

SHB 2777 - H AMD 1082

By Representative Goodman

WITHDRAWN 02/12/2010

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

3 **"PART ONE**

4 **INTENT**

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

23 **PART TWO**

24 **LAW ENFORCEMENT/ARREST PROVISIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **Sec. 303.** RCW 26.50.060 and 2009 c 439 s 2 are each amended to
2 read as follows:

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

5 (a) Restrain the respondent from committing acts of domestic
6 violence;

7 (b) Exclude the respondent from the dwelling that the parties
8 share, from the residence, workplace, or school of the petitioner, or
9 from the day care or school of a child;

10 (c) Prohibit the respondent from knowingly coming within, or
11 knowingly remaining within, a specified distance from a specified
12 location;

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

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

19 (f) Order other relief as it deems necessary for the protection of
20 the petitioner and other family or household members sought to be
21 protected, including orders or directives to a peace officer, as
22 allowed under this chapter;

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

27 (h) Restrain the respondent from having any contact with the victim
28 of domestic violence or the victim's children or members of the
29 victim's household;

30 (i) Restrain the respondent from harassing, following, keeping
31 under physical or electronic surveillance, cyberstalking as defined in
32 RCW 9.61.260, and using telephonic, audiovisual, or other electronic
33 means to monitor the actions, location, or communication of a victim of
34 domestic violence, the victim's children, or members of the victim's
35 household. For the purposes of this subsection, "communication"
36 includes both "wire communication" and "electronic communication" as
37 defined in RCW 9.73.260;

1 (j) Require the respondent to submit to electronic monitoring. The
2 order shall specify who shall provide the electronic monitoring
3 services and the terms under which the monitoring must be performed.
4 The order also may include a requirement that the respondent pay the
5 costs of the monitoring. The court shall consider the ability of the
6 respondent to pay for electronic monitoring;

7 (~~(j)~~) (k) Consider the provisions of RCW 9.41.800;

8 (~~(k)~~) (l) Order possession and use of essential personal effects.
9 The court shall list the essential personal effects with sufficient
10 specificity to make it clear which property is included. Personal
11 effects may include pets. The court may order that a petitioner be
12 granted the exclusive custody or control of any pet owned, possessed,
13 leased, kept, or held by the petitioner, respondent, or minor child
14 residing with either the petitioner or respondent and may prohibit the
15 respondent from interfering with the petitioner's efforts to remove the
16 pet. The court may also prohibit the respondent from knowingly coming
17 within, or knowingly remaining within, a specified distance of
18 specified locations where the pet is regularly found; and

19 (~~(l)~~) (m) Order use of a vehicle.

20 (2) If a protection order restrains the respondent from contacting
21 the respondent's minor children the restraint shall be for a fixed
22 period not to exceed one year. This limitation is not applicable to
23 orders for protection issued under chapter 26.09, 26.10, or 26.26 RCW.
24 With regard to other relief, if the petitioner has petitioned for
25 relief on his or her own behalf or on behalf of the petitioner's family
26 or household members or minor children, and the court finds that the
27 respondent is likely to resume acts of domestic violence against the
28 petitioner or the petitioner's family or household members or minor
29 children when the order expires, the court may either grant relief for
30 a fixed period or enter a permanent order of protection.

31 If the petitioner has petitioned for relief on behalf of the
32 respondent's minor children, the court shall advise the petitioner that
33 if the petitioner wants to continue protection for a period beyond one
34 year the petitioner may either petition for renewal pursuant to the
35 provisions of this chapter or may seek relief pursuant to the
36 provisions of chapter 26.09 or 26.26 RCW.

37 (3) If the court grants an order for a fixed time period, the
38 petitioner may apply for renewal of the order by filing a petition for

1 renewal at any time within the three months before the order expires.
2 The petition for renewal shall state the reasons why the petitioner
3 seeks to renew the protection order. Upon receipt of the petition for
4 renewal the court shall order a hearing which shall be not later than
5 fourteen days from the date of the order. Except as provided in RCW
6 26.50.085, personal service shall be made on the respondent not less
7 than five days before the hearing. If timely service cannot be made
8 the court shall set a new hearing date and shall either require
9 additional attempts at obtaining personal service or permit service by
10 publication as provided in RCW 26.50.085 or by mail as provided in RCW
11 26.50.123. If the court permits service by publication or mail, the
12 court shall set the new hearing date not later than twenty-four days
13 from the date of the order. If the order expires because timely
14 service cannot be made the court shall grant an ex parte order of
15 protection as provided in RCW 26.50.070. The court shall grant the
16 petition for renewal unless the respondent proves by a preponderance of
17 the evidence that the respondent will not resume acts of domestic
18 violence against the petitioner or the petitioner's children or family
19 or household members when the order expires. The court may renew the
20 protection order for another fixed time period or may enter a permanent
21 order as provided in this section. The court may award court costs,
22 service fees, and reasonable attorneys' fees as provided in subsection
23 (1)(g) of this section.

24 (4) In providing relief under this chapter, the court may realign
25 the designation of the parties as "petitioner" and "respondent" where
26 the court finds that the original petitioner is the abuser and the
27 original respondent is the victim of domestic violence and may issue an
28 ex parte temporary order for protection in accordance with RCW
29 26.50.070 on behalf of the victim until the victim is able to prepare
30 a petition for an order for protection in accordance with RCW
31 26.50.030.

32 (5) Except as provided in subsection (4) of this section, no order
33 for protection shall grant relief to any party except upon notice to
34 the respondent and hearing pursuant to a petition or counter-petition
35 filed and served by the party seeking relief in accordance with RCW
36 26.50.050.

37 (6) The court order shall specify the date the order expires if
38 any. The court order shall also state whether the court issued the

1 protection order following personal service, service by publication, or
2 service by mail and whether the court has approved service by
3 publication or mail of an order issued under this section.

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

7 **Sec. 304.** RCW 26.50.070 and 2000 c 119 s 16 are each amended to
8 read as follows:

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

15 (a) Restraining any party from committing acts of domestic
16 violence;

17 (b) Restraining any party from going onto the grounds of or
18 entering the dwelling that the parties share, from the residence,
19 workplace, or school of the other, or from the day care or school of a
20 child until further order of the court;

21 (c) Prohibiting any party from knowingly coming within, or
22 knowingly remaining within, a specified distance from a specified
23 location;

24 (d) Restraining any party from interfering with the other's custody
25 of the minor children or from removing the children from the
26 jurisdiction of the court;

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

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

31 (g) Restraining the respondent from harassing, following, keeping
32 under physical or electronic surveillance, cyberstalking as defined in
33 RCW 9.61.260, and using telephonic, audiovisual, or other electronic
34 means to monitor the actions, location, or communication of a victim of
35 domestic violence, the victim's children, or members of the victim's
36 household. For the purposes of this subsection, "communication"

1 includes both "wire communication" and "electronic communication" as
2 defined in RCW 9.73.260.

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

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

10 (4) An ex parte temporary order for protection shall be effective
11 for a fixed period not to exceed fourteen days or twenty-four days if
12 the court has permitted service by publication under RCW 26.50.085 or
13 by mail under RCW 26.50.123. The ex parte order may be reissued. A
14 full hearing, as provided in this chapter, shall be set for not later
15 than fourteen days from the issuance of the temporary order or not
16 later than twenty-four days if service by publication or by mail is
17 permitted. Except as provided in RCW 26.50.050, 26.50.085, and
18 26.50.123, the respondent shall be personally served with a copy of the
19 ex parte order along with a copy of the petition and notice of the date
20 set for the hearing.

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

25 (6) If the court declines to issue an ex parte temporary order for
26 protection the court shall state the particular reasons for the court's
27 denial. The court's denial of a motion for an ex parte order of
28 protection shall be filed with the court.

29 NEW SECTION. Sec. 305. A new section is added to chapter 26.50
30 RCW to read as follows:

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

34 (a) The individual is personally served with a petition within this
35 state;

36 (b) The individual submits to the jurisdiction of this state by

1 consent, entering a general appearance, or filing a responsive document
2 having the effect of waiving any objection to consent to personal
3 jurisdiction;

4 (c) The act or acts of the individual or the individual's agent
5 giving rise to the petition or enforcement of an order for protection
6 either:

7 (i) Occurred within this state; or

8 (ii) Occurred outside this state and are part of an ongoing pattern
9 of domestic violence or stalking that has an adverse effect on the
10 petitioner or a member of the petitioner's family or household and the
11 petitioner resides in this state;

12 (d) As a result of acts of domestic violence or stalking, the
13 petitioner or a member of the petitioner's family or household has
14 sought safety or protection in this state and currently resides in this
15 state; or

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

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

24 NEW SECTION. **Sec. 306.** A new section is added to chapter 7.90 RCW
25 to read as follows:

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

29 (a) The individual is personally served with a petition within this
30 state;

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

35 (c) The act or acts of the individual or the individual's agent
36 giving rise to the petition or enforcement of a sexual assault
37 protection order either:

1 (i) Occurred within this state; or

2 (ii) Occurred outside this state and are part of an ongoing pattern
3 of sexual assaults or stalking that has an adverse effect on the
4 petitioner or a member of the petitioner's family or household and the
5 petitioner resides in this state;

6 (d) As a result of acts of stalking or a sexual assault, the
7 petitioner or a member of the petitioner's family or household has
8 sought safety or protection in this state and currently resides in this
9 state; or

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

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

18 NEW SECTION. **Sec. 307.** A new section is added to chapter 10.14
19 RCW to read as follows:

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

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

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

29 (c) The act or acts of the individual or the individual's agent
30 giving rise to the petition or enforcement of an order for protection
31 either:

32 (i) Occurred within this state; or

33 (ii) Occurred outside this state and are part of an ongoing pattern
34 of harassment that has an adverse effect on the petitioner or a member
35 of the petitioner's family or household and the petitioner resides in
36 this state;

1 (d) As a result of acts of harassment, the petitioner or a member
2 of the petitioner's family or household has sought safety or protection
3 in this state and currently resides in this state; or

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

6 (2) For the purposes of this section, an act or acts that "occurred
7 within this state" includes, but is not limited to, an oral or written
8 statement made or published by a person outside of this state to any
9 person in this state by means of the mail, interstate commerce, or
10 foreign commerce. Oral or written statements sent by electronic mail
11 or the internet are deemed to have "occurred within this state."

12 **Sec. 308.** RCW 10.99.040 and 2000 c 119 s 18 are each amended to
13 read as follows:

14 (1) Because of the serious nature of domestic violence, the court
15 in domestic violence actions:

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

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

20 (c) Shall waive any requirement that the victim's location be
21 disclosed to any person, other than the attorney of a criminal
22 defendant, upon a showing that there is a possibility of further
23 violence: PROVIDED, That the court may order a criminal defense
24 attorney not to disclose to his or her client the victim's location;
25 and

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

28 (2)(a) Because of the likelihood of repeated violence directed at
29 those who have been victims of domestic violence in the past, when any
30 person charged with or arrested for a crime involving domestic violence
31 is released from custody before arraignment or trial on bail or
32 personal recognizance, the court authorizing the release may prohibit
33 that person from having any contact with the victim. The jurisdiction
34 authorizing the release shall determine whether that person should be
35 prohibited from having any contact with the victim. If there is no
36 outstanding restraining or protective order prohibiting that person
37 from having contact with the victim, the court authorizing release may

1 issue, by telephone, a no-contact order prohibiting the person charged
2 or arrested from having contact with the victim or from knowingly
3 coming within, or knowingly remaining within, a specified distance of
4 a location.

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

7 (c) The no-contact order shall also be issued in writing as soon as
8 possible. By January 1, 2011, the administrative office of the courts
9 shall develop a pattern form for all no-contact orders issued under
10 this chapter. A no-contact order issued under this chapter must
11 substantially comply with the pattern form developed by the
12 administrative office of the courts.

13 (3) At the time of arraignment the court shall determine whether a
14 no-contact order shall be issued or extended. The no-contact order
15 shall terminate if the defendant is acquitted or the charges are
16 dismissed. If a no-contact order is issued or extended, the court may
17 also include in the conditions of release a requirement that the
18 defendant submit to electronic monitoring. If electronic monitoring is
19 ordered, the court shall specify who shall provide the monitoring
20 services, and the terms under which the monitoring shall be performed.
21 Upon conviction, the court may require as a condition of the sentence
22 that the defendant reimburse the providing agency for the costs of the
23 electronic monitoring.

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

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

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

36 (5) If a no-contact order has been issued prior to charging, that
37 order shall expire at arraignment or within seventy-two hours if

1 charges are not filed. Such orders need not be entered into the
2 computer-based criminal intelligence information system in this state
3 which is used by law enforcement agencies to list outstanding warrants.

4 (6) Whenever a no-contact order is issued, modified, or terminated
5 under subsection (2) or (3) of this section, the clerk of the court
6 shall forward a copy of the order on or before the next judicial day to
7 the appropriate law enforcement agency specified in the order. Upon
8 receipt of the copy of the order the law enforcement agency shall enter
9 the order for one year or until the expiration date specified on the
10 order into any computer-based criminal intelligence information system
11 available in this state used by law enforcement agencies to list
12 outstanding warrants. Entry into the computer-based criminal
13 intelligence information system constitutes notice to all law
14 enforcement agencies of the existence of the order. The order is fully
15 enforceable in any jurisdiction in the state. Upon receipt of notice
16 that an order has been terminated under subsection (3) of this section,
17 the law enforcement agency shall remove the order from the computer-
18 based criminal intelligence information system.

19 (7) All courts shall develop policies and procedures by January 1,
20 2011, to grant victims a process to modify or rescind a no-contact
21 order issued under this chapter. The administrative office of the
22 courts shall develop a model policy to assist the courts in
23 implementing the requirements of this subsection.

24 NEW SECTION. Sec. 309. A new section is added to chapter 2.56 RCW
25 to read as follows:

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

30 (2) The guidelines developed under subsection (1) of this section
31 must include:

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

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

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

4 **PART FOUR**
5 **SENTENCING REFORMS**

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

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

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

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

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

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

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

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

33 (7) "Community restitution" means compulsory service, without
34 compensation, performed for the benefit of the community by the
35 offender.

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

1 (9) "Conviction" means an adjudication of guilt pursuant to Title
2 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
3 acceptance of a plea of guilty.

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

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

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

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

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

27 (12) "Criminal street gang" means any ongoing organization,
28 association, or group of three or more persons, whether formal or
29 informal, having a common name or common identifying sign or symbol,
30 having as one of its primary activities the commission of criminal
31 acts, and whose members or associates individually or collectively
32 engage in or have engaged in a pattern of criminal street gang
33 activity. This definition does not apply to employees engaged in
34 concerted activities for their mutual aid and protection, or to the
35 activities of labor and bona fide nonprofit organizations or their
36 members or agents.

37 (13) "Criminal street gang associate or member" means any person

1 who actively participates in any criminal street gang and who
2 intentionally promotes, furthers, or assists in any criminal act by the
3 criminal street gang.

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

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

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

13 (c) To exact revenge or retribution for the gang or any member of
14 the gang;

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

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

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

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

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

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

37 (18) "Determinate sentence" means a sentence that states with
38 exactitude the number of actual years, months, or days of total

1 confinement, of partial confinement, of community custody, the number
2 of actual hours or days of community restitution work, or dollars or
3 terms of a legal financial obligation. The fact that an offender
4 through earned release can reduce the actual period of confinement
5 shall not affect the classification of the sentence as a determinate
6 sentence.

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

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

21 (21) "Drug offender sentencing alternative" is a sentencing option
22 available to persons convicted of a felony offense other than a violent
23 offense or a sex offense and who are eligible for the option under RCW
24 9.94A.660.

25 ((+21+)) (22) "Drug offense" means:

26 (a) Any felony violation of chapter 69.50 RCW except possession of
27 a controlled substance (RCW 69.50.4013) or forged prescription for a
28 controlled substance (RCW 69.50.403);

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

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

35 ((+22+)) (23) "Earned release" means earned release from
36 confinement as provided in RCW 9.94A.728.

37 ((+23+)) (24) "Escape" means:

1 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
2 first degree (RCW 9A.76.110), escape in the second degree (RCW
3 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
4 willful failure to return from work release (RCW 72.65.070), or willful
5 failure to be available for supervision by the department while in
6 community custody (RCW 72.09.310); or

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

10 ~~((+24+))~~ (25) "Felony traffic offense" means:

11 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
12 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
13 run injury-accident (RCW 46.52.020(4)), felony driving while under the
14 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
15 felony physical control of a vehicle while under the influence of
16 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

20 ~~((+25+))~~ (26) "Fine" means a specific sum of money ordered by the
21 sentencing court to be paid by the offender to the court over a
22 specific period of time.

23 ~~((+26+))~~ (27) "First-time offender" means any person who has no
24 prior convictions for a felony and is eligible for the first-time
25 offender waiver under RCW 9.94A.650.

26 ~~((+27+))~~ (28) "Home detention" means a program of partial
27 confinement available to offenders wherein the offender is confined in
28 a private residence subject to electronic surveillance.

29 ~~((+28+))~~ (29) "Legal financial obligation" means a sum of money
30 that is ordered by a superior court of the state of Washington for
31 legal financial obligations which may include restitution to the
32 victim, statutorily imposed crime victims' compensation fees as
33 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
34 drug funds, court-appointed attorneys' fees, and costs of defense,
35 fines, and any other financial obligation that is assessed to the
36 offender as a result of a felony conviction. Upon conviction for
37 vehicular assault while under the influence of intoxicating liquor or
38 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the

1 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
2 legal financial obligations may also include payment to a public agency
3 of the expense of an emergency response to the incident resulting in
4 the conviction, subject to RCW 38.52.430.

5 ~~((+29))~~ (30) "Most serious offense" means any of the following
6 felonies or a felony attempt to commit any of the following felonies:

7 (a) Any felony defined under any law as a class A felony or
8 criminal solicitation of or criminal conspiracy to commit a class A
9 felony;

10 (b) Assault in the second degree;

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

12 (d) Child molestation in the second degree;

13 (e) Controlled substance homicide;

14 (f) Extortion in the first degree;

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

16 (h) Indecent liberties;

17 (i) Kidnapping in the second degree;

18 (j) Leading organized crime;

19 (k) Manslaughter in the first degree;

20 (l) Manslaughter in the second degree;

21 (m) Promoting prostitution in the first degree;

22 (n) Rape in the third degree;

23 (o) Robbery in the second degree;

24 (p) Sexual exploitation;

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

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

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

35 (t) Any other felony with a deadly weapon verdict under RCW
36 9.94A.825;

37 (u) Any felony offense in effect at any time prior to December 2,
38 1993, that is comparable to a most serious offense under this

1 subsection, or any federal or out-of-state conviction for an offense
2 that under the laws of this state would be a felony classified as a
3 most serious offense under this subsection;

4 (v)(i) A prior conviction for indecent liberties under RCW
5 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
6 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
7 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
8 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

9 (ii) A prior conviction for indecent liberties under RCW
10 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
11 if: (A) The crime was committed against a child under the age of
12 fourteen; or (B) the relationship between the victim and perpetrator is
13 included in the definition of indecent liberties under RCW
14 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
15 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
16 through July 27, 1997;

17 (w) Any out-of-state conviction for a felony offense with a finding
18 of sexual motivation if the minimum sentence imposed was ten years or
19 more; provided that the out-of-state felony offense must be comparable
20 to a felony offense under Title 9 or 9A RCW and the out-of-state
21 definition of sexual motivation must be comparable to the definition of
22 sexual motivation contained in this section.

23 ~~((+30+))~~ (31) "Nonviolent offense" means an offense which is not a
24 violent offense.

25 ~~((+31+))~~ (32) "Offender" means a person who has committed a felony
26 established by state law and is eighteen years of age or older or is
27 less than eighteen years of age but whose case is under superior court
28 jurisdiction under RCW 13.04.030 or has been transferred by the
29 appropriate juvenile court to a criminal court pursuant to RCW
30 13.40.110. In addition, for the purpose of community custody
31 requirements under this chapter, "offender" also means a misdemeanor or
32 gross misdemeanor probationer convicted of an offense included in RCW
33 9.94A.501(1) and ordered by a superior court to probation under the
34 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or
35 9.95.210. Throughout this chapter, the terms "offender" and
36 "defendant" are used interchangeably.

37 ~~((+32+))~~ (33) "Partial confinement" means confinement for no more
38 than one year in a facility or institution operated or utilized under

1 contract by the state or any other unit of government, or, if home
2 detention or work crew has been ordered by the court, in an approved
3 residence, for a substantial portion of each day with the balance of
4 the day spent in the community. Partial confinement includes work
5 release, home detention, work crew, and a combination of work crew and
6 home detention.

7 ~~((+33+))~~ (34) "Pattern of criminal street gang activity" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (xiv) Malicious Mischief 2 (RCW 9A.48.080);

33 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);

34 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

35 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

36 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
37 9A.56.075);

38 (xix) Extortion 1 (RCW 9A.56.120);

1 (xx) Extortion 2 (RCW 9A.56.130);
2 (xxi) Intimidating a Witness (RCW 9A.72.110);
3 (xxii) Tampering with a Witness (RCW 9A.72.120);
4 (xxiii) Reckless Endangerment (RCW 9A.36.050);
5 (xxiv) Coercion (RCW 9A.36.070);
6 (xxv) Harassment (RCW 9A.46.020); or
7 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
8 (b) That at least one of the offenses listed in (a) of this
9 subsection shall have occurred after July 1, 2008;
10 (c) That the most recent committed offense listed in (a) of this
11 subsection occurred within three years of a prior offense listed in (a)
12 of this subsection; and
13 (d) Of the offenses that were committed in (a) of this subsection,
14 the offenses occurred on separate occasions or were committed by two or
15 more persons.
16 ((+34+)) (35) "Persistent offender" is an offender who:
17 (a)(i) Has been convicted in this state of any felony considered a
18 most serious offense; and
19 (ii) Has, before the commission of the offense under (a) of this
20 subsection, been convicted as an offender on at least two separate
21 occasions, whether in this state or elsewhere, of felonies that under
22 the laws of this state would be considered most serious offenses and
23 would be included in the offender score under RCW 9.94A.525; provided
24 that of the two or more previous convictions, at least one conviction
25 must have occurred before the commission of any of the other most
26 serious offenses for which the offender was previously convicted; or
27 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
28 of a child in the first degree, child molestation in the first degree,
29 rape in the second degree, rape of a child in the second degree, or
30 indecent liberties by forcible compulsion; (B) any of the following
31 offenses with a finding of sexual motivation: Murder in the first
32 degree, murder in the second degree, homicide by abuse, kidnapping in
33 the first degree, kidnapping in the second degree, assault in the first
34 degree, assault in the second degree, assault of a child in the first
35 degree, assault of a child in the second degree, or burglary in the
36 first degree; or (C) an attempt to commit any crime listed in this
37 subsection ((+34+)) (35)(b)(i); and

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

13 ~~((+35+))~~ (36) "Predatory" means: (a) The perpetrator of the crime
14 was a stranger to the victim, as defined in this section; (b) the
15 perpetrator established or promoted a relationship with the victim
16 prior to the offense and the victimization of the victim was a
17 significant reason the perpetrator established or promoted the
18 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
19 volunteer, or other person in authority in any public or private school
20 and the victim was a student of the school under his or her authority
21 or supervision. For purposes of this subsection, "school" does not
22 include home-based instruction as defined in RCW 28A.225.010; (ii) a
23 coach, trainer, volunteer, or other person in authority in any
24 recreational activity and the victim was a participant in the activity
25 under his or her authority or supervision; or (iii) a pastor, elder,
26 volunteer, or other person in authority in any church or religious
27 organization, and the victim was a member or participant of the
28 organization under his or her authority.

29 ~~((+36+))~~ (37) "Private school" means a school regulated under
30 chapter 28A.195 or 28A.205 RCW.

31 ~~((+37+))~~ (38) "Public school" has the same meaning as in RCW
32 28A.150.010.

33 ~~((+38+))~~ (39) "Repetitive domestic violence offense" means any:
34 (a)(i) Domestic violence assault that is not a felony offense under
35 RCW 9A.36.041;
36 (ii) Domestic violence violation of a no contact order under
37 chapter 10.99 RCW that is not a felony offense;

1 (iii) Domestic violence harassment offense under RCW 9A.46.020 that
2 is not a felony offense; or

3 (iv) Domestic violence stalking offense under 9A.46.110 that is not
4 a felony offense; or

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

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

13 ~~((+39+))~~ (41) "Risk assessment" means the application of the risk
14 instrument recommended to the department by the Washington state
15 institute for public policy as having the highest degree of predictive
16 accuracy for assessing an offender's risk of reoffense.

17 ~~((+40+))~~ (42) "Serious traffic offense" means:

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

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

26 ~~((+41+))~~ (43) "Serious violent offense" is a subcategory of violent
27 offense and means:

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

29 (ii) Homicide by abuse;

30 (iii) Murder in the second degree;

31 (iv) Manslaughter in the first degree;

32 (v) Assault in the first degree;

33 (vi) Kidnapping in the first degree;

34 (vii) Rape in the first degree;

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

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

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

4 (~~(42)~~) (44) "Sex offense" means:

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

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

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

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

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

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

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

20 (~~(43)~~) (45) "Sexual motivation" means that one of the purposes
21 for which the defendant committed the crime was for the purpose of his
22 or her sexual gratification.

23 (~~(44)~~) (46) "Standard sentence range" means the sentencing
24 court's discretionary range in imposing a nonappealable sentence.

25 (~~(45)~~) (47) "Statutory maximum sentence" means the maximum length
26 of time for which an offender may be confined as punishment for a crime
27 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
28 the crime, or other statute defining the maximum penalty for a crime.

29 (~~(46)~~) (48) "Stranger" means that the victim did not know the
30 offender twenty-four hours before the offense.

31 (~~(47)~~) (49) "Total confinement" means confinement inside the
32 physical boundaries of a facility or institution operated or utilized
33 under contract by the state or any other unit of government for twenty-
34 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

35 (~~(48)~~) (50) "Transition training" means written and verbal
36 instructions and assistance provided by the department to the offender
37 during the two weeks prior to the offender's successful completion of

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

4 ~~((+49+))~~ (51) "Victim" means any person who has sustained
5 emotional, psychological, physical, or financial injury to person or
6 property as a direct result of the crime charged.

7 ~~((+50+))~~ (52) "Violent offense" means:

8 (a) Any of the following felonies:

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

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

13 (iii) Manslaughter in the first degree;

14 (iv) Manslaughter in the second degree;

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

16 (vi) Kidnapping in the second degree;

17 (vii) Arson in the second degree;

18 (viii) Assault in the second degree;

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

20 (x) Extortion in the first degree;

21 (xi) Robbery in the second degree;

22 (xii) Drive-by shooting;

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

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

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

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

37 ~~((+51+))~~ (53) "Work crew" means a program of partial confinement

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

3 ~~((+52+))~~ (54) "Work ethic camp" means an alternative incarceration
4 program as provided in RCW 9.94A.690 designed to reduce recidivism and
5 lower the cost of corrections by requiring offenders to complete a
6 comprehensive array of real-world job and vocational experiences,
7 character-building work ethics training, life management skills
8 development, substance abuse rehabilitation, counseling, literacy
9 training, and basic adult education.

10 ~~((+53+))~~ (55) "Work release" means a program of partial confinement
11 available to offenders who are employed or engaged as a student in a
12 regular course of study at school.

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

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

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

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

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

33 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

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

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

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

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

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

31 (a) The defendant and the state both stipulate that justice is best
32 served by the imposition of an exceptional sentence outside the
33 standard range, and the court finds the exceptional sentence to be
34 consistent with and in furtherance of the interests of justice and the
35 purposes of the sentencing reform act.

36 (b) The defendant's prior unscored misdemeanor or prior unscored
37 foreign criminal history results in a presumptive sentence that is

1 clearly too lenient in light of the purpose of this chapter, as
2 expressed in RCW 9.94A.010.

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

6 (d) The failure to consider the defendant's prior criminal history
7 which was omitted from the offender score calculation pursuant to RCW
8 9.94A.525 results in a presumptive sentence that is clearly too
9 lenient.

10 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
11 the Court

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

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

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

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

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

25 (i) The current offense involved multiple victims or multiple
26 incidents per victim;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (i) The offense resulted in the pregnancy of a child victim of
33 rape.

34 (j) The defendant knew that the victim of the current offense was
35 a youth who was not residing with a legal custodian and the defendant
36 established or promoted the relationship for the primary purpose of
37 victimization.

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

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

7 (m) The offense involved a high degree of sophistication or
8 planning.

9 (n) The defendant used his or her position of trust, confidence, or
10 fiduciary responsibility to facilitate the commission of the current
11 offense.

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

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

15 (q) The defendant demonstrated or displayed an egregious lack of
16 remorse.

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

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

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

24 (u) The current offense is a burglary and the victim of the
25 burglary was present in the building or residence when the crime was
26 committed.

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

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

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

37 (y) The victim's injuries substantially exceed the level of bodily

1 harm necessary to satisfy the elements of the offense. This aggravator
2 is not an exception to RCW 9.94A.530(2).

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

10 (ii) For purposes of this subsection, "metal property" means
11 commercial metal property, private metal property, or nonferrous metal
12 property, as defined in RCW 19.290.010.

13 (aa) The defendant committed the offense with the intent to
14 directly or indirectly cause any benefit, aggrandizement, gain, profit,
15 or other advantage to or for a criminal street gang as defined in RCW
16 9.94A.030, its reputation, influence, or membership.

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

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

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

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

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

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

36 (c) Except as provided in (e) of this subsection, class C prior
37 felony convictions other than sex offenses shall not be included in the

1 offender score if, since the last date of release from confinement
2 (including full-time residential treatment) pursuant to a felony
3 conviction, if any, or entry of judgment and sentence, the offender had
4 spent five consecutive years in the community without committing any
5 crime that subsequently results in a conviction.

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

12 (e) If the present conviction is felony driving while under the
13 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
14 felony physical control of a vehicle while under the influence of
15 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions
16 of felony driving while under the influence of intoxicating liquor or
17 any drug, felony physical control of a vehicle while under the
18 influence of intoxicating liquor or any drug, and serious traffic
19 offenses shall be included in the offender score if: (i) The prior
20 convictions were committed within five years since the last date of
21 release from confinement (including full-time residential treatment) or
22 entry of judgment and sentence; or (ii) the prior convictions would be
23 considered "prior offenses within ten years" as defined in RCW
24 46.61.5055.

25 (f) This subsection applies to both adult and juvenile prior
26 convictions.

27 (3) Out-of-state convictions for offenses shall be classified
28 according to the comparable offense definitions and sentences provided
29 by Washington law. Federal convictions for offenses shall be
30 classified according to the comparable offense definitions and
31 sentences provided by Washington law. If there is no clearly
32 comparable offense under Washington law or the offense is one that is
33 usually considered subject to exclusive federal jurisdiction, the
34 offense shall be scored as a class C felony equivalent if it was a
35 felony under the relevant federal statute.

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

1 (5)(a) In the case of multiple prior convictions, for the purpose
2 of computing the offender score, count all convictions separately,
3 except:

4 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
5 encompass the same criminal conduct, shall be counted as one offense,
6 the offense that yields the highest offender score. The current
7 sentencing court shall determine with respect to other prior adult
8 offenses for which sentences were served concurrently or prior juvenile
9 offenses for which sentences were served consecutively, whether those
10 offenses shall be counted as one offense or as separate offenses using
11 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
12 if the court finds that they shall be counted as one offense, then the
13 offense that yields the highest offender score shall be used. The
14 current sentencing court may presume that such other prior offenses
15 were not the same criminal conduct from sentences imposed on separate
16 dates, or in separate counties or jurisdictions, or in separate
17 complaints, indictments, or informations;

18 (ii) In the case of multiple prior convictions for offenses
19 committed before July 1, 1986, for the purpose of computing the
20 offender score, count all adult convictions served concurrently as one
21 offense, and count all juvenile convictions entered on the same date as
22 one offense. Use the conviction for the offense that yields the
23 highest offender score.

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

30 (6) If the present conviction is one of the anticipatory offenses
31 of criminal attempt, solicitation, or conspiracy, count each prior
32 conviction as if the present conviction were for a completed offense.
33 When these convictions are used as criminal history, score them the
34 same as a completed crime.

35 (7) If the present conviction is for a nonviolent offense and not
36 covered by subsection (11), (12), or (13) of this section, count one
37 point for each adult prior felony conviction and one point for each

1 juvenile prior violent felony conviction and 1/2 point for each
2 juvenile prior nonviolent felony conviction.

3 (8) If the present conviction is for a violent offense and not
4 covered in subsection (9), (10), (11), (12), or (13) of this section,
5 count two points for each prior adult and juvenile violent felony
6 conviction, one point for each prior adult nonviolent felony
7 conviction, and 1/2 point for each prior juvenile nonviolent felony
8 conviction.

9 (9) If the present conviction is for a serious violent offense,
10 count three points for prior adult and juvenile convictions for crimes
11 in this category, two points for each prior adult and juvenile violent
12 conviction (not already counted), one point for each prior adult
13 nonviolent felony conviction, and 1/2 point for each prior juvenile
14 nonviolent felony conviction.

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

20 (11) If the present conviction is for a felony traffic offense
21 count two points for each adult or juvenile prior conviction for
22 Vehicular Homicide or Vehicular Assault; for each felony offense count
23 one point for each adult and 1/2 point for each juvenile prior
24 conviction; for each serious traffic offense, other than those used for
25 an enhancement pursuant to RCW 46.61.520(2), count one point for each
26 adult and 1/2 point for each juvenile prior conviction; count one point
27 for each adult and 1/2 point for each juvenile prior conviction for
28 operation of a vessel while under the influence of intoxicating liquor
29 or any drug.

30 (12) If the present conviction is for homicide by watercraft or
31 assault by watercraft count two points for each adult or juvenile prior
32 conviction for homicide by watercraft or assault by watercraft; for
33 each felony offense count one point for each adult and 1/2 point for
34 each juvenile prior conviction; count one point for each adult and 1/2
35 point for each juvenile prior conviction for driving under the
36 influence of intoxicating liquor or any drug, actual physical control
37 of a motor vehicle while under the influence of intoxicating liquor or

1 any drug, or operation of a vessel while under the influence of
2 intoxicating liquor or any drug.

3 (13) If the present conviction is for manufacture of
4 methamphetamine count three points for each adult prior manufacture of
5 methamphetamine conviction and two points for each juvenile manufacture
6 of methamphetamine offense. If the present conviction is for a drug
7 offense and the offender has a criminal history that includes a sex
8 offense or serious violent offense, count three points for each adult
9 prior felony drug offense conviction and two points for each juvenile
10 drug offense. All other adult and juvenile felonies are scored as in
11 subsection (8) of this section if the current drug offense is violent,
12 or as in subsection (7) of this section if the current drug offense is
13 nonviolent.

14 (14) If the present conviction is for Escape from Community
15 Custody, RCW 72.09.310, count only prior escape convictions in the
16 offender score. Count adult prior escape convictions as one point and
17 juvenile prior escape convictions as 1/2 point.

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

21 (16) If the present conviction is for Burglary 2 or residential
22 burglary, count priors as in subsection (7) of this section; however,
23 count two points for each adult and juvenile prior Burglary 1
24 conviction, two points for each adult prior Burglary 2 or residential
25 burglary conviction, and one point for each juvenile prior Burglary 2
26 or residential burglary conviction.

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

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

37 (19) If the present conviction is for an offense committed while

1 the offender was under community custody, add one point. For purposes
2 of this subsection, community custody includes community placement or
3 postrelease supervision, as defined in chapter 9.94B RCW.

4 (20) If the present conviction is for Theft of a Motor Vehicle,
5 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
6 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
7 priors as in subsections (7) through (18) of this section; however
8 count one point for prior convictions of Vehicle Prowling 2, and three
9 points for each adult and juvenile prior Theft 1 (of a motor vehicle),
10 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a
11 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),
12 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a
13 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without
14 Permission 2 conviction.

15 (21) If the present conviction is for a felony domestic violence
16 offense where domestic violence as defined in RCW 9.94A.030 was plead
17 and proven, count priors as in subsections (7) through (18) of this
18 section; however count one point for repetitive domestic violence
19 offense as defined in RCW 9.94A.030.

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

31 NEW SECTION. Sec. 404. A new section is added to chapter 10.99
32 RCW to read as follows:

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

36 (a) The defendant suffered a continuing pattern of coercion,

1 control, or abuse by the victim of the offense and the offense is a
2 response to that coercion, control, or abuse;

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

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

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

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

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

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

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

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

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

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

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

31 For a period not to exceed five years after imposition of sentence
32 for a defendant sentenced for a domestic violence offense or under RCW
33 46.61.5055 and two years after imposition of sentence for all other
34 offenses, the court has continuing jurisdiction and authority to
35 suspend or defer the execution of all or any part of its sentence upon
36 stated terms, including installment payment of fines. A defendant who
37 has been sentenced, or whose sentence has been deferred, and who then

1 fails to appear for any hearing to address the defendant's compliance
2 with the terms of probation when ordered to do so by the court, shall
3 have the term of probation tolled until such time as the defendant
4 makes his or her presence known to the court on the record. However,
5 the jurisdiction period in this section does not apply to the
6 enforcement of orders issued under RCW 46.20.720. For the purposes of
7 this section, "domestic violence offense" means a crime listed in RCW
8 10.99.020 that is not a felony offense.

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

11 For a period not to exceed five years after imposition of sentence
12 for a defendant sentenced for a domestic violence offense or under RCW
13 46.61.5055 and two years after imposition of sentence for all other
14 offenses, the court shall have continuing jurisdiction and authority to
15 suspend or defer the execution of all or any part of the sentence upon
16 stated terms, including installment payment of fines. A defendant who
17 has been sentenced, or whose sentence has been deferred, and who then
18 fails to appear for any hearing to address the defendant's compliance
19 with the terms of probation when ordered to do so by the court, shall
20 have the term of probation tolled until such time as the defendant
21 makes his or her presence known to the court on the record. However,
22 the jurisdiction period in this section does not apply to the
23 enforcement of orders issued under RCW 46.20.720. Any time before
24 entering an order terminating probation, the court may modify or revoke
25 its order suspending or deferring the imposition or execution of the
26 sentence. For the purposes of this section, "domestic violence
27 offense" means a crime listed in RCW 10.99.020 that is not a felony
28 offense.

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

31 (1) Judges of the municipal court, in their discretion, shall have
32 the power in all criminal proceedings within their jurisdiction
33 including violations of city ordinances, to defer imposition of any
34 sentence, suspend all or part of any sentence including installment
35 payment of fines, fix the terms of any such deferral or suspension, and
36 provide for such probation as in their opinion is reasonable and

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

17 (2)(a) If a defendant whose sentence has been deferred requests
18 permission to travel or transfer to another state, the director of
19 probation services or a designee thereof shall determine whether such
20 request is subject to RCW 9.94A.745, the interstate compact for adult
21 offender supervision. If such request is subject to the compact, the
22 director or designee shall:

23 (i) Notify the department of corrections of the defendant's
24 request;

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

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

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

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

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

35 (c) If the probationer is returned to the state at the request of
36 the receiving state under rules of the interstate compact for adult
37 offender supervision, the department of corrections is responsible for
38 the cost of returning the probationer.

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

5 **PART FIVE**

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

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

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

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

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

29 (a) A release for the program to inform the victim and victim's
30 community and legal advocates that the perpetrator is in treatment with
31 the program, and to provide information, for safety purposes, to the
32 victim and victim's community and legal advocates;

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

35 (c) A release for the program to provide information on the

1 perpetrator to relevant legal entities including: Lawyers, courts,
2 parole, probation, child protective services, and child welfare
3 services.

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

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

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

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

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

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

32 (9) The department may conduct on-site monitoring visits as part of
33 its plan for certifying domestic violence perpetrator programs and
34 monitoring implementation of the rules adopted by the secretary of the
35 department to determine compliance with the minimum qualifications for
36 domestic violence perpetrator programs. The applicant or certified
37 domestic violence perpetrator program shall cooperate fully with the
38 department in the monitoring visit and provide all program and

1 management records requested by the department to determine the
2 program's compliance with the minimum certification qualifications and
3 rules adopted by the department.

4 **PART SIX**

5 **MISCELLANEOUS PROVISIONS**

6 **Sec. 601.** RCW 68.50.160 and 2007 c 156 s 24 are each amended to
7 read as follows:

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

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

21 (3) Except as provided in subsection (4) of this subsection, if the
22 decedent has not made a prearrangement as set forth in subsection (2)
23 of this section or the costs of executing the decedent's wishes
24 regarding the disposition of the decedent's remains exceeds a reason-
25 able amount or directions have not been given by the decedent, the
26 right to control the disposition of the remains of a deceased person
27 vests in, and the duty of disposition and the liability for the
28 reasonable cost of preparation, care, and disposition of such remains
29 devolves upon the following in the order named:

- 30 (a) The surviving spouse or state registered domestic partner.
- 31 (b) The surviving adult children of the decedent.
- 32 (c) The surviving parents of the decedent.
- 33 (d) The surviving siblings of the decedent.
- 34 (e) A person acting as a representative of the decedent under the
35 signed authorization of the decedent.

1 (4) A person listed in subsection (3) of this section does not have
2 the right to control the disposition of a decedent's remains if the
3 person has been arrested for or charged with first or second degree
4 murder, homicide by abuse, or first or second degree manslaughter by
5 reason of the death of the decedent. The right to control the
6 disposition of the decedent's remains vests in an eligible person in
7 the next applicable class in accordance with subsection (3) of this
8 section.

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

22 ~~((+5+))~~ (6) The liability for the reasonable cost of preparation,
23 care, and disposition devolves jointly and severally upon all kin of
24 the decedent in the same degree of kindred, in the order listed in
25 subsection (3) of this section, and upon the estate of the decedent.

26 NEW SECTION. Sec. 602. A new section is added to chapter 2.56 RCW
27 to read as follows:

28 (1)(a) The administrative office of the courts shall, within
29 existing resources, convene a work group to address the issue of
30 transmitting information regarding revocation of concealed pistol
31 licenses, upon the entry of orders issued under chapter 10.99, 26.50,
32 or 26.52 RCW.

33 (b) The work group must include a superior court judge, a district
34 court judge, a municipal court judge, an attorney whose practice
35 includes a significant amount of time representing defendants in
36 criminal trials, and representatives from the following entities: The
37 Washington state patrol, the Washington association of sheriffs and

1 police chiefs, the prosecuting attorneys association, the department of
2 licensing, and the county clerks. Other members may be added as deemed
3 appropriate by the work group.

4 (2) The work group shall review the methods currently used to
5 transfer information between the courts, the county clerks, the
6 prosecutors, the department of licensing, the Washington state patrol,
7 and local law enforcement agencies regarding the suspension and
8 revocation of concealed pistol licenses.

9 (3) The goal of the work group is to identify methods to expedite
10 the transfer of information to enhance the safety of law enforcement
11 and the public.

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

16 Correct the title.

EFFECT: Numerous provisions of SHB 2778 (concerning domestic violence) are added to the underlying bill. The provisions include the following:

(1) Law Enforcement and Arrest Provisions.

(a) Provides that when an officer is arresting a person for assault of a family or household member, for the purposes of identifying the primary physical aggressor, the officer must consider the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse.

(b) Requires the Washington Association of Sheriffs and Police Chiefs to convene a model policy work group to address the reporting of domestic violence to law enforcement in cases where the victim is unable or unwilling to make a report in the jurisdiction where the alleged crime occurred.

(2) No-Contact Orders.

(a) Provides in a domestic violence case where the court must determine the necessity of imposing a no-contact order or other conditions of pretrial release, that at the time of the defendant's first appearance before the court, the prosecutor must provide the court with the defendant's criminal history and history of no-contact and protection orders.

(b) Requires all courts, with the assistance of the Administrative Office of the Courts, to develop policies and procedures to grant victims a process to modify or rescind a no-contact order.

(3) Protection Orders.

(a) Authorizes any person 13 years of age or older to petition the court for a domestic violence protection order if he or she is the victim of violence in a dating relationship and the respondent is 16 years of age or older. Provides that a petitioner who is under the age of 16 must petition the court through a parent or guardian.

(b) Authorizes courts, when issuing a domestic violence protection order, to restrain the respondent from cyber stalking or monitoring the actions, location, or communication of the victim by using wire or electronic technology.

(4) Sentencing Reforms.

(a) Provides that during sentencing for a nonfelony offense involving domestic violence, the prosecutor must provide courts of limited jurisdiction with the defendant's criminal history and history of no-contact and protection orders.

(b) Requires courts of limited jurisdiction, when sentencing for an offense involving domestic violence, to consider whether: (i) The defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse; (ii) the offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time; and (iii) the offense occurred within sight or sound of the victim's or the offender's minor children under the age of 18.

(c) Modifies the sections concerning the court's long arm jurisdiction when issuing domestic violence, sexual assault, and antiharassment protection orders to clarify when a court may exercise jurisdiction over a respondent who does not reside in this state.

(d) Increases the maximum period of probation that may be imposed by all district and municipal courts from two years to five years for any nonfelony offense involving domestic violence.

(5) Treatment/Services for Perpetrators and Victims.

(a) Requires that any program that provides domestic violence treatment to perpetrators of domestic violence be certified by the Department of Social & Health Services (DSHS) and meet minimum standards for domestic violence treatment purposes.

(b) Requires DSHS to conduct on-site monitoring visits of treatment programs to determine the program's compliance with minimum certification qualifications and rules.

(6) Human Remains Disposition.

Provides that a person is prohibited from controlling the disposition of the decedent's remains if such person has been arrested for or charged with first or second degree Murder, Homicide by Abuse, or first or second degree Manslaughter by reason of the death of the decedent. Provides that the right to control the disposition vests in an eligible person in the next applicable class listed in statute.

--- END ---