.070, 9A.88.080, or 9A.88.090 or equivalent local ordinances
36 shall automatically be revoked by the secretary upon receipt of a
37 certified copy of the court documents reflecting such conviction,
38 except as provided in section 3 of this act. No further hearing or
39 procedure is required, and the secretary has no discretion with

1 regard to the revocation of the license or certification. The
2 revocation shall be effective even though such conviction may be
3 under appeal, or the time period for such appeal has not elapsed.
4 However, upon presentation of a final appellate decision overturning
5 such conviction, the license or certification shall be reinstated,
6 unless grounds for disciplinary action have been found under chapter
7 18.130 RCW. No license or certification may be granted under this
8 chapter to any person who has been convicted of violating RCW
9 9A.88.030, 9A.88.070, 9A.88.080, or 9A.88.090 or equivalent local
10 ordinances within the eight years immediately preceding the date of
11 application, except as provided in section 3 of this act. For
12 purposes of this subsection, "convicted" does not include a
13 conviction that has been the subject of a pardon, annulment, or other
14 equivalent procedure based on a finding of innocence, but does
15 include convictions for offenses for which the defendant received a
16 deferred or suspended sentence, unless the record has been expunged
17 according to law.

18 (4) The secretary shall keep an official record of all
19 proceedings under this chapter, a part of which record shall consist
20 of a register of all applicants for licensure or certification under
21 this chapter, with the result of each application.

22 **Sec. 12.** RCW 18.130.055 and 2008 c 134 s 19 are each amended to
23 read as follows:

24 (1) The disciplining authority may deny an application for
25 licensure or grant a license with conditions if the applicant:

26 (a) Has had his or her license to practice any health care
27 profession suspended, revoked, or restricted, by competent authority
28 in any state, federal, or foreign jurisdiction;

29 (b) Has committed any act defined as unprofessional conduct for a
30 license holder under RCW 18.130.180, except as provided in section 3
31 of this act;

32 (c) Has been convicted or is subject to current prosecution or
33 pending charges of a crime involving moral turpitude or a crime
34 identified in RCW 43.43.830, except as provided in section 3 of this
35 act. For purposes of this section, conviction includes all instances
36 in which a plea of guilty or nolo contendere is the basis for the
37 conviction and all proceedings in which the prosecution or sentence
38 has been deferred or suspended. At the request of an applicant for an
39 original license whose conviction is under appeal, the disciplining

1 authority may defer decision upon the application during the pendency
2 of such a prosecution or appeal;

3 (d) Fails to prove that he or she is qualified in accordance with
4 the provisions of this chapter, the chapters identified in RCW
5 18.130.040(2), or the rules adopted by the disciplining authority; or

6 (e) Is not able to practice with reasonable skill and safety to
7 consumers by reason of any mental or physical condition.

8 (i) The disciplining authority may require the applicant, at his
9 or her own expense, to submit to a mental, physical, or psychological
10 examination by one or more licensed health professionals designated
11 by the disciplining authority. The disciplining authority shall
12 provide written notice of its requirement for a mental or physical
13 examination that includes a statement of the specific conduct, event,
14 or circumstances justifying an examination and a statement of the
15 nature, purpose, scope, and content of the intended examination. If
16 the applicant fails to submit to the examination or provide the
17 results of the examination or any required waivers, the disciplining
18 authority may deny the application.

19 (ii) An applicant governed by this chapter is deemed to have
20 given consent to submit to a mental, physical, or psychological
21 examination when directed in writing by the disciplining authority
22 and further to have waived all objections to the admissibility or use
23 of the examining health professional's testimony or examination
24 reports by the disciplining authority on the grounds that the
25 testimony or reports constitute privileged communications.

26 (2) The provisions of RCW 9.95.240 and chapter 9.96A RCW do not
27 apply to a decision to deny a license under this section.

28 (3) The disciplining authority shall give written notice to the
29 applicant of the decision to deny a license or grant a license with
30 conditions in response to an application for a license. The notice
31 must state the grounds and factual basis for the action and be served
32 upon the applicant.

33 (4) A license applicant who is aggrieved by the decision to deny
34 the license or grant the license with conditions has the right to an
35 adjudicative proceeding. The application for adjudicative proceeding
36 must be in writing, state the basis for contesting the adverse
37 action, include a copy of the adverse notice, and be served on and
38 received by the department within twenty-eight days of the decision.
39 The license applicant has the burden to establish, by a preponderance
40 of evidence, that the license applicant is qualified in accordance

1 with the provisions of this chapter, the chapters identified in RCW
2 18.130.040(2), and the rules adopted by the disciplining authority.

3 **Sec. 13.** RCW 18.130.050 and 2013 c 109 s 1 and 2013 c 86 s 2 are
4 each reenacted and amended to read as follows:

5 Except as provided in RCW 18.130.062, the disciplining authority
6 has the following authority:

7 (1) To adopt, amend, and rescind such rules as are deemed
8 necessary to carry out this chapter;

9 (2) To investigate all complaints or reports of unprofessional
10 conduct as defined in this chapter;

11 (3) To hold hearings as provided in this chapter;

12 (4) To issue subpoenas and administer oaths in connection with
13 any investigation, consideration of an application for license,
14 hearing, or proceeding held under this chapter;

15 (5) To take or cause depositions to be taken and use other
16 discovery procedures as needed in any investigation, hearing, or
17 proceeding held under this chapter;

18 (6) To compel attendance of witnesses at hearings;

19 (7) In the course of investigating a complaint or report of
20 unprofessional conduct, to conduct practice reviews and to issue
21 citations and assess fines for failure to produce documents, records,
22 or other items in accordance with RCW 18.130.230;

23 (8) To take emergency action ordering summary suspension of a
24 license, or restriction or limitation of the license holder's
25 practice pending proceedings by the disciplining authority. Within
26 fourteen days of a request by the affected license holder, the
27 disciplining authority must provide a show cause hearing in
28 accordance with the requirements of RCW 18.130.135. In addition to
29 the authority in this subsection, a disciplining authority shall,
30 except as provided in section 3 of this act:

31 (a) Consistent with RCW 18.130.370, issue a summary suspension of
32 the license or temporary practice permit of a license holder
33 prohibited from practicing a health care profession in another state,
34 federal, or foreign jurisdiction because of an act of unprofessional
35 conduct that is substantially equivalent to an act of unprofessional
36 conduct prohibited by this chapter or any of the chapters specified
37 in RCW 18.130.040. The summary suspension remains in effect until
38 proceedings by the Washington disciplining authority have been
39 completed;

1 (b) Consistent with RCW 18.130.400, issue a summary suspension of
2 the license or temporary practice permit if, under RCW 74.39A.051,
3 the license holder is prohibited from employment in the care of
4 vulnerable adults based upon a department of social and health
5 services' final finding of abuse or neglect of a minor or abuse,
6 abandonment, neglect, or financial exploitation of a vulnerable
7 adult. The summary suspension remains in effect until proceedings by
8 the disciplining authority have been completed;

9 (9) To conduct show cause hearings in accordance with RCW
10 18.130.062 or 18.130.135 to review an action taken by the
11 disciplining authority to suspend a license or restrict or limit a
12 license holder's practice pending proceedings by the disciplining
13 authority;

14 (10) To use a presiding officer as authorized in RCW
15 18.130.095(3) or the office of administrative hearings as authorized
16 in chapter 34.12 RCW to conduct hearings. Disciplining authorities
17 identified in RCW 18.130.040(2) shall make the final decision
18 regarding disposition of the license unless the disciplining
19 authority elects to delegate in writing the final decision to the
20 presiding officer. Disciplining authorities identified in RCW
21 18.130.040(2)(b) may not delegate the final decision regarding
22 disposition of the license or imposition of sanctions to a presiding
23 officer in any case pertaining to standards of practice or where
24 clinical expertise is necessary, including deciding any motion that
25 results in dismissal of any allegation contained in the statement of
26 charges. Presiding officers acting on behalf of the secretary shall
27 enter initial orders. The secretary may, by rule, provide that
28 initial orders in specified classes of cases may become final without
29 further agency action unless, within a specified time period:

30 (a) The secretary upon his or her own motion determines that the
31 initial order should be reviewed; or

32 (b) A party to the proceedings files a petition for
33 administrative review of the initial order;

34 (11) To use individual members of the boards to direct
35 investigations and to authorize the issuance of a citation under
36 subsection (7) of this section. However, the member of the board
37 shall not subsequently participate in the hearing of the case;

38 (12) To enter into contracts for professional services determined
39 to be necessary for adequate enforcement of this chapter;

1 (13) To contract with license holders or other persons or
2 organizations to provide services necessary for the monitoring and
3 supervision of license holders who are placed on probation, whose
4 professional activities are restricted, or who are for any authorized
5 purpose subject to monitoring by the disciplining authority;

6 (14) To adopt standards of professional conduct or practice;

7 (15) To grant or deny license applications, and in the event of a
8 finding of unprofessional conduct by an applicant or license holder,
9 to impose any sanction against a license applicant or license holder
10 provided by this chapter. After January 1, 2009, all sanctions must
11 be issued in accordance with RCW 18.130.390;

12 (16) To restrict or place conditions on the practice of new
13 licensees in order to protect the public and promote the safety of
14 and confidence in the health care system;

15 (17) To designate individuals authorized to sign subpoenas and
16 statements of charges;

17 (18) To establish panels consisting of three or more members of
18 the board to perform any duty or authority within the board's
19 jurisdiction under this chapter;

20 (19) To review and audit the records of licensed health
21 facilities' or services' quality assurance committee decisions in
22 which a license holder's practice privilege or employment is
23 terminated or restricted. Each health facility or service shall
24 produce and make accessible to the disciplining authority the
25 appropriate records and otherwise facilitate the review and audit.
26 Information so gained shall not be subject to discovery or
27 introduction into evidence in any civil action pursuant to RCW
28 70.41.200(3).

29 **Sec. 14.** RCW 18.235.110 and 2007 c 256 s 18 are each amended to
30 read as follows:

31 (1) Upon finding unprofessional conduct, except as provided in
32 section 3 of this act, the disciplinary authority may issue an order
33 providing for one or any combination of the following:

34 (a) Revocation of the license for an interval of time;

35 (b) Suspension of the license for a fixed or indefinite term;

36 (c) Restriction or limitation of the practice;

37 (d) Satisfactory completion of a specific program of remedial
38 education or treatment;

1 (e) Monitoring of the practice in a manner directed by the
2 disciplinary authority;

3 (f) Censure or reprimand;

4 (g) Compliance with conditions of probation for a designated
5 period of time;

6 (h) Payment of a fine for each violation found by the
7 disciplinary authority, not to exceed five thousand dollars per
8 violation. The disciplinary authority must consider aggravating or
9 mitigating circumstances in assessing any fine. Funds received must
10 be deposited in the related program account;

11 (i) Denial of an initial or renewal license application for an
12 interval of time; or

13 (j) Other corrective action.

14 (2) The disciplinary authority may require reimbursement to the
15 disciplinary authority for the investigative costs incurred in
16 investigating the matter that resulted in issuance of an order under
17 this section, but only if any of the sanctions in subsection (1)(a)
18 through (j) of this section is ordered.

19 (3) Any of the actions under this section may be totally or
20 partly stayed by the disciplinary authority. In determining what
21 action is appropriate, the disciplinary authority must first consider
22 what sanctions are necessary to protect the public health, safety, or
23 welfare. Only after these provisions have been made may the
24 disciplinary authority consider and include in the order requirements
25 designed to rehabilitate the license holder or applicant. All costs
26 associated with compliance with orders issued under this section are
27 the obligation of the license holder or applicant.

28 (4) The licensee or applicant may enter into a stipulated
29 disposition of charges that includes one or more of the sanctions of
30 this section, but only after a statement of charges has been issued
31 and the licensee has been afforded the opportunity for a hearing and
32 has elected on the record to forego such a hearing. The stipulation
33 shall either contain one or more specific findings of unprofessional
34 conduct or a statement by the licensee acknowledging that evidence is
35 sufficient to justify one or more specified findings of
36 unprofessional conduct. The stipulations entered into under this
37 subsection are considered formal disciplinary action for all
38 purposes.

1 **Sec. 15.** RCW 18.145.120 and 1995 c 27 s 11 are each amended to
2 read as follows:

3 (1) Upon receipt of complaints against court reporters, the
4 director shall investigate and evaluate the complaint to determine if
5 disciplinary action is appropriate. The director shall hold
6 disciplinary hearings pursuant to chapter 34.05 RCW.

7 (2) After a hearing conducted under chapter 34.05 RCW and upon a
8 finding that a certificate holder or applicant has committed
9 unprofessional conduct or is unable to practice with reasonable skill
10 and safety due to a physical or mental condition, except as provided
11 in section 3 of this act, the director may issue an order providing
12 for one or any combination of the following:

13 (a) Revocation of the certification;

14 (b) Suspension of the certificate for a fixed or indefinite term;

15 (c) Restriction or limitation of the practice;

16 (d) Requiring the satisfactory completion of a specific program
17 or remedial education;

18 (e) The monitoring of the practice by a supervisor approved by
19 the director;

20 (f) Censure or reprimand;

21 (g) Compliance with conditions of probation for a designated
22 period of time;

23 (h) Denial of the certification request;

24 (i) Corrective action;

25 (j) Refund of fees billed to or collected from the consumer.

26 Any of the actions under this section may be totally or partly
27 stayed by the director. In determining what action is appropriate,
28 the director shall consider sanctions necessary to protect the
29 public, after which the director may consider and include in the
30 order requirements designed to rehabilitate the certificate holder or
31 applicant. All costs associated with compliance to orders issued
32 under this section are the obligation of the certificate holder or
33 applicant.

34 **Sec. 16.** RCW 9.94A.030 and 2015 c 287 s 1 and 2015 c 261 s 12
35 are each reenacted and amended to read as follows:

36 Unless the context clearly requires otherwise, the definitions in
37 this section apply throughout this chapter.

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

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

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

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

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

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

23 (7) "Community restitution" means compulsory service, without
24 compensation, performed for the benefit of the community by the
25 offender.

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

27 (9) "Conviction" means an adjudication of guilt pursuant to Title
28 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,
29 and acceptance of a plea of guilty.

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

38 (11) "Criminal history" means the list of a defendant's prior
39 convictions and juvenile adjudications, whether in this state, in

1 federal court, or elsewhere, and any issued certificates of
2 restoration of opportunity pursuant to section 3 of this act.

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

7 (b) A conviction may be removed from a defendant's criminal
8 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,
9 9.95.240, or a similar out-of-state statute, or if the conviction has
10 been vacated pursuant to a governor's pardon.

11 (c) The determination of a defendant's criminal history is
12 distinct from the determination of an offender score. A prior
13 conviction that was not included in an offender score calculated
14 pursuant to a former version of the sentencing reform act remains
15 part of the defendant's criminal history.

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

26 (13) "Criminal street gang associate or member" means any person
27 who actively participates in any criminal street gang and who
28 intentionally promotes, furthers, or assists in any criminal act by
29 the criminal street gang.

30 (14) "Criminal street gang-related offense" means any felony or
31 misdemeanor offense, whether in this state or elsewhere, that is
32 committed for the benefit of, at the direction of, or in association
33 with any criminal street gang, or is committed with the intent to
34 promote, further, or assist in any criminal conduct by the gang, or
35 is committed for one or more of the following reasons:

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

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

39 (c) To exact revenge or retribution for the gang or any member of
40 the gang;

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

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

6 (f) To provide the gang with any advantage in, or any control or
7 dominance over any criminal market sector, including, but not limited
8 to, manufacturing, delivering, or selling any controlled substance
9 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
10 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
11 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
12 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
13 9.68 RCW).

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

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

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

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

32 (19) "Disposable earnings" means that part of the earnings of an
33 offender remaining after the deduction from those earnings of any
34 amount required by law to be withheld. For the purposes of this
35 definition, "earnings" means compensation paid or payable for
36 personal services, whether denominated as wages, salary, commission,
37 bonuses, or otherwise, and, notwithstanding any other provision of
38 law making the payments exempt from garnishment, attachment, or other
39 process to satisfy a court-ordered legal financial obligation,
40 specifically includes periodic payments pursuant to pension or

1 retirement programs, or insurance policies of any type, but does not
2 include payments made under Title 50 RCW, except as provided in RCW
3 50.40.020 and 50.40.050, or Title 74 RCW.

4 (20) "Domestic violence" has the same meaning as defined in RCW
5 10.99.020 and 26.50.010.

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

10 (22) "Drug offense" means:

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

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

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

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

22 (24) "Electronic monitoring" means tracking the location of an
23 individual, whether pretrial or posttrial, through the use of
24 technology that is capable of determining or identifying the
25 monitored individual's presence or absence at a particular location
26 including, but not limited to:

27 (a) Radio frequency signaling technology, which detects if the
28 monitored individual is or is not at an approved location and
29 notifies the monitoring agency of the time that the monitored
30 individual either leaves the approved location or tampers with or
31 removes the monitoring device; or

32 (b) Active or passive global positioning system technology, which
33 detects the location of the monitored individual and notifies the
34 monitoring agency of the monitored individual's location.

35 (25) "Escape" means:

36 (a) Sexually violent predator escape (RCW 9A.76.115), escape in
37 the first degree (RCW 9A.76.110), escape in the second degree (RCW
38 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
39 willful failure to return from work release (RCW 72.65.070), or

1 willful failure to be available for supervision by the department
2 while in community custody (RCW 72.09.310); or

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

6 (26) "Felony traffic offense" means:

7 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
8 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
9 run injury-accident (RCW 46.52.020(4)), felony driving while under
10 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),
11 or felony physical control of a vehicle while under the influence of
12 intoxicating liquor or any drug (RCW 46.61.504(6)); 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 a felony
15 traffic offense under (a) of this subsection.

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

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

22 (29) "Home detention" is a subset of electronic monitoring and
23 means a program of partial confinement available to offenders wherein
24 the offender is confined in a private residence twenty-four hours a
25 day, unless an absence from the residence is approved, authorized, or
26 otherwise permitted in the order by the court or other supervising
27 agency that ordered home detention, and the offender is subject to
28 electronic monitoring.

29 (30) "Homelessness" or "homeless" means a condition where an
30 individual lacks a fixed, regular, and adequate nighttime residence
31 and who has a primary nighttime residence that is:

32 (a) A supervised, publicly or privately operated shelter designed
33 to provide temporary living accommodations;

34 (b) A public or private place not designed for, or ordinarily
35 used as, a regular sleeping accommodation for human beings; or

36 (c) A private residence where the individual stays as a transient
37 invitee.

38 (31) "Legal financial obligation" means a sum of money that is
39 ordered by a superior court of the state of Washington for legal
40 financial obligations which may include restitution to the victim,

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

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

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

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

20 (b) Assault in the second degree;

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

22 (d) Child molestation in the second degree;

23 (e) Controlled substance homicide;

24 (f) Extortion in the first degree;

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

26 (h) Indecent liberties;

27 (i) Kidnapping in the second degree;

28 (j) Leading organized crime;

29 (k) Manslaughter in the first degree;

30 (l) Manslaughter in the second degree;

31 (m) Promoting prostitution in the first degree;

32 (n) Rape in the third degree;

33 (o) Robbery in the second degree;

34 (p) Sexual exploitation;

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

39 (r) Vehicular homicide, when proximately caused by the driving of
40 any vehicle by any person while under the influence of intoxicating

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

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

5 (t) Any other felony with a deadly weapon verdict under RCW
6 9.94A.825;

7 (u) Any felony offense in effect at any time prior to December 2,
8 1993, that is comparable to a most serious offense under this
9 subsection, or any federal or out-of-state conviction for an offense
10 that under the laws of this state would be a felony classified as a
11 most serious offense under this subsection;

12 (v)(i) A prior conviction for indecent liberties under RCW
13 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
14 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
15 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW
16 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
17 until July 1, 1988;

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

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

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

34 (35) "Offender" means a person who has committed a felony
35 established by state law and is eighteen years of age or older or is
36 less than eighteen years of age but whose case is under superior
37 court jurisdiction under RCW 13.04.030 or has been transferred by the
38 appropriate juvenile court to a criminal court pursuant to RCW
39 13.40.110. In addition, for the purpose of community custody
40 requirements under this chapter, "offender" also means a misdemeanor

1 or gross misdemeanor probationer ordered by a superior court to
2 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and
3 supervised by the department pursuant to RCW 9.94A.501 and
4 9.94A.5011. Throughout this chapter, the terms "offender" and
5 "defendant" are used interchangeably.

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

16 (37) "Pattern of criminal street gang activity" means:

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

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

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

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

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

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

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

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

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

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

35 (x) Any felony conviction by a person eighteen years of age or
36 older with a special finding of involving a juvenile in a felony
37 offense under RCW 9.94A.833;

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

39 (xii) Burglary 2 (RCW 9A.52.030);

40 (xiii) Malicious Mischief 1 (RCW 9A.48.070);

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

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

18 (c) That the most recent committed offense listed in (a) of this
19 subsection occurred within three years of a prior offense listed in
20 (a) of this subsection; and

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

24 (38) "Persistent offender" is an offender who:

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

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

35 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
36 of a child in the first degree, child molestation in the first
37 degree, rape in the second degree, rape of a child in the second
38 degree, or indecent liberties by forcible compulsion; (B) any of the
39 following offenses with a finding of sexual motivation: Murder in the
40 first degree, murder in the second degree, homicide by abuse,

1 kidnapping in the first degree, kidnapping in the second degree,
2 assault in the first degree, assault in the second degree, assault of
3 a child in the first degree, assault of a child in the second degree,
4 or burglary in the first degree; or (C) an attempt to commit any
5 crime listed in this subsection (38)(b)(i); and

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

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

1 in authority" does not include the parent or legal guardian of the
2 victim.

3 (40) "Private school" means a school regulated under chapter
4 28A.195 or 28A.205 RCW.

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

6 (42) "Repetitive domestic violence offense" means any:

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

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

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

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

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

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

22 (43) "Restitution" means a specific sum of money ordered by the
23 sentencing court to be paid by the offender to the court over a
24 specified period of time as payment of damages. The sum may include
25 both public and private costs.

26 (44) "Risk assessment" means the application of the risk
27 instrument recommended to the department by the Washington state
28 institute for public policy as having the highest degree of
29 predictive accuracy for assessing an offender's risk of reoffense.

30 (45) "Serious traffic offense" means:

31 (a) Nonfelony driving while under the influence of intoxicating
32 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
33 while under the influence of intoxicating liquor or any drug (RCW
34 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
35 attended vehicle (RCW 46.52.020(5)); or

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

39 (46) "Serious violent offense" is a subcategory of violent
40 offense and means:

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

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

14 (47) "Sex offense" means:

15 (a)(i) A felony that is a violation of chapter 9A.44 RCW other
16 than RCW 9A.44.132;

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

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

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

23 (v) A felony violation of RCW 9A.44.132(1) (failure to register
24 as a sex offender) if the person has been convicted of violating RCW
25 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
26 prior to June 10, 2010, on at least one prior occasion;

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

30 (c) A felony with a finding of sexual motivation under RCW
31 9.94A.835 or 13.40.135; or

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

35 (48) "Sexual motivation" means that one of the purposes for which
36 the defendant committed the crime was for the purpose of his or her
37 sexual gratification.

38 (49) "Standard sentence range" means the sentencing court's
39 discretionary range in imposing a nonappealable sentence.

1 (50) "Statutory maximum sentence" means the maximum length of
2 time for which an offender may be confined as punishment for a crime
3 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute
4 defining the crime, or other statute defining the maximum penalty for
5 a crime.

6 (51) "Stranger" means that the victim did not know the offender
7 twenty-four hours before the offense.

8 (52) "Total confinement" means confinement inside the physical
9 boundaries of a facility or institution operated or utilized under
10 contract by the state or any other unit of government for twenty-four
11 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

12 (53) "Transition training" means written and verbal instructions
13 and assistance provided by the department to the offender during the
14 two weeks prior to the offender's successful completion of the work
15 ethic camp program. The transition training shall include
16 instructions in the offender's requirements and obligations during
17 the offender's period of community custody.

18 (54) "Victim" means any person who has sustained emotional,
19 psychological, physical, or financial injury to person or property as
20 a direct result of the crime charged.

21 (55) "Violent offense" means:

22 (a) Any of the following felonies:

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

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

27 (iii) Manslaughter in the first degree;

28 (iv) Manslaughter in the second degree;

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

30 (vi) Kidnapping in the second degree;

31 (vii) Arson in the second degree;

32 (viii) Assault in the second degree;

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

34 (x) Extortion in the first degree;

35 (xi) Robbery in the second degree;

36 (xii) Drive-by shooting;

37 (xiii) Vehicular assault, when caused by the operation or driving
38 of a vehicle by a person while under the influence of intoxicating
39 liquor or any drug or by the operation or driving of a vehicle in a
40 reckless manner; and

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

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

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

11 (56) "Work crew" means a program of partial confinement
12 consisting of civic improvement tasks for the benefit of the
13 community that complies with RCW 9.94A.725.

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

21 (58) "Work release" means a program of partial confinement
22 available to offenders who are employed or engaged as a student in a
23 regular course of study at school.

24 **Sec. 17.** RCW 18.160.080 and 1997 c 58 s 834 are each amended to
25 read as follows:

26 (1) The state director of fire protection may refuse to issue or
27 renew or may suspend or revoke the privilege of a licensed fire
28 protection sprinkler system contractor or the certificate of a
29 certificate of competency holder to engage in the fire protection
30 sprinkler system business or in lieu thereof, establish penalties as
31 prescribed by Washington state law, for any of the following reasons:

32 (a) Gross incompetency or gross negligence in the preparation of
33 technical drawings, installation, repair, alteration, maintenance,
34 inspection, service, or addition to fire protection sprinkler
35 systems;

36 (b) Except as provided in section 3 of this act, conviction of a
37 felony;

38 (c) Fraudulent or dishonest practices while engaging in the fire
39 protection sprinkler system((s)) business;

1 (d) Use of false evidence or misrepresentation in an application
2 for a license or certificate of competency;

3 (e) Permitting his or her license to be used in connection with
4 the preparation of any technical drawings which have not been
5 prepared by him or her personally or under his or her immediate
6 supervision, or in violation of this chapter; or

7 (f) Knowingly violating any provisions of this chapter or the
8 regulations issued thereunder.

9 (2) The state director of fire protection shall revoke the
10 license of a licensed fire protection sprinkler system contractor or
11 the certificate of a certificate of competency holder who engages in
12 the fire protection sprinkler system business while the license or
13 certificate of competency is suspended.

14 (3) The state director of fire protection shall immediately
15 suspend any license or certificate issued under this chapter if the
16 holder has been certified pursuant to RCW 74.20A.320 by the
17 department of social and health services as a person who is not in
18 compliance with a support order or a residential or visitation order.
19 If the person has continued to meet all other requirements for
20 issuance or reinstatement during the suspension, issuance or
21 reissuance of the license or certificate shall be automatic upon the
22 director's receipt of a release issued by the department of social
23 and health services stating that the person is in compliance with the
24 order.

25 (4) Any licensee or certificate of competency holder who is
26 aggrieved by an order of the state director of fire protection
27 suspending or revoking a license may, within thirty days after notice
28 of such suspension or revocation, appeal under chapter 34.05 RCW.
29 This subsection does not apply to actions taken under subsection (3)
30 of this section.

31 **Sec. 18.** RCW 18.130.160 and 2008 c 134 s 10 are each amended to
32 read as follows:

33 Upon a finding, after hearing, that a license holder has
34 committed unprofessional conduct or is unable to practice with
35 reasonable skill and safety due to a physical or mental condition,
36 the disciplining authority shall issue an order including sanctions
37 adopted in accordance with the schedule adopted under RCW 18.130.390
38 giving proper consideration to any prior findings of fact under RCW
39 18.130.110, any stipulations to informal disposition under RCW

1 18.130.172, and any action taken by other in-state or out-of-state
2 disciplining authorities. The order must provide for one or any
3 combination of the following, as directed by the schedule, except as
4 provided in section 3 of this act:

- 5 (1) Revocation of the license;
- 6 (2) Suspension of the license for a fixed or indefinite term;
- 7 (3) Restriction or limitation of the practice;
- 8 (4) Requiring the satisfactory completion of a specific program
9 of remedial education or treatment;
- 10 (5) The monitoring of the practice by a supervisor approved by
11 the disciplining authority;
- 12 (6) Censure or reprimand;
- 13 (7) Compliance with conditions of probation for a designated
14 period of time;
- 15 (8) Payment of a fine for each violation of this chapter, not to
16 exceed five thousand dollars per violation. Funds received shall be
17 placed in the health professions account;
- 18 (9) Denial of the license request;
- 19 (10) Corrective action;
- 20 (11) Refund of fees billed to and collected from the consumer;
- 21 (12) A surrender of the practitioner's license in lieu of other
22 sanctions, which must be reported to the federal data bank.

23 Any of the actions under this section may be totally or partly
24 stayed by the disciplining authority. Safeguarding the public's
25 health and safety is the paramount responsibility of every
26 disciplining authority. In determining what action is appropriate,
27 the disciplining authority must consider the schedule adopted under
28 RCW 18.130.390. Where the schedule allows flexibility in determining
29 the appropriate sanction, the disciplining authority must first
30 consider what sanctions are necessary to protect or compensate the
31 public. Only after such provisions have been made may the
32 disciplining authority consider and include in the order requirements
33 designed to rehabilitate the license holder. All costs associated
34 with compliance with orders issued under this section are the
35 obligation of the license holder. The disciplining authority may
36 order permanent revocation of a license if it finds that the license
37 holder can never be rehabilitated or can never regain the ability to
38 practice with reasonable skill and safety.

39 Surrender or permanent revocation of a license under this section
40 is not subject to a petition for reinstatement under RCW 18.130.150.

1 The disciplining authority may determine that a case presents
2 unique circumstances that the schedule adopted under RCW 18.130.390
3 does not adequately address. The disciplining authority may deviate
4 from the schedule adopted under RCW 18.130.390 when selecting
5 appropriate sanctions, but the disciplining authority must issue a
6 written explanation of the basis for not following the schedule.

7 The license holder may enter into a stipulated disposition of
8 charges that includes one or more of the sanctions of this section,
9 but only after a statement of charges has been issued and the license
10 holder has been afforded the opportunity for a hearing and has
11 elected on the record to forego such a hearing. The stipulation shall
12 either contain one or more specific findings of unprofessional
13 conduct or inability to practice, or a statement by the license
14 holder acknowledging that evidence is sufficient to justify one or
15 more specified findings of unprofessional conduct or inability to
16 practice. The stipulation entered into pursuant to this subsection
17 shall be considered formal disciplinary action for all purposes.

18 NEW SECTION. **Sec. 19.** 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. 20.** If any part of this act is found to be in
23 conflict with federal requirements that are a prescribed condition to
24 the allocation of federal funds to the state, the conflicting part of
25 this act is inoperative solely to the extent of the conflict and with
26 respect to the agencies directly affected, and this finding does not
27 affect the operation of the remainder of this act in its application
28 to the agencies concerned. Rules adopted under this act must meet
29 federal requirements that are a necessary condition to the receipt of
30 federal funds by the state.

31 NEW SECTION. **Sec. 21.** Sections 2 and 3 of this act constitute a
32 new chapter in Title 9 RCW.

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