

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

3 (b) Consideration for grant awards shall primarily be given to, but
4 is not limited to, those applicants that show that gang violence is an
5 increasing problem in their respective city and that addressing the
6 impact of street gangs is a high priority within their local community.

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

9 (d) The costs of administration shall not exceed four percent of
10 appropriated funding.

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

14 (2) The governor's juvenile justice advisory committee shall
15 convene a state gang work group. The committee, working in
16 collaboration with the work group, shall meet quarterly each year to
17 provide oversight of the pilot projects established in subsection (1)
18 of this section. The work group shall include a total of twenty
19 members that consist of the following:

20 (a) One member from each of the two largest caucuses of the senate,
21 appointed by the president of the senate;

22 (b) One member from each of the two largest caucuses of the house
23 of representatives, appointed by the speaker of the house of
24 representatives;

25 (c) The attorney general or the attorney general's designee;

26 (d) A prosecutor appointed by the Washington association of
27 prosecuting attorneys;

28 (e) A defender appointed by the Washington defender association of
29 the Washington association of criminal defense lawyers;

30 (f) The state superintendent of public instruction or the
31 superintendent's designee;

32 (g) The secretary of the department of corrections or the
33 secretary's designee;

34 (h) The secretary of the department of social and health services
35 or the secretary's designee;

36 (i) The chief of the Washington state patrol or the chief's
37 designee;

38 (j) A representative of the association of cities;

1 (k) A representative of the Washington state association of
2 counties; and

3 (1) Representatives, appointed by the governor, that shall include,
4 but are not limited to:

5 (i) City law enforcement;

6 (ii) County law enforcement;

7 (iii) Court administrators; and

8 (iv) Experts in gang or delinquency prevention.

9 (3) The members of the state gang work group shall be reimbursed
10 for travel expenses as provided in RCW 43.03.050 and 43.03.060, within
11 available resources.

12 NEW SECTION. **Sec. 102.** The sum of ten million dollars, or as much
13 thereof as may be necessary, is appropriated for the biennium ending
14 June 30, 2009, from the general fund to the department of social and
15 health services for the purposes of section 101 of this act.

16 **PART II**

17 **NEAR-TERM RELIEF FOR 2008**

18 **Two Million Dollar Washington Association Of Sheriffs And Police**
19 **Chiefs Grant Program To Communities**

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

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

28 (2) Each grant applicant shall:

29 (a) Show a significant gang problem in the jurisdiction or
30 jurisdictions receiving the grant;

31 (b) Verify that grant awards are sufficient to cover increased
32 prosecution and jail costs;

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

1 (d) Demonstrate community coordination focusing on prevention,
2 intervention, and suppression.

3 (3) The cost of administering the grants shall not exceed sixty
4 thousand dollars.

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

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

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

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

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

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

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

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

23 (3) The cost of administering the grants shall not exceed twenty-
24 five thousand dollars.

25 NEW SECTION. **Sec. 203.** The sum of two million dollars, or as much
26 thereof as may be necessary, is appropriated for the fiscal year ending
27 June 30, 2008, from the public safety and education account to the
28 Washington association of sheriffs and police chiefs for the purposes
29 of section 201 of this act.

30 NEW SECTION. **Sec. 204.** The sum of one million dollars, or as much
31 thereof as may be necessary, is appropriated for the fiscal year ending
32 June 30, 2008, from the general fund to the Washington association of
33 sheriffs and police chiefs for the purposes of section 202 of this act.

1 about a criminal street gang associate or gang member, as defined in
2 RCW 9.94A.030, is twelve years old or older;

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

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

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

18 **PART IV**
19 **CIVIL INJUNCTIONS**

20 NEW SECTION. **Sec. 401.** The definitions in this section apply
21 throughout this chapter unless the context clearly requires otherwise.

22 (1) "Gang" means "criminal street gang" as defined in RCW
23 9.94A.030.

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

26 NEW SECTION. **Sec. 402.** (1) Equitable relief is authorized to
27 enjoin, abate, and prevent criminal street gang activity, whether it is
28 a private or public nuisance. Relief is also authorized to enjoin
29 gang-related criminal acts described in RCW 9.94A.030(36) and
30 associated noncriminal acts or acts which are known precursors to gang-
31 related criminal acts as specified in subsection (2) of this section,
32 upon a showing of the following elements by a preponderance of the
33 evidence:

34 (a) A gang is named as a defendant and contains at least five

1 members, at least two of whom possess active leadership roles at the
2 time of application, and that any person sought to be enjoined is an
3 active or current member of the gang;

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

8 (c) The defendants and other gang members have committed, during
9 the five years immediately prior to the filing of the petition, a
10 pattern of criminal street gang activity within the described
11 geographical area. It is insufficient to show merely an increase in
12 crime within the area;

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

19 (e) The plaintiffs have engaged in prevention and intervention
20 planning to serve a reasonable number of the gang's total membership
21 with prevention and intervention services to divert them from gang
22 activity.

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

26 (a) Associating with other gang members;

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

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

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

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

37 (f) Consuming alcohol in public;

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

3 (h) Defacing any public or private property or possessing graffiti
4 or tagging tools;

5 (i) Violating any court defined curfew;

6 (j) Using hand or other gestures associated with the gang;

7 (k) Wearing colors or symbols associated with the gang; or

8 (l) Any other activity or behavior contributing to an atmosphere
9 that has in the past caused the intimidation of nongang members within
10 the described geographical area.

11 (3) The attorney general, the prosecuting attorney, or city
12 attorney or city prosecutor may maintain an action of an equitable
13 nature in the name of the state under this act. If a city applies for
14 equitable relief under this act, the city shall seek and obtain
15 approval of the prosecuting attorney of the county in which the city is
16 located to maintain the action.

17 (4) A court of competent jurisdiction shall conduct an evidentiary
18 hearing on the complaint for equitable relief filed under this act.
19 The plaintiff must prove by a preponderance of the evidence: (a) The
20 elements set forth in subsection (1) of this section; and (b) the
21 specific remedies requested are reasonable and necessary. The hearing
22 may be conducted ex parte. However, the injunction is not effective as
23 to any person unless that person has been personally served with a copy
24 of the summons.

25 (5) A person served in the representative capacity of the gang, if
26 indigent, may request that an attorney be appointed to represent him or
27 her at public expense. If the court grants the request, the plaintiff
28 shall pay the cost of representation. The person shall receive notice
29 of this right to request counsel in the summons. The person need not
30 testify, but may testify and cross-examine witnesses and present
31 testimony and other evidence on his or her own behalf.

32 (6) The final order of injunction shall contain an opt out
33 provision, by which an alleged member previously included in the order
34 may petition at any time for removal from the injunction after a period
35 of five years in which no act by the alleged member has resulted in
36 either a contempt finding or a conviction of crime, and further that
37 there is no criminal charge pending at the time of the hearing. In the
38 petition, the alleged member may request a court hearing on the matter.

1 (7) All actions to punish any violation of the injunction shall be
2 by prosecution of the crime of contempt of court. If the person did
3 not contest the finding that he or she was a gang member when
4 originally served with notice of the injunction, then it is an
5 affirmative defense that he or she was no longer an active or current
6 member of the gang.

7 (8) No nonprofit or charitable organization which is conducting its
8 affairs with ordinary care and skill, and no governmental entity, shall
9 be enjoined or abated under this chapter.

10 **PART V**

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

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

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

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

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

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

1 firearm enhancements, the following additional times shall be added to
2 the standard sentence range determined under subsection (2) of this
3 section based on the felony crime of conviction as classified under RCW
4 9A.28.020:

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

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

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

14 (d) If the offender is being sentenced for any firearm enhancements
15 under (a), (b), and/or (c) of this subsection and the offender has
16 previously been sentenced for any deadly weapon enhancements after July
17 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
18 (4)(a), (b), and/or (c) of this section, or both, all firearm
19 enhancements under this subsection shall be twice the amount of the
20 enhancement listed;

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

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

34 (g) If the standard sentence range under this section exceeds the
35 statutory maximum sentence for the offense, the statutory maximum
36 sentence shall be the presumptive sentence unless the offender is a
37 persistent offender. If the addition of a firearm enhancement

1 increases the sentence so that it would exceed the statutory maximum
2 for the offense, the portion of the sentence representing the
3 enhancement may not be reduced.

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

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

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

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

31 (d) If the offender is being sentenced under (a), (b), and/or (c)
32 of this subsection for any deadly weapon enhancements and the offender
33 has previously been sentenced for any deadly weapon enhancements after
34 July 23, 1995, under (a), (b), and/or (c) of this subsection or
35 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
36 weapon enhancements under this subsection shall be twice the amount of
37 the enhancement listed;

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

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

14 (g) If the standard sentence range under this section exceeds the
15 statutory maximum sentence for the offense, the statutory maximum
16 sentence shall be the presumptive sentence unless the offender is a
17 persistent offender. If the addition of a deadly weapon enhancement
18 increases the sentence so that it would exceed the statutory maximum
19 for the offense, the portion of the sentence representing the
20 enhancement may not be reduced.

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

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

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

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

37 For the purposes of this subsection, all of the real property of a

1 state correctional facility or county jail shall be deemed to be part
2 of that facility or county jail.

3 (6) An additional twenty-four months shall be added to the standard
4 sentence range for any ranked offense involving a violation of chapter
5 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
6 9.94A.605. All enhancements under this subsection shall run
7 consecutively to all other sentencing provisions, for all offenses
8 sentenced under this chapter.

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

13 (8)(a) The following additional times shall be added to the
14 standard sentence range for felony crimes committed on or after July 1,
15 2006, if the offense was committed with sexual motivation, as that term
16 is defined in RCW 9.94A.030. If the offender is being sentenced for
17 more than one offense, the sexual motivation enhancement must be added
18 to the total period of total confinement for all offenses, regardless
19 of which underlying offense is subject to a sexual motivation
20 enhancement. If the offender committed the offense with sexual
21 motivation and the offender is being sentenced for an anticipatory
22 offense under chapter 9A.28 RCW, the following additional times shall
23 be added to the standard sentence range determined under subsection (2)
24 of this section based on the felony crime of conviction as classified
25 under RCW 9A.28.020:

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

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

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

34 (iv) If the offender is being sentenced for any sexual motivation
35 enhancements under (i), (ii), and/or (iii) of this subsection and the
36 offender has previously been sentenced for any sexual motivation
37 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of

1 this subsection, all sexual motivation enhancements under this
2 subsection shall be twice the amount of the enhancement listed;

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

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

13 (d) If the standard sentence range under this subsection exceeds
14 the statutory maximum sentence for the offense, the statutory maximum
15 sentence shall be the presumptive sentence unless the offender is a
16 persistent offender. If the addition of a sexual motivation
17 enhancement increases the sentence so that it would exceed the
18 statutory maximum for the offense, the portion of the sentence
19 representing the enhancement may not be reduced;

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

23 (f) Nothing in this subsection prevents a sentencing court from
24 imposing a sentence outside the standard sentence range pursuant to RCW
25 9.94A.535.

26 (9) An additional one-year enhancement shall be added to the
27 standard sentence range for the felony crimes of RCW 9A.44.073,
28 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
29 or after July 22, 2007, if the offender engaged, agreed, or offered to
30 engage the victim in the sexual conduct in return for a fee. If the
31 offender is being sentenced for more than one offense, the one-year
32 enhancement must be added to the total period of total confinement for
33 all offenses, regardless of which underlying offense is subject to the
34 enhancement. If the offender is being sentenced for an anticipatory
35 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
36 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
37 solicited another, or conspired to engage, agree, or offer to engage
38 the victim in (~~the~~) the sexual conduct in return for a fee, an

1 additional one-year enhancement shall be added to the standard sentence
2 range determined under subsection (2) of this section. For purposes of
3 this subsection, "sexual conduct" means sexual intercourse or sexual
4 contact, both as defined in chapter 9A.44 RCW.

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

15 (b) This subsection does not apply to any felony for which
16 involving a minor in the commission of the felony is an element of the
17 offense.

18 **Expansion Of The List Of Aggravating Factors**

19 **Sec. 502.** RCW 9.94A.535 and 2007 c 377 s 10 are each amended to
20 read as follows:

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

27 Whenever a sentence outside the standard sentence range is imposed,
28 the court shall set forth the reasons for its decision in written
29 findings of fact and conclusions of law. A sentence outside the
30 standard sentence range shall be a determinate sentence.

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

34 A departure from the standards in RCW 9.94A.589 (1) and (2)
35 governing whether sentences are to be served consecutively or

1 concurrently is an exceptional sentence subject to the limitations in
2 this section, and may be appealed by the offender or the state as set
3 forth in RCW 9.94A.585 (2) through (6).

4 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

19 (e) The defendant's capacity to appreciate the wrongfulness of his
20 or her conduct, or to conform his or her conduct to the requirements of
21 the law, was significantly impaired. Voluntary use of drugs or alcohol
22 is excluded.

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

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

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

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

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

35 (a) The defendant and the state both stipulate that justice is best
36 served by the imposition of an exceptional sentence outside the
37 standard range, and the court finds the exceptional sentence to be

1 consistent with and in furtherance of the interests of justice and the
2 purposes of the sentencing reform act.

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

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

10 (d) The failure to consider the defendant's prior criminal history
11 which was omitted from the offender score calculation pursuant to RCW
12 9.94A.525 results in a presumptive sentence that is clearly too
13 lenient.

14 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
15 the Court

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

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

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

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

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

29 (i) The current offense involved multiple victims or multiple
30 incidents per victim;

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

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

35 (iv) The defendant used his or her position of trust, confidence,
36 or fiduciary responsibility to facilitate the commission of the current
37 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (i) The offense resulted in the pregnancy of a child victim of
38 rape.

1 (j) The defendant knew that the victim of the current offense was
2 a youth who was not residing with a legal custodian and the defendant
3 established or promoted the relationship for the primary purpose of
4 victimization.

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

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

11 (m) The offense involved a high degree of sophistication or
12 planning.

13 (n) The defendant used his or her position of trust, confidence, or
14 fiduciary responsibility to facilitate the commission of the current
15 offense.

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

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

19 (q) The defendant demonstrated or displayed an egregious lack of
20 remorse.

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

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

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

28 (u) The current offense is a burglary and the victim of the
29 burglary was present in the building or residence when the crime was
30 committed.

31 (v) The offense was committed against a law enforcement officer who
32 was performing his or her official duties at the time of the offense,
33 the offender knew that the victim was a law enforcement officer, and
34 the victim's status as a law enforcement officer is not an element of
35 the offense.

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

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

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

7 (z)(i)(A) The current offense is theft in the first degree, theft
8 in the second degree, possession of stolen property in the first
9 degree, or possession of stolen property in the second degree; (B) the
10 stolen property involved is metal property; and (C) the property damage
11 to the victim caused in the course of the theft of metal property is
12 more than three times the value of the stolen metal property, or the
13 theft of the metal property creates a public hazard.

14 (ii) For purposes of this subsection, "metal property" means
15 commercial metal property or nonferrous metal property, as defined in
16 RCW 19.290.010.

17 (aa) The defendant committed the offense with the intent to
18 directly or indirectly cause any benefit, aggrandizement, gain, profit,
19 or other advantage to or for a criminal street gang as defined in RCW
20 9.94A.030, its reputation, influence, or membership.

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

22 **Sec. 503.** RCW 9.94A.545 and 2006 c 128 s 4 are each amended to
23 read as follows:

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

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

4 (3) If the offender is found guilty of unlawful possession of a
5 firearm under RCW 9.41.040, the court shall impose a term of community
6 custody under RCW 9.94A.715.

7 **Sec. 504.** RCW 9.94A.715 and 2006 c 130 s 2 and 2006 c 128 s 5 are
8 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

25 **Requiring Courts To Notify Department Of Corrections And Jails**
26 **That An Offender Is A Gang Member**

27 NEW SECTION. **Sec. 505.** A new section is added to chapter 9.94A
28 RCW to read as follows:

29 In any felony trial, if the court finds by a preponderance of the
30 evidence that the defendant is a criminal street gang associate or
31 member as defined in RCW 9.94A.030 or is convicted of a criminal street
32 gang-related offense as defined in RCW 9.94A.030, the court shall
33 notify the department of the defendant's gang membership and the
34 defendant's crime of conviction.

1 under chapter 9A.48 RCW by causing physical damage to the property of
2 another is liable in addition to actual damages, for a penalty to the
3 owner in the amount of the value of the damaged property not to exceed
4 one thousand dollars, plus an additional penalty of not less than one
5 hundred dollars nor more than two hundred dollars, plus all reasonable
6 attorneys' fees and court costs expended by the owner.

7 (2)(a) The parent or legal guardian having the custody of an
8 unemancipated minor who commits malicious mischief under chapter 9A.48
9 RCW by causing physical damage to the property of another is liable for
10 a penalty to the owner for the value of the damaged property not to
11 exceed five hundred dollars plus an additional penalty of not less than
12 one hundred dollars nor more than two hundred dollars, plus all
13 reasonable attorneys' fees and court costs expended by the owner. For
14 the purposes of this subsection, liability shall not be imposed upon
15 any governmental entity, private agency, or foster parent assigned
16 responsibility for the minor child under a court order or action of the
17 department of social and health services.

18 (b) The fine or penalty to the owner may be suspended on the
19 condition: (i) The parent or legal guardian having custody of the
20 unemancipated minor shows he or she is unaware of the criminal
21 violation by the unemancipated minor in custody; (ii) the parent or legal
22 guardian having custody of the unemancipated minor shows he or she has
23 a financial hardship and has done everything possible to make
24 restitution to the owner of the damaged property; or (iii) it is an
25 affirmative defense to the charge, the parent or legal guardian proves
26 by a preponderance of the evidence, that he or she has done everything
27 possible, with reasonable diligence, to provide restitution to the
28 property owner.

29 (3) A conviction for violation of chapter 9A.48 RCW is not a
30 condition precedent to maintenance of a civil action authorized by this
31 section.

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

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

37 When a defendant is prosecuted in a criminal action for a

1 misdemeanor, for which the person injured by the act constituting the
2 offense has a remedy by a civil action, the offense may be compromised
3 as provided in RCW 10.22.020, except when it was committed:

4 (1) By or upon an officer while in the execution of the duties of
5 his office.

6 (2) Riotously;

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

8 (4) By committing malicious mischief in the third degree under RCW
9 9A.48.090 by causing physical damage to the property of another; or

10 (5) By one family or household member against another as defined in
11 RCW 10.99.020 and was a crime of domestic violence as defined in RCW
12 10.99.020.

13 Criminal Street Gang Definition

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

17 Unless the context clearly requires otherwise, the definitions in
18 this section apply throughout this chapter.

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

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

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

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

34 (5) "Community custody" means that portion of an offender's
35 sentence of confinement in lieu of earned release time or imposed
36 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,

1 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
2 community subject to controls placed on the offender's movement and
3 activities by the department. For offenders placed on community
4 custody for crimes committed on or after July 1, 2000, the department
5 shall assess the offender's risk of reoffense and may establish and
6 modify conditions of community custody, in addition to those imposed by
7 the court, based upon the risk to community safety.

8 (6) "Community custody range" means the minimum and maximum period
9 of community custody included as part of a sentence under RCW
10 9.94A.715, as established by the commission or the legislature under
11 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

12 (7) "Community placement" means that period during which the
13 offender is subject to the conditions of community custody and/or
14 postrelease supervision, which begins either upon completion of the
15 term of confinement (postrelease supervision) or at such time as the
16 offender is transferred to community custody in lieu of earned release.
17 Community placement may consist of entirely community custody, entirely
18 postrelease supervision, or a combination of the two.

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

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

25 (10) "Community supervision" means a period of time during which a
26 convicted offender is subject to crime-related prohibitions and other
27 sentence conditions imposed by a court pursuant to this chapter or RCW
28 16.52.200(6) or 46.61.524. Where the court finds that any offender has
29 a chemical dependency that has contributed to his or her offense, the
30 conditions of supervision may, subject to available resources, include
31 treatment. For purposes of the interstate compact for out-of-state
32 supervision of parolees and probationers, RCW 9.95.270, community
33 supervision is the functional equivalent of probation and should be
34 considered the same as probation by other states.

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

36 (12) "Conviction" means an adjudication of guilt pursuant to Titles
37 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
38 acceptance of a plea of guilty.

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

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

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

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

19 (c) The determination of a defendant's criminal history is distinct
20 from the determination of an offender score. A prior conviction that
21 was not included in an offender score calculated pursuant to a former
22 version of the sentencing reform act remains part of the defendant's
23 criminal history.

24 (15) "Criminal street gang" means any ongoing organization,
25 association, or group of three or more persons, whether formal or
26 informal, having a common name or common identifying sign or symbol,
27 having as one of its primary activities the commission of criminal
28 acts, and whose members or associates individually or collectively
29 engage in or have engaged in a pattern of criminal street gang
30 activity.

31 (16) "Criminal street gang associate or member" means any person
32 who actively participates in any criminal street gang and who
33 intentionally promotes, furthers, or assists in any criminal act by the
34 criminal street gang.

35 (17) "Criminal street gang-related offense" means the conviction of
36 any felony or misdemeanor offense, whether in this state or elsewhere,
37 that is committed for one or more of the following reasons:

1 (a) For the benefit of, at the direction of, or in association with
2 any criminal street gang, with the intent to gain admission or
3 promotion within the gang or with the intent to promote, further, or
4 assist in any criminal act by the gang;

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

7 (c) To exact revenge or retribution for the gang or any member of
8 the gang;

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

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

14 (f) To provide the gang with any advantage in, or any control or
15 dominance over any criminal market sector, including, but not limited
16 to, manufacturing, delivering, or selling any controlled substance
17 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
18 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
19 RCW); human trafficking (RCW 9A.40.100); or promoting pornography
20 (chapter 9.68 RCW).

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

25 ~~((+16+))~~ (19) "Day reporting" means a program of enhanced
26 supervision designed to monitor the offender's daily activities and
27 compliance with sentence conditions, and in which the offender is
28 required to report daily to a specific location designated by the
29 department or the sentencing court.

30 ~~((+17+))~~ (20) "Department" means the department of corrections.

31 ~~((+18+))~~ (21) "Determinate sentence" means a sentence that states
32 with exactitude the number of actual years, months, or days of total
33 confinement, of partial confinement, of community supervision, the
34 number of actual hours or days of community restitution work, or
35 dollars or terms of a legal financial obligation. The fact that an
36 offender through earned release can reduce the actual period of
37 confinement shall not affect the classification of the sentence as a
38 determinate sentence.

1 ~~((+19+))~~ (22) "Disposable earnings" means that part of the earnings
2 of an offender remaining after the deduction from those earnings of any
3 amount required by law to be withheld. For the purposes of this
4 definition, "earnings" means compensation paid or payable for personal
5 services, whether denominated as wages, salary, commission, bonuses, or
6 otherwise, and, notwithstanding any other provision of law making the
7 payments exempt from garnishment, attachment, or other process to
8 satisfy a court-ordered legal financial obligation, specifically
9 includes periodic payments pursuant to pension or retirement programs,
10 or insurance policies of any type, but does not include payments made
11 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
12 or Title 74 RCW.

13 ~~((+20+))~~ (23) "Drug offender sentencing alternative" is a
14 sentencing option available to persons convicted of a felony offense
15 other than a violent offense or a sex offense and who are eligible for
16 the option under RCW 9.94A.660.

17 ~~((+21+))~~ (24) "Drug offense" means:

18 (a) Any felony violation of chapter 69.50 RCW except possession of
19 a controlled substance (RCW 69.50.4013) or forged prescription for a
20 controlled substance (RCW 69.50.403);

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

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

27 ~~((+22+))~~ (25) "Earned release" means earned release from
28 confinement as provided in RCW 9.94A.728.

29 ~~((+23+))~~ (26) "Escape" means:

30 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
31 first degree (RCW 9A.76.110), escape in the second degree (RCW
32 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
33 willful failure to return from work release (RCW 72.65.070), or willful
34 failure to be available for supervision by the department while in
35 community custody (RCW 72.09.310); or

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

1 ~~((+24+))~~ (27) "Felony traffic offense" means:

2 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
3 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
4 run injury-accident (RCW 46.52.020(4)), felony driving while under the
5 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
6 felony physical control of a vehicle while under the influence of
7 intoxicating liquor or any drug (RCW 46.61.504(6)); or

8 (b) 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 felony
10 traffic offense under (a) of this subsection.

11 ~~((+25+))~~ (28) "Fine" means a specific sum of money ordered by the
12 sentencing court to be paid by the offender to the court over a
13 specific period of time.

14 ~~((+26+))~~ (29) "First-time offender" means any person who has no
15 prior convictions for a felony and is eligible for the first-time
16 offender waiver under RCW 9.94A.650.

17 ~~((+27+))~~ (30) "Home detention" means a program of partial
18 confinement available to offenders wherein the offender is confined in
19 a private residence subject to electronic surveillance.

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

34 ~~((+29+))~~ (32) "Most serious offense" means any of the following
35 felonies or a felony attempt to commit any of the following felonies:

36 (a) Any felony defined under any law as a class A felony or
37 criminal solicitation of or criminal conspiracy to commit a class A
38 felony;

- 1 (b) Assault in the second degree;
- 2 (c) Assault of a child in the second degree;
- 3 (d) Child molestation in the second degree;
- 4 (e) Controlled substance homicide;
- 5 (f) Extortion in the first degree;
- 6 (g) Incest when committed against a child under age fourteen;
- 7 (h) Indecent liberties;
- 8 (i) Kidnapping in the second degree;
- 9 (j) Leading organized crime;
- 10 (k) Manslaughter in the first degree;
- 11 (l) Manslaughter in the second degree;
- 12 (m) Promoting prostitution in the first degree;
- 13 (n) Rape in the third degree;
- 14 (o) Robbery in the second degree;
- 15 (p) Sexual exploitation;
- 16 (q) Vehicular assault, when caused by the operation or driving of
17 a vehicle by a person while under the influence of intoxicating liquor
18 or any drug or by the operation or driving of a vehicle in a reckless
19 manner;
- 20 (r) Vehicular homicide, when proximately caused by the driving of
21 any vehicle by any person while under the influence of intoxicating
22 liquor or any drug as defined by RCW 46.61.502, or by the operation of
23 any vehicle in a reckless manner;
- 24 (s) Any other class B felony offense with a finding of sexual
25 motivation;
- 26 (t) Any other felony with a deadly weapon verdict under RCW
27 9.94A.602;
- 28 (u) Any felony offense in effect at any time prior to December 2,
29 1993, that is comparable to a most serious offense under this
30 subsection, or any federal or out-of-state conviction for an offense
31 that under the laws of this state would be a felony classified as a
32 most serious offense under this subsection;
- 33 (v)(i) A prior conviction for indecent liberties under RCW
34 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
35 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
36 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
37 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

1 (ii) A prior conviction for indecent liberties under RCW
2 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
3 if: (A) The crime was committed against a child under the age of
4 fourteen; or (B) the relationship between the victim and perpetrator is
5 included in the definition of indecent liberties under RCW
6 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
7 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
8 through July 27, 1997.

9 ~~((+30+))~~ (33) "Nonviolent offense" means an offense which is not a
10 violent offense.

11 ~~((+31+))~~ (34) "Offender" means a person who has committed a felony
12 established by state law and is eighteen years of age or older or is
13 less than eighteen years of age but whose case is under superior court
14 jurisdiction under RCW 13.04.030 or has been transferred by the
15 appropriate juvenile court to a criminal court pursuant to RCW
16 13.40.110. Throughout this chapter, the terms "offender" and
17 "defendant" are used interchangeably.

18 ~~((+32+))~~ (35) "Partial confinement" means confinement for no more
19 than one year in a facility or institution operated or utilized under
20 contract by the state or any other unit of government, or, if home
21 detention or work crew has been ordered by the court, in an approved
22 residence, for a substantial portion of each day with the balance of
23 the day spent in the community. Partial confinement includes work
24 release, home detention, work crew, and a combination of work crew and
25 home detention.

26 ~~((+33+))~~ (36) "Pattern of criminal street gang activity" means:

27 (a) An attempt to, commission to, solicitation of, conspiracy to
28 commit, or juvenile adjudication of, or adult conviction of, two or
29 more of the following criminal street gang-related offenses:

30 (i) Any "serious violent" felony offense as defined in RCW
31 9.94A.030, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of
32 a Child 1 (RCW 9A.36.120);

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

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

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

1 (v) Theft of a Firearm (RCW 9A.56.300);
2 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);
3 (vii) Malicious Harassment (RCW 9A.36.080);
4 (viii) Harassment where a subsequent violation or deadly threat is
5 made (RCW 9A.46.020(2)(b));
6 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
7 (x) Criminal Gang Recruiting;
8 (xi) Involving a Juvenile in a Criminal Offense;
9 (xii) Residential Burglary (RCW 9A.52.025);
10 (xiii) Burglary 2 (RCW 9A.52.030);
11 (xiv) Malicious Mischief 1 (RCW 9A.48.070);
12 (xv) Malicious Mischief 2 (RCW 9A.48.080);
13 (xvi) Theft of a Motor Vehicle (RCW 9A.56.065);
14 (xvii) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
15 (xviii) Taking a Motor Vehicle Without Permission 1 (RCW
16 9A.56.070);
17 (xix) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);
18 (xx) Extortion 1 (RCW 9A.56.120);
19 (xxi) Extortion 2 (RCW 9A.56.130);
20 (xxii) Intimidating a Witness (RCW 9A.72.110);
21 (xxiii) Tampering with a Witness (RCW 9A.72.120);
22 (xxiv) Reckless Endangerment (RCW 9A.36.050);
23 (xxv) Coercion (RCW 9A.36.070);
24 (xxvi) Harassment (RCW 9A.46.020); or
25 (xxvii) Malicious Mischief 3 (RCW 9A.48.090);
26 (b) That the conviction for at least one of the offenses listed in
27 (a) of this subsection shall have occurred after July 1, 2008;
28 (c) That the offender's current conviction for the most recent
29 committed offense listed in (a) of this subsection occurred within
30 three years of his or her prior offense listed in (a) of this
31 subsection; and
32 (d) Of the offenses that were committed in (a) of this subsection,
33 the offenses occurred on separate occasions or by two or more persons.
34 (37) "Persistent offender" is an offender who:
35 (a)(i) Has been convicted in this state of any felony considered a
36 most serious offense; and
37 (ii) Has, before the commission of the offense under (a) of this
38 subsection, been convicted as an offender on at least two separate

1 occasions, whether in this state or elsewhere, of felonies that under
2 the laws of this state would be considered most serious offenses and
3 would be included in the offender score under RCW 9.94A.525; provided
4 that of the two or more previous convictions, at least one conviction
5 must have occurred before the commission of any of the other most
6 serious offenses for which the offender was previously convicted; or

7 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
8 of a child in the first degree, child molestation in the first degree,
9 rape in the second degree, rape of a child in the second degree, or
10 indecent liberties by forcible compulsion; (B) any of the following
11 offenses with a finding of sexual motivation: Murder in the first
12 degree, murder in the second degree, homicide by abuse, kidnapping in
13 the first degree, kidnapping in the second degree, assault in the first
14 degree, assault in the second degree, assault of a child in the first
15 degree, assault of a child in the second degree, or burglary in the
16 first degree; or (C) an attempt to commit any crime listed in this
17 subsection (~~(+33+)~~) (37)(b)(i); and

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

30 (~~(+34+)~~) (38) "Postrelease supervision" is that portion of an
31 offender's community placement that is not community custody.

32 (~~(+35+)~~) (39) "Predatory" means: (a) The perpetrator of the crime
33 was a stranger to the victim, as defined in this section; (b) the
34 perpetrator established or promoted a relationship with the victim
35 prior to the offense and the victimization of the victim was a
36 significant reason the perpetrator established or promoted the
37 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
38 volunteer, or other person in authority in any public or private school

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

10 ~~((36))~~ (40) "Private school" means a school regulated under
11 chapter 28A.195 or 28A.205 RCW.

12 ~~((37))~~ (41) "Public school" has the same meaning as in RCW
13 28A.150.010.

14 ~~((38))~~ (42) "Restitution" means a specific sum of money ordered
15 by the sentencing court to be paid by the offender to the court over a
16 specified period of time as payment of damages. The sum may include
17 both public and private costs.

18 ~~((39))~~ (43) "Risk assessment" means the application of an
19 objective instrument supported by research and adopted by the
20 department for the purpose of assessing an offender's risk of
21 reoffense, taking into consideration the nature of the harm done by the
22 offender, place and circumstances of the offender related to risk, the
23 offender's relationship to any victim, and any information provided to
24 the department by victims. The results of a risk assessment shall not
25 be based on unconfirmed or unconfirmable allegations.

26 ~~((40))~~ (44) "Serious traffic offense" means:

27 (a) Nonfelony driving while under the influence of intoxicating
28 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
29 while under the influence of intoxicating liquor or any drug (RCW
30 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
31 attended vehicle (RCW 46.52.020(5)); or

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

35 ~~((41))~~ (45) "Serious violent offense" is a subcategory of violent
36 offense and means:

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

38 (ii) Homicide by abuse;

1 (iii) Murder in the second degree;
2 (iv) Manslaughter in the first degree;
3 (v) Assault in the first degree;
4 (vi) Kidnapping in the first degree;
5 (vii) Rape in the first degree;
6 (viii) Assault of a child in the first degree; or
7 (ix) An attempt, criminal solicitation, or criminal conspiracy to
8 commit one of these felonies; or
9 (b) Any federal or out-of-state conviction for an offense that
10 under the laws of this state would be a felony classified as a serious
11 violent offense under (a) of this subsection.
12 ~~((42))~~ (46) "Sex offense" means:
13 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
14 RCW 9A.44.130~~((11))~~ (12);
15 (ii) A violation of RCW 9A.64.020;
16 (iii) A felony that is a violation of chapter 9.68A RCW other than
17 RCW 9.68A.080; or
18 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
19 criminal solicitation, or criminal conspiracy to commit such crimes;
20 (b) Any conviction for a felony offense in effect at any time prior
21 to July 1, 1976, that is comparable to a felony classified as a sex
22 offense in (a) of this subsection;
23 (c) A felony with a finding of sexual motivation under RCW
24 9.94A.835 or 13.40.135; or
25 (d) Any federal or out-of-state conviction for an offense that
26 under the laws of this state would be a felony classified as a sex
27 offense under (a) of this subsection.
28 ~~((43))~~ (47) "Sexual motivation" means that one of the purposes
29 for which the defendant committed the crime was for the purpose of his
30 or her sexual gratification.
31 ~~((44))~~ (48) "Standard sentence range" means the sentencing
32 court's discretionary range in imposing a nonappealable sentence.
33 ~~((45))~~ (49) "Statutory maximum sentence" means the maximum length
34 of time for which an offender may be confined as punishment for a crime
35 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
36 the crime, or other statute defining the maximum penalty for a crime.
37 ~~((46))~~ (50) "Stranger" means that the victim did not know the
38 offender twenty-four hours before the offense.

1 (~~(47)~~) (51) "Total confinement" means confinement inside the
2 physical boundaries of a facility or institution operated or utilized
3 under contract by the state or any other unit of government for twenty-
4 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

5 (~~(48)~~) (52) "Transition training" means written and verbal
6 instructions and assistance provided by the department to the offender
7 during the two weeks prior to the offender's successful completion of
8 the work ethic camp program. The transition training shall include
9 instructions in the offender's requirements and obligations during the
10 offender's period of community custody.

11 (~~(49)~~) (53) "Victim" means any person who has sustained
12 emotional, psychological, physical, or financial injury to person or
13 property as a direct result of the crime charged.

14 (~~(50)~~) (54) "Violent offense" means:

15 (a) Any of the following felonies:

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

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

20 (iii) Manslaughter in the first degree;

21 (iv) Manslaughter in the second degree;

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

23 (vi) Kidnapping in the second degree;

24 (vii) Arson in the second degree;

25 (viii) Assault in the second degree;

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

27 (x) Extortion in the first degree;

28 (xi) Robbery in the second degree;

29 (xii) Drive-by shooting;

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

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

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

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

7 (~~(+51+)~~) (55) "Work crew" means a program of partial confinement
8 consisting of civic improvement tasks for the benefit of the community
9 that complies with RCW 9.94A.725.

10 (~~(+52+)~~) (56) "Work ethic camp" means an alternative incarceration
11 program as provided in RCW 9.94A.690 designed to reduce recidivism and
12 lower the cost of corrections by requiring offenders to complete a
13 comprehensive array of real-world job and vocational experiences,
14 character-building work ethics training, life management skills
15 development, substance abuse rehabilitation, counseling, literacy
16 training, and basic adult education.

17 (~~(+53+)~~) (57) "Work release" means a program of partial confinement
18 available to offenders who are employed or engaged as a student in a
19 regular course of study at school.

20 **PART VI**

21 **TEMPORARY WITNESS RELOCATION PROGRAM**

22 NEW SECTION. **Sec. 601.** A new section is added to chapter 43.31
23 RCW to read as follows:

24 The office of crime victims advocacy within the department of
25 community, trade, and economic development shall, within available
26 funds, establish a gang relocation assistance program. As part of the
27 relocation program, the office of crime victims advocacy shall work in
28 collaboration with each local prosecuting agency to determine how
29 funding and assistance shall be distributed to assist witnesses of
30 felony gang-related offenses with temporary relocation and shelter.

31 **PART VII**

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

