

2SSB 6239 - S AMD 90

By Senator Hargrove

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

3 "PART I

4 **SUBSTANCE ABUSE REDUCTION**

5 NEW SECTION. **Sec. 101.** A new section is added to chapter 70.96A  
6 RCW to read as follows:

7 (1) Any county that has imposed the sales and use tax authorized by  
8 RCW 82.14.460 may seek a state appropriation of up to one hundred  
9 thousand dollars annually beginning in fiscal year 2008 and ending in  
10 fiscal year 2010. The funds shall be used to provide additional  
11 support to counties for mental health or substance abuse treatment for  
12 persons with methamphetamine addiction. Local governments receiving  
13 funds under this section may not use the funds to supplant existing  
14 funding.

15 (2) Counties receiving funding shall: (a) Provide a financial plan  
16 for the expenditure of any potential funds prior to funds being  
17 awarded; (b) report annually to the appropriate committees of the  
18 legislature regarding the number of clients served, services provided,  
19 and a statement of expenditures; and (c) expend no more than ten  
20 percent for administrative costs or for information technology.

21 NEW SECTION. **Sec. 102.** A new section is added to chapter 72.09  
22 RCW to read as follows:

23 (1) Through June 30, 2010, it is the intent of the legislature to  
24 provide one hundred additional placements for therapeutic drug and  
25 alcohol treatment in the state's correctional institutions, above the  
26 level of placements provided on January 1, 2006.

27 (2) This section expires June 30, 2010.

1        NEW SECTION.    **Sec. 103.**    It is the intent of the legislature to  
2 provide an annual combined level of state and federal funding for  
3 multijurisdictional drug task forces and local government drug  
4 prosecution assistance at a minimum of four million dollars.

5        NEW SECTION.    **Sec. 104.**    (1) It is the intent of the legislature to  
6 provide assistance for jurisdictions enforcing illegal drug laws that  
7 have historically been underserved by federally funded state narcotics  
8 task forces and are considered to be major transport areas of narcotics  
9 traffickers.

10       NEW SECTION.    **Sec. 105.**    Three pilot enforcement areas shall be  
11 established for a period of four fiscal years, beginning July 1, 2006,  
12 and ending June 30, 2010, with one in the southwestern region of the  
13 state, comprising of Pacific, Wahkiakum, Lewis, Grays Harbor, and  
14 Cowlitz counties; one in the southeastern region of the state,  
15 comprising of Walla Walla, Columbia, Garfield, and Asotin counties; and  
16 one in the northeastern part of the state, comprising of Stevens,  
17 Ferry, Pend Oreille, and Lincoln counties. The counties comprising a  
18 specific pilot area shall coordinate with each other to establish and  
19 implement a regional strategy to enforce illegal drug laws.

20       NEW SECTION.    **Sec. 106.**    It is the intent of the legislature to  
21 provide funding of no less than one million five hundred seventy-five  
22 thousand dollars annually. The funding is to be divided equally among  
23 the three pilot enforcement areas. This funding is intended to provide  
24 a minimum of four additional sheriff deputies for each pilot area, two  
25 deputy prosecutors who will support the counties that are included in  
26 the pilot area, a court clerk, and clerical staff to serve the pilot  
27 area. It is the intent of the legislature that those counties that  
28 have not previously received significant federal narcotics task force  
29 funding shall be allocated funding for at least one additional  
30 sheriff's deputy. Counties are encouraged to utilize drug courts and  
31 treatment programs, and to share resources that operate in the region  
32 through the use of interlocal agreements. The funding appropriated for  
33 this purpose must not be used to supplant existing funding and cannot  
34 be used for any purpose other than the enforcement of illegal drug  
35 laws.

1       The criminal justice training commission shall allocate funds to  
2 the Washington association of prosecuting attorneys and the Washington  
3 association of sheriffs and police chiefs. The Washington association  
4 of prosecuting attorneys is responsible for administration of the  
5 funding and programs for the prosecution of crimes and court  
6 proceedings. The Washington association of sheriffs and police chiefs  
7 shall administer the funds provided for law enforcement.

8       NEW SECTION. **Sec. 107.** The Washington association of sheriffs and  
9 police chiefs, the Washington association of prosecuting attorneys, and  
10 the Washington association of county officials shall jointly develop  
11 measures to determine the efficacy of the programs in the pilot areas.  
12 These measures shall include comparison of arrest rates before the  
13 implementation of this act and after, reduction of recidivism, and any  
14 other factors that are determined to be relevant to evaluation of the  
15 programs. The organizations named in this section shall present their  
16 findings to the legislature by December 1, 2008.

17       **Sec. 108.** RCW 2.28.170 and 2005 c 504 s 504 are each amended to  
18 read as follows:

19       (1) Counties may establish and operate drug courts.

20       (2) For the purposes of this section, "drug court" means a court  
21 that has special calendars or dockets designed to achieve a reduction  
22 in recidivism and substance abuse among nonviolent, substance abusing  
23 felony and nonfelony offenders, whether adult or juvenile, by  
24 increasing their likelihood for successful rehabilitation through  
25 early, continuous, and intense judicially supervised treatment;  
26 mandatory periodic drug testing; and the use of appropriate sanctions  
27 and other rehabilitation services.

28       (3)(a) Any jurisdiction that seeks a state appropriation to fund a  
29 drug court program must first:

30       (i) Exhaust all federal funding that is available to support the  
31 operations of its drug court and associated services; and

32       (ii) Match, on a dollar-for-dollar basis, state moneys allocated  
33 for drug court programs with local cash or in-kind resources. Moneys  
34 allocated by the state must be used to supplement, not supplant, other  
35 federal, state, and local funds for drug court operations and  
36 associated services.

1 (b) Any county that establishes a drug court pursuant to this  
2 section shall establish minimum requirements for the participation of  
3 offenders in the program. The drug court may adopt local requirements  
4 that are more stringent than the minimum. The minimum requirements  
5 are:

6 (i) The offender would benefit from substance abuse treatment;

7 (ii) The offender has not previously been convicted of a serious  
8 violent offense or sex offense as defined in RCW 9.94A.030; and

9 (iii) Without regard to whether proof of any of these elements is  
10 required to convict, the offender is not currently charged with or  
11 convicted of an offense:

12 (A) That is a sex offense;

13 (B) That is a serious violent offense;

14 (C) During which the defendant used a firearm; or

15 (D) During which the defendant caused substantial or great bodily  
16 harm or death to another person.

17 **Sec. 109.** RCW 26.44.020 and 2000 c 162 s 19 are each amended to  
18 read as follows:

19 The definitions in this section apply throughout this chapter  
20 unless the context clearly requires otherwise.

21 (1) "Court" means the superior court of the state of Washington,  
22 juvenile department.

23 (2) "Law enforcement agency" means the police department, the  
24 prosecuting attorney, the state patrol, the director of public safety,  
25 or the office of the sheriff.

26 (3) "Practitioner of the healing arts" or "practitioner" means a  
27 person licensed by this state to practice podiatric medicine and  
28 surgery, optometry, chiropractic, nursing, dentistry, osteopathic  
29 medicine and surgery, or medicine and surgery or to provide other  
30 health services. The term "practitioner" includes a duly accredited  
31 Christian Science practitioner: PROVIDED, HOWEVER, That a person who  
32 is being furnished Christian Science treatment by a duly accredited  
33 Christian Science practitioner will not be considered, for that reason  
34 alone, a neglected person for the purposes of this chapter.

35 (4) "Institution" means a private or public hospital or any other  
36 facility providing medical diagnosis, treatment or care.

- 1 (5) "Department" means the state department of social and health  
2 services.
- 3 (6) "Child" or "children" means any person under the age of  
4 eighteen years of age.
- 5 (7) "Professional school personnel" include, but are not limited  
6 to, teachers, counselors, administrators, child care facility  
7 personnel, and school nurses.
- 8 (8) "Social service counselor" means anyone engaged in a  
9 professional capacity during the regular course of employment in  
10 encouraging or promoting the health, welfare, support or education of  
11 children, or providing social services to adults or families, including  
12 mental health, drug and alcohol treatment, and domestic violence  
13 programs, whether in an individual capacity, or as an employee or agent  
14 of any public or private organization or institution.
- 15 (9) "Psychologist" means any person licensed to practice psychology  
16 under chapter 18.83 RCW, whether acting in an individual capacity or as  
17 an employee or agent of any public or private organization or  
18 institution.
- 19 (10) "Pharmacist" means any registered pharmacist under chapter  
20 18.64 RCW, whether acting in an individual capacity or as an employee  
21 or agent of any public or private organization or institution.
- 22 (11) "Clergy" means any regularly licensed or ordained minister,  
23 priest, or rabbi of any church or religious denomination, whether  
24 acting in an individual capacity or as an employee or agent of any  
25 public or private organization or institution.
- 26 (12) "Abuse or neglect" means the injury, sexual abuse, sexual  
27 exploitation, negligent treatment, or maltreatment of a child by any  
28 person under circumstances which indicate that the child's health,  
29 welfare, and safety is harmed, including conduct prohibited under RCW  
30 9A.42.100, and excluding conduct permitted under RCW 9A.16.100. An  
31 abused child is a child who has been subjected to child abuse or  
32 neglect as defined in this section.
- 33 (13) "Child protective services section" means the child protective  
34 services section of the department.
- 35 (14) "Sexual exploitation" includes: (a) Allowing, permitting, or  
36 encouraging a child to engage in prostitution by any person; or (b)  
37 allowing, permitting, encouraging, or engaging in the obscene or

1 pornographic photographing, filming, or depicting of a child by any  
2 person.

3 (15) "Negligent treatment or maltreatment" means an act or omission  
4 that evidences a serious disregard of consequences of such magnitude as  
5 to constitute a clear and present danger to the child's health,  
6 welfare, and safety. The fact that siblings share a bedroom is not, in  
7 and of itself, negligent treatment or maltreatment.

8 (16) "Child protective services" means those services provided by  
9 the department designed to protect children from child abuse and  
10 neglect and safeguard such children from future abuse and neglect, and  
11 conduct investigations of child abuse and neglect reports.  
12 Investigations may be conducted regardless of the location of the  
13 alleged abuse or neglect. Child protective services includes referral  
14 to services to ameliorate conditions that endanger the welfare of  
15 children, the coordination of necessary programs and services relevant  
16 to the prevention, intervention, and treatment of child abuse and  
17 neglect, and services to children to ensure that each child has a  
18 permanent home. In determining whether protective services should be  
19 provided, the department shall not decline to provide such services  
20 solely because of the child's unwillingness or developmental inability  
21 to describe the nature and severity of the abuse or neglect.

22 (17) "Malice" or "maliciously" means an evil intent, wish, or  
23 design to vex, annoy, or injure another person. Such malice may be  
24 inferred from an act done in willful disregard of the rights of  
25 another, or an act wrongfully done without just cause or excuse, or an  
26 act or omission of duty betraying a willful disregard of social duty.

27 (18) "Sexually aggressive youth" means a child who is defined in  
28 RCW 74.13.075(1)(b) as being a sexually aggressive youth.

29 (19) "Unfounded" means available information indicates that, more  
30 likely than not, child abuse or neglect did not occur. No unfounded  
31 allegation of child abuse or neglect may be disclosed to a child-  
32 placing agency, private adoption agency, or any other provider licensed  
33 under chapter 74.15 RCW.

34 **Sec. 110.** RCW 26.44.020 and 2005 c 512 s 5 are each amended to  
35 read as follows:

36 The definitions in this section apply throughout this chapter  
37 unless the context clearly requires otherwise.

- 1 (1) "Court" means the superior court of the state of Washington,  
2 juvenile department.
- 3 (2) "Law enforcement agency" means the police department, the  
4 prosecuting attorney, the state patrol, the director of public safety,  
5 or the office of the sheriff.
- 6 (3) "Practitioner of the healing arts" or "practitioner" means a  
7 person licensed by this state to practice podiatric medicine and  
8 surgery, optometry, chiropractic, nursing, dentistry, osteopathic  
9 medicine and surgery, or medicine and surgery or to provide other  
10 health services. The term "practitioner" includes a duly accredited  
11 Christian Science practitioner: PROVIDED, HOWEVER, That a person who  
12 is being furnished Christian Science treatment by a duly accredited  
13 Christian Science practitioner will not be considered, for that reason  
14 alone, a neglected person for the purposes of this chapter.
- 15 (4) "Institution" means a private or public hospital or any other  
16 facility providing medical diagnosis, treatment or care.
- 17 (5) "Department" means the state department of social and health  
18 services.
- 19 (6) "Child" or "children" means any person under the age of  
20 eighteen years of age.
- 21 (7) "Professional school personnel" include, but are not limited  
22 to, teachers, counselors, administrators, child care facility  
23 personnel, and school nurses.
- 24 (8) "Social service counselor" means anyone engaged in a  
25 professional capacity during the regular course of employment in  
26 encouraging or promoting the health, welfare, support or education of  
27 children, or providing social services to adults or families, including  
28 mental health, drug and alcohol treatment, and domestic violence  
29 programs, whether in an individual capacity, or as an employee or agent  
30 of any public or private organization or institution.
- 31 (9) "Psychologist" means any person licensed to practice psychology  
32 under chapter 18.83 RCW, whether acting in an individual capacity or as  
33 an employee or agent of any public or private organization or  
34 institution.
- 35 (10) "Pharmacist" means any registered pharmacist under chapter  
36 18.64 RCW, whether acting in an individual capacity or as an employee  
37 or agent of any public or private organization or institution.

1 (11) "Clergy" means any regularly licensed or ordained minister,  
2 priest, or rabbi of any church or religious denomination, whether  
3 acting in an individual capacity or as an employee or agent of any  
4 public or private organization or institution.

5 (12) "Abuse or neglect" means sexual abuse, sexual exploitation, or  
6 injury of a child by any person under circumstances which cause harm to  
7 the child's health, welfare, or safety, including conduct prohibited  
8 under RCW 9A.42.100, and excluding conduct permitted under RCW  
9 9A.16.100; or the negligent treatment or maltreatment of a child by a  
10 person responsible for or providing care to the child. An abused child  
11 is a child who has been subjected to child abuse or neglect as defined  
12 in this section.

13 (13) "Child protective services section" means the child protective  
14 services section of the department.

15 (14) "Sexual exploitation" includes: (a) Allowing, permitting, or  
16 encouraging a child to engage in prostitution by any person; or (b)  
17 allowing, permitting, encouraging, or engaging in the obscene or  
18 pornographic photographing, filming, or depicting of a child by any  
19 person.

20 (15) "Negligent treatment or maltreatment" means an act or a  
21 failure to act, or the cumulative effects of a pattern of conduct,  
22 behavior, or inaction, that evidences a serious disregard of  
23 consequences of such magnitude as to constitute a clear and present  
24 danger to a child's health, welfare, or safety. When considering  
25 whether a clear and present danger exists, evidence of a parent's  
26 substance abuse as a contributing factor to negligent treatment or  
27 maltreatment shall be given great weight. The fact that siblings share  
28 a bedroom is not, in and of itself, negligent treatment or  
29 maltreatment. Poverty, homelessness, or exposure to domestic violence  
30 as defined in RCW 26.50.010 that is perpetrated against someone other  
31 than the child (~~(do-[does])~~) does not constitute negligent treatment or  
32 maltreatment in and of (~~(themselves-[itself])~~) itself.

33 (16) "Child protective services" means those services provided by  
34 the department designed to protect children from child abuse and  
35 neglect and safeguard such children from future abuse and neglect, and  
36 conduct investigations of child abuse and neglect reports.  
37 Investigations may be conducted regardless of the location of the  
38 alleged abuse or neglect. Child protective services includes referral



1 to services to ameliorate conditions that endanger the welfare of  
2 children, the coordination of necessary programs and services relevant  
3 to the prevention, intervention, and treatment of child abuse and  
4 neglect, and services to children to ensure that each child has a  
5 permanent home. In determining whether protective services should be  
6 provided, the department shall not decline to provide such services  
7 solely because of the child's unwillingness or developmental inability  
8 to describe the nature and severity of the abuse or neglect.

9 (17) "Malice" or "maliciously" means an evil intent, wish, or  
10 design to vex, annoy, or injure another person. Such malice may be  
11 inferred from an act done in willful disregard of the rights of  
12 another, or an act wrongfully done without just cause or excuse, or an  
13 act or omission of duty betraying a willful disregard of social duty.

14 (18) "Sexually aggressive youth" means a child who is defined in  
15 RCW 74.13.075(1)(b) as being a sexually aggressive youth.

16 (19) "Unfounded" means available information indicates that, more  
17 likely than not, child abuse or neglect did not occur. No unfounded  
18 allegation of child abuse or neglect may be disclosed to a child-  
19 placing agency, private adoption agency, or any other provider licensed  
20 under chapter 74.15 RCW.

21 **Sec. 111.** RCW 26.44.195 and 2005 c 512 s 6 are each amended to  
22 read as follows:

23 (1) If the department, upon investigation of a report that a child  
24 has been abused or neglected as defined in this chapter, determines  
25 that the child has been subject to negligent treatment or maltreatment,  
26 the department may offer services to the child's parents, guardians, or  
27 legal custodians to: (a) Ameliorate the conditions that endangered the  
28 welfare of the child; or (b) address or treat the effects of  
29 mistreatment or neglect upon the child.

30 (2) When evaluating whether the child has been subject to negligent  
31 treatment or maltreatment, evidence of a parent's substance abuse as a  
32 contributing factor to a parent's failure to provide for a child's  
33 basic health, welfare, or safety shall be given great weight.

34 (3) If the child's parents, guardians, or legal custodians are  
35 available and willing to participate on a voluntary basis in in-home  
36 services, and the department determines that in-home services on a

1 voluntary basis are appropriate for the family, the department may  
2 offer such services.

3 (4) In cases where the department has offered appropriate and  
4 reasonable services under subsection (1) of this section, and the  
5 parents, guardians, or legal custodians refuse to accept or fail to  
6 obtain available and appropriate treatment or services, or are unable  
7 or unwilling to participate in or successfully and substantially  
8 complete the treatment or services identified by the department, the  
9 department may initiate a dependency proceeding under chapter 13.34 RCW  
10 on the basis that the negligent treatment or maltreatment by the  
11 parent, guardian, or legal custodian constitutes neglect. When  
12 evaluating whether to initiate a dependency proceeding on this basis,  
13 the evidence of a parent's substance abuse as a contributing factor to  
14 the negligent treatment or maltreatment shall be given great weight.

15 (5) Nothing in this section precludes the department from filing a  
16 dependency petition as provided in chapter 13.34 RCW if it determines  
17 that such action is necessary to protect the child from abuse or  
18 neglect.

19 ~~((6) Nothing in this section shall be construed to create in any  
20 person an entitlement to services or financial assistance in paying for  
21 services or to create judicial authority to order the provision of  
22 services to any person or family if the services are unavailable or  
23 unsuitable or if the child or family is not eligible for such  
24 services.))~~

25 **Sec. 112.** RCW 74.34.020 and 2003 c 230 s 1 are each amended to  
26 read as follows:

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

29 (1) "Abandonment" means action or inaction by a person or entity  
30 with a duty of care for a vulnerable adult that leaves the vulnerable  
31 person without the means or ability to obtain necessary food, clothing,  
32 shelter, or health care.

33 (2) "Abuse" means the willful action or inaction that inflicts  
34 injury, unreasonable confinement, intimidation, or punishment on a  
35 vulnerable adult. In instances of abuse of a vulnerable adult who is  
36 unable to express or demonstrate physical harm, pain, or mental  
37 anguish, the abuse is presumed to cause physical harm, pain, or mental

1 anguish. Abuse includes sexual abuse, mental abuse, physical abuse,  
2 and exploitation of a vulnerable adult, which have the following  
3 meanings:

4 (a) "Sexual abuse" means any form of nonconsensual sexual contact,  
5 including but not limited to unwanted or inappropriate touching, rape,  
6 sodomy, sexual coercion, sexually explicit photographing, and sexual  
7 harassment. Sexual abuse includes any sexual contact between a staff  
8 person, who is not also a resident or client, of a facility or a staff  
9 person of a program authorized under chapter 71A.12 RCW, and a  
10 vulnerable adult living in that facility or receiving service from a  
11 program authorized under chapter 71A.12 RCW, whether or not it is  
12 consensual.

13 (b) "Physical abuse" means the willful action of inflicting bodily  
14 injury or physical mistreatment. Physical abuse includes, but is not  
15 limited to, striking with or without an object, slapping, pinching,  
16 choking, kicking, shoving, prodding, or the use of chemical restraints  
17 or physical restraints unless the restraints are consistent with  
18 licensing requirements, and includes restraints that are otherwise  
19 being used inappropriately.

20 (c) "Mental abuse" means any willful action or inaction of mental  
21 or verbal abuse. Mental abuse includes, but is not limited to,  
22 coercion, harassment, inappropriately isolating a vulnerable adult from  
23 family, friends, or regular activity, and verbal assault that includes  
24 ridiculing, intimidating, yelling, or swearing.

25 (d) "Exploitation" means an act of forcing, compelling, or exerting  
26 undue influence over a vulnerable adult causing the vulnerable adult to  
27 act in a way that is inconsistent with relevant past behavior, or  
28 causing the vulnerable adult to perform services for the benefit of  
29 another.

30 (3) "Consent" means express written consent granted after the  
31 vulnerable adult or his or her legal representative has been fully  
32 informed of the nature of the services to be offered and that the  
33 receipt of services is voluntary.

34 (4) "Department" means the department of social and health  
35 services.

36 (5) "Facility" means a residence licensed or required to be  
37 licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW,

1 nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36  
2 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation  
3 centers; or any other facility licensed by the department.

4 (6) "Financial exploitation" means the illegal or improper use of  
5 the property, income, resources, or trust funds of the vulnerable adult  
6 by any person for any person's profit or advantage.

7 (7) "Individual provider" means a person under contract with the  
8 department to provide services in the home under chapter 74.09 or  
9 74.39A RCW.

10 (8) "Mandated reporter" is an employee of the department; law  
11 enforcement officer; social worker; professional school personnel;  
12 individual provider; an employee of a facility; an operator of a  
13 facility; an employee of a social service, welfare, mental health,  
14 adult day health, adult day care, home health, home care, or hospice  
15 agency; county coroner or medical examiner; Christian Science  
16 practitioner; or health care provider subject to chapter 18.130 RCW.

17 (9) "Neglect" means (a) a pattern of conduct or inaction by a  
18 person or entity with a duty of care that fails to provide the goods  
19 and services that maintain physical or mental health of a vulnerable  
20 adult, or that fails to avoid or prevent physical or mental harm or  
21 pain to a vulnerable adult, including but not limited to conduct  
22 prohibited under RCW 9A.42.100; or (b) an act or omission that  
23 demonstrates a serious disregard of consequences of such a magnitude as  
24 to constitute a clear and present danger to the vulnerable adult's  
25 health, welfare, or safety.

26 (10) "Permissive reporter" means any person, employee of a  
27 financial institution, attorney, or volunteer in a facility or program  
28 providing services for vulnerable adults.

29 (11) "Protective services" means any services provided by the  
30 department to a vulnerable adult with the consent of the vulnerable  
31 adult, or the legal representative of the vulnerable adult, who has  
32 been abandoned, abused, financially exploited, neglected, or in a state  
33 of self-neglect. These services may include, but are not limited to  
34 case management, social casework, home care, placement, arranging for  
35 medical evaluations, psychological evaluations, day care, or referral  
36 for legal assistance.

37 (12) "Self-neglect" means the failure of a vulnerable adult, not  
38 living in a facility, to provide for himself or herself the goods and

1 services necessary for the vulnerable adult's physical or mental  
2 health, and the absence of which impairs or threatens the vulnerable  
3 adult's well-being. This definition may include a vulnerable adult who  
4 is receiving services through home health, hospice, or a home care  
5 agency, or an individual provider when the neglect is not a result of  
6 inaction by that agency or individual provider.

7 (13) "Vulnerable adult" includes a person:

8 (a) Sixty years of age or older who has the functional, mental, or  
9 physical inability to care for himself or herself; or

10 (b) Found incapacitated under chapter 11.88 RCW; or

11 (c) Who has a developmental disability as defined under RCW  
12 71A.10.020; or

13 (d) Admitted to any facility; or

14 (e) Receiving services from home health, hospice, or home care  
15 agencies licensed or required to be licensed under chapter 70.127 RCW;  
16 or

17 (f) Receiving services from an individual provider.

18 NEW SECTION. **Sec. 113.** The department of community, trade, and  
19 economic development shall review federal, state, and local funding  
20 sources and funding levels available to local meth action teams through  
21 the Washington state methamphetamine initiative to determine whether  
22 funding is adequate to accomplish the mission of the meth action teams.  
23 The department shall also review the funding levels for drug task  
24 forces in the state of Washington to determine whether they may require  
25 additional resources to successfully interdict drug trafficking  
26 organizations and clandestine labs statewide. The department shall  
27 report findings and recommendations to the legislature by November 1,  
28 2006.

29 NEW SECTION. **Sec. 114.** The department of social and health  
30 services shall consult with faith-based organizations to discuss the  
31 appropriate role that such organizations may have in filling support  
32 service delivery needs for persons with chemical dependency disorders.  
33 The department shall report findings and recommendations to the  
34 legislature by November 1, 2006.



1 (5) "Confirmation test" or "confirmed test" means a second  
2 analytical procedure used to identify the presence of a specific drug  
3 or metabolic in a specimen. Drug tests must be confirmed as specified  
4 in section 205(5) of this act. Alcohol tests must be confirmed by a  
5 second breath test or as specified for drug tests.

6 (6) "Department" means the department of social and health  
7 services.

8 (7) "Drug" means amphetamines, cannabinoids, cocaine, phencyclidine  
9 (PCP), methadone, methaqualone, opiates, barbiturates, benzodiazepines,  
10 propoxyphene, or a metabolite of any such substances.

11 (8) "Drug test" means a chemical, biological, or physical  
12 instrumental analysis administered on a specimen sample for the purpose  
13 of determining the presence or absence of a drug or its metabolites  
14 within the sample.

15 (9) "Employee" means a person who is employed for salary, wages, or  
16 other remuneration by an employer.

17 (10) "Employee assistance program" means a program designed to  
18 assist in the identification and resolution of job performance problems  
19 associated with employees impaired by personal concerns. A minimum  
20 level of core services must include: Consultation and professional,  
21 confidential, appropriate, and timely problem assessment services;  
22 short-term problem resolution; referrals for appropriate diagnosis,  
23 treatment, and assistance; follow-up and monitoring; employee  
24 education; and supervisory training.

25 (11) "Employer" means an employer subject to Title 51 RCW but does  
26 not include the state or any department, agency, or instrumentality of  
27 the state; any county; any city; any school district or educational  
28 service district; or any municipal corporation.

29 (12) "Initial test" means a sensitive, rapid, and reliable  
30 procedure to identify negative and presumptive positive specimens. An  
31 initial drug test must use an immunoassay procedure or an equivalent  
32 procedure or must use a more accurate scientifically accepted method  
33 approved by the national institute on drug abuse as more accurate  
34 technology becomes available in a cost-effective form.

35 (13) "Injury" means a sudden and tangible happening, of a traumatic  
36 nature, producing an immediate or prompt result and occurring from  
37 without, and such physical conditions as result therefrom.

1 (14) "Job applicant" means a person who has applied for employment  
2 with an employer and has been offered employment conditioned upon  
3 successfully passing a drug test and may have begun work pending the  
4 results of the drug test.

5 (15) "Last-chance agreement" means a notice to an employee who is  
6 referred to the employee assistance program due to a verified positive  
7 alcohol or drug test or for violating an alcohol or drug-related  
8 employer rule that states the terms and conditions of continued  
9 employment with which the employee must comply.

10 (16) "Medical review officer" means a licensed physician trained in  
11 the field of drug testing who provides medical assessment of positive  
12 test results, requests reanalysis if necessary, and makes a  
13 determination whether or not drug misuse has occurred.

14 (17) "Nonprescription medication" means a drug or medication  
15 authorized under federal or state law for general distribution and use  
16 without a prescription in the treatment of human disease, ailments, or  
17 injuries.

18 (18) "Prescription medication" means a drug or medication lawfully  
19 prescribed by a physician, or other health care provider licensed to  
20 prescribe medication, for an individual and taken in accordance with  
21 the prescription.

22 (19) "Rehabilitation program" means a program approved by the  
23 department that is capable of providing expert identification,  
24 assessment, and resolution of employee drug or alcohol abuse in a  
25 confidential and timely service. Any rehabilitation program under this  
26 chapter must contain a two-year continuing care component.

27 (20) "Specimen" means breath or urine. "Specimen" may include  
28 other products of the human body capable of revealing the presence of  
29 drugs or their metabolites or of alcohol, if approved by the United  
30 States department of health and human services and permitted by rules  
31 adopted under section 212 of this act.

32 (21) "Substance" means drugs or alcohol.

33 (22) "Substance abuse test" or "test" means a chemical, biological,  
34 or physical instrumental analysis administered on a specimen sample for  
35 the purpose of determining the presence or absence of a drug or its  
36 metabolites or of alcohol within the sample.

37 (23) "Threshold detection level" means the level at which the  
38 presence of a drug or alcohol can be reasonably expected to be detected



1 by an initial and confirmation test performed by a laboratory meeting  
2 the standards specified in this chapter. The threshold detection level  
3 indicates the level at which a valid conclusion can be drawn that the  
4 drug or alcohol is present in the employee's specimen.

5 (24) "Verified positive test result" means a confirmed positive  
6 test result obtained by a laboratory meeting the standards specified in  
7 this chapter that has been reviewed and verified by a medical review  
8 officer in accordance with medical review officer guidelines  
9 promulgated by the United States department of health and human  
10 services.

11 (25) "Workers' compensation premium" means the medical aid fund  
12 premium and the accident fund premium under Title 51 RCW.

13 NEW SECTION. **Sec. 202.** (1) An employer, except an employer that  
14 is self-insured for the purposes of Title 51 RCW, implementing a drug-  
15 free workplace program in accordance with section 203 of this act shall  
16 qualify for a five percent workers' compensation premium discount under  
17 Title 51 RCW if the employer:

18 (a) Is certified by the division of alcohol and substance abuse of  
19 the department as provided in section 212 of this act. The employer  
20 must maintain an alcohol and drug-free workplace program in accordance  
21 with the standards, procedures, and rules established in or under this  
22 chapter. If the employer fails to maintain the program as required,  
23 the employer shall not qualify for the premium discount provided under  
24 this section;

25 (b) Is in good standing and remains in good standing with the  
26 department of labor and industries with respect to the employer's  
27 workers' compensation premium obligations and any other premiums and  
28 assessments under Title 51 RCW; and

29 (c) Has medical insurance available to its full-time employees  
30 through an employer, union, or jointly sponsored medical plan.

31 (2) The premium discount must remain in effect as long as the  
32 employer is certified under section 212 of this act, up to a maximum of  
33 three years from the date of initial certification.

34 (3) A certified employer may discontinue operating a drug-free  
35 workplace program at any time. The qualification for a premium  
36 discount shall expire in accordance with decertification rules adopted  
37 by the department under section 212 of this act.

1 (4) An employer whose drug-free workplace program reasonably meets,  
2 as of July 1, 2006, all the requirements for the premium discount  
3 provided in this section is not eligible for certification, except that  
4 an employer who has had in place for two years prior to the effective  
5 date of this section a drug-free workplace program that meets the  
6 requirements of section 203 of this act, but whose policy allows  
7 termination for an employee's first verified positive test, shall  
8 qualify for a two percent workers' compensation premium discount under  
9 Title 51 RCW upon adding a provision for job continuation through a  
10 last chance agreement following a first verified positive alcohol or  
11 drug test, as required by section 207(1)(b) of this act.

12 (5) Nothing in this chapter creates or alters an obligation on the  
13 part of an employer seeking to participate in this program to bargain  
14 with a collective bargaining representative of its employees.

15 (6) An employer may not receive premium discounts from the  
16 department of labor and industries under more than one premium discount  
17 program. For purposes of this chapter, the retrospective rating  
18 program is not considered a premium discount. An employer  
19 participating in and meeting all of the requirements for the discount  
20 provided in this section and also participating in another premium  
21 discount program offered by the department of labor and industries is  
22 only entitled to the premium discount that is the highest.

23 (7) The department of labor and industries will notify self-insured  
24 employers of the value of drug-free workplace programs and encourage  
25 them to implement programs that are in accord with section 203 of this  
26 act.

27 NEW SECTION. **Sec. 203.** (1) A drug-free workplace program  
28 established under this chapter must contain all of the following  
29 elements:

30 (a) A written policy statement in compliance with section 204 of  
31 this act;

32 (b) Substance abuse testing in compliance with section 205 of this  
33 act;

34 (c) An employee assistance program in compliance with section 206  
35 of this act;

36 (d) Employee education in compliance with section 208 of this act;  
37 and

1 (e) Supervisor training in compliance with section 209 of this act.  
2 (2) In addition to the requirements of subsection (1) of this  
3 section, a drug-free workplace program established under this chapter  
4 must be implemented in compliance with the confidentiality standards  
5 provided in section 211 of this act.

6 NEW SECTION. **Sec. 204.** (1) An alcohol and drug-free workplace  
7 program established under this chapter must contain a written substance  
8 abuse policy statement in order to qualify for the premium discount  
9 provided under section 202 of this act. The policy must:

10 (a) Notify employees that the use or being under any influence of  
11 alcohol during working hours is prohibited;

12 (b) Notify employees that the use, purchase, possession, or  
13 transfer of drugs or having drugs in their system is prohibited and  
14 that prescription or nonprescription medications are not prohibited  
15 when taken in accordance with a lawful prescription or consistent with  
16 standard dosage recommendations;

17 (c) Identify the types of testing an employee or job applicant may  
18 be required to submit to or other basis used to determine when such a  
19 test will be required;

20 (d) Identify the actions the employer may take against an employee  
21 or job applicant on the basis of a verified positive test result;

22 (e) Contain a statement advising an employee or job applicant of  
23 the existence of this chapter;

24 (f) Contain a general statement concerning confidentiality;

25 (g) Identify the consequences of refusing to submit to a drug test;

26 (h) Contain a statement advising an employee of the employee  
27 assistance program;

28 (i) Contain a statement that an employee or job applicant who  
29 receives a verified positive test result may contest or explain the  
30 result to the employer within five working days after receiving written  
31 notification of the positive test result;

32 (j) Contain a statement informing an employee of the provisions of  
33 the federal drug-free workplace act, if applicable to the employer; and

34 (k) Notify employees that the employer may discipline an employee  
35 for failure to report an injury in the workplace.

36 (2) An employer not having a substance abuse testing program in  
37 effect on July 1, 2006, shall ensure that at least sixty days elapse

1 between a general one-time notice to all employees that a substance  
2 abuse testing program is being implemented and the beginning of the  
3 actual testing. An employer having a substance abuse testing program  
4 in place before July 1, 2006, is not required to provide a sixty-day  
5 notice period.

6 (3) An employer shall include notice of substance abuse testing to  
7 all job applicants. A notice of the employer's substance abuse testing  
8 policy must also be posted in an appropriate and conspicuous location  
9 on the employer's premises, and copies of the policy must be made  
10 available for inspection by the employees or job applicants of the  
11 employer during regular business hours in the employer's personnel  
12 office or other suitable locations. An employer with employees or job  
13 applicants who have trouble communicating in English shall make  
14 reasonable efforts to help the employees understand the policy  
15 statement.

16 NEW SECTION. **Sec. 205.** (1) In conducting substance abuse testing  
17 under this chapter, the employer must comply with the standards and  
18 procedures established in this chapter and all applicable rules adopted  
19 by the department under this chapter and must:

20 (a) Require job applicants to submit to a drug test after extending  
21 an offer of employment. The employer may use a refusal to submit to a  
22 drug test or a verified positive test as a basis for not hiring the job  
23 applicant;

24 (b) Investigate each workplace injury that results in a worker  
25 needing off-site medical attention and require an employee to submit to  
26 drug and alcohol tests if the employer reasonably believes the employee  
27 has caused or contributed to an injury which resulted in the need for  
28 off-site medical attention. An employer need not require that an  
29 employee submit to drug and alcohol tests if a supervisor, trained in  
30 accordance with section 209 of this act, reasonably believes that the  
31 injury was due to the inexperience of the employee or due to a  
32 defective or unsafe product or working condition, or other  
33 circumstances beyond the control of the employee. Under this chapter,  
34 a first-time verified positive test result may not be used as a basis  
35 to terminate an employee's employment. However, nothing in this  
36 section prohibits an employee from being terminated for reasons other  
37 than the positive test result;

1 (c) If the employee in the course of employment is referred to the  
2 employee assistance program by the employer as a result of a verified  
3 positive drug or alcohol test or an alcohol or drug-related incident in  
4 violation of employer rules, require the employee to submit to drug and  
5 alcohol testing in conjunction with any recommended rehabilitation  
6 program. If the employee assistance program determines that the  
7 employee does not require treatment services, the employee must still  
8 be required to participate in follow-up testing. However, if an  
9 employee voluntarily enters an employee assistance program, without a  
10 verified positive drug or alcohol test or a violation of any drug or  
11 alcohol related employer rule, follow-up testing is not required. If  
12 follow-up testing is conducted, the frequency of the testing shall be  
13 at least four times a year for a two-year period after completion of  
14 the rehabilitation program and advance notice of the testing date may  
15 not be given. A verified positive follow-up test result shall normally  
16 require termination of employment.

17 (2) This section does not prohibit an employer from conducting  
18 other drug or alcohol testing, such as upon reasonable suspicion or a  
19 random basis.

20 (3) Specimen collection and substance abuse testing under this  
21 section must be performed in accordance with regulations and procedures  
22 approved by the United States department of health and human services  
23 and the United States department of transportation regulations for  
24 alcohol and drug testing and must include testing for marijuana,  
25 cocaine, amphetamines, opiates, and phencyclidine. Employers may test  
26 for any drug listed in section 201(7) of this act.

27 (a) A specimen must be collected with due regard to the privacy of  
28 the individual providing the specimen and in a manner reasonably  
29 calculated to prevent substitution or contamination of the specimen.

30 (b) Specimen collection and analysis must be documented. The  
31 documentation procedures must include:

32 (i) Labeling of specimen containers so as to reasonably preclude  
33 the likelihood of erroneous identification of test results; and

34 (ii) An opportunity for the employee or job applicant to provide to  
35 a medical review officer information the employee or applicant  
36 considers relevant to the drug test, including identification of  
37 currently or recently used prescription or nonprescription medication  
38 or other relevant medical information.

1 (c) Specimen collection, storage, and transportation to the testing  
2 site must be performed in a manner that reasonably precludes specimen  
3 contamination or adulteration.

4 (d) An initial and confirmation test conducted under this section,  
5 not including the taking or collecting of a specimen to be tested, must  
6 be conducted by a laboratory as described in subsection (4) of this  
7 section.

8 (e) A specimen for a test may be taken or collected by any of the  
9 following persons:

10 (i) A physician, a physician's assistant, a registered professional  
11 nurse, a licensed practical nurse, a nurse practitioner, or a certified  
12 paramedic who is present at the scene of an accident for the purpose of  
13 rendering emergency medical service or treatment;

14 (ii) A qualified person certified or employed by a laboratory  
15 certified by the substance abuse and mental health administration or  
16 the college of American pathologists; or

17 (iii) A qualified person certified or employed by a collection  
18 company using collection procedures adopted by the United States  
19 department of health and human services and the United States  
20 department of transportation for alcohol collection.

21 (f) Within five working days after receipt of a verified positive  
22 test result from the laboratory, an employer shall inform an employee  
23 or job applicant in writing of the positive test result, the  
24 consequences of the result, and the options available to the employee  
25 or job applicant.

26 (g) The employer shall provide to the employee or job applicant,  
27 upon request, a copy of the test results.

28 (h) An initial test having a positive result must be verified by a  
29 confirmation test.

30 (i) An employer who performs drug testing or specimen collection  
31 shall use chain of custody procedures to ensure proper recordkeeping,  
32 handling, labeling, and identification of all specimens to be tested.

33 (j) An employer shall pay the cost of all drug or alcohol tests,  
34 initial and confirmation, that the employer requires of employees.

35 (k) An employee or job applicant shall pay the cost of additional  
36 tests not required by the employer.

37 (4)(a) A laboratory may not analyze initial or confirmation drug  
38 specimens unless:

1 (i) The laboratory is approved by the substance abuse and mental  
2 health administration or the college of American pathologists;

3 (ii) The laboratory has written procedures to ensure the chain of  
4 custody; and

5 (iii) The laboratory follows proper quality control procedures  
6 including, but not limited to:

7 (A) The use of internal quality controls including the use of  
8 samples of known concentrations that are used to check the performance  
9 and calibration of testing equipment, and periodic use of blind samples  
10 for overall accuracy;

11 (B) An internal review and certification process for test results,  
12 conducted by a person qualified to perform that function in the testing  
13 laboratory;

14 (C) Security measures implemented by the testing laboratory to  
15 preclude adulteration of specimens and test results; and

16 (D) Other necessary and proper actions taken to ensure reliable and  
17 accurate drug test results.

18 (b) A laboratory shall disclose to the employer a written test  
19 result report within seven working days after receipt of the sample.  
20 A laboratory report of a substance abuse test result must, at a  
21 minimum, state:

22 (i) The name and address of the laboratory that performed the test  
23 and the positive identification of the person tested;

24 (ii) Positive results on confirmation tests only, or negative  
25 results, as applicable;

26 (iii) A list of the drugs for which the drug analyses were  
27 conducted; and

28 (iv) The type of tests conducted for both initial and confirmation  
29 tests and the threshold detection levels of the tests.

30 A report may not disclose the presence or absence of a drug other  
31 than a specific drug and its metabolites listed under this chapter.

32 (c) A medical review officer shall provide technical assistance to  
33 the employer, employee, or job applicant for the purpose of  
34 interpreting a positive confirmed drug test result that could have been  
35 caused by prescription or nonprescription medication taken by the  
36 employee or job applicant. The medical review officer shall interpret  
37 and evaluate the laboratory's positive drug test result and eliminate

1 test results that could have been caused by prescription medication or  
2 other medically documented sources in accordance with the United States  
3 department of health and human services medical review officer manual.

4 (5) A positive initial drug test must be confirmed using the gas  
5 chromatography/mass spectrometry method or an equivalent or more  
6 accurate scientifically accepted method approved by the substance abuse  
7 and mental health administration as the technology becomes available in  
8 a cost-effective form.

9 NEW SECTION. **Sec. 206.** (1) The employee assistance program  
10 required under this chapter shall provide the employer with a system  
11 for dealing with employees whose job performances are declining due to  
12 unresolved problems, including alcohol or other drug-related problems,  
13 marital problems, or legal or financial problems.

14 (2) To ensure appropriate assessment and referral to treatment:

15 (a) The employer must notify the employees of the benefits and  
16 services of the employee assistance program;

17 (b) The employer shall publish notice of the employee assistance  
18 program in conspicuous places and explore alternative routine and  
19 reinforcing means of publicizing the services; and

20 (c) The employer shall provide the employee with notice of the  
21 policies and procedures regarding access to and use of the employee  
22 assistance program.

23 (3) A list of approved employee assistance programs must be  
24 provided by the department according to recognized program standards.

25 NEW SECTION. **Sec. 207.** (1)(a) Rehabilitation of employees  
26 suffering from either or both alcohol or drug addiction shall be a  
27 primary focus of an employee assistance program.

28 (b) Under any program under this chapter, the employer may not use  
29 a first-time verified positive drug or alcohol test as the basis for  
30 termination of an employee. After a first-time verified positive test  
31 result, the employee must be given an opportunity to keep his or her  
32 job through the use of a last-chance agreement. The last-chance  
33 agreement shall require an employee to:

34 (i) Submit to an employee assistance program evaluation for  
35 chemical dependency;

36 (ii) Comply with any treatment recommendations;



1 (iii) Be subject to follow-up drug and alcohol testing for two  
2 years;

3 (iv) Meet the same standards of performance and conduct that are  
4 set for other employees; and

5 (v) Authorize the employer to receive all relevant information  
6 regarding the employee's progress in treatment, if applicable.

7 Failure to comply with all the terms of this agreement normally  
8 will result in termination of employment.

9 (2) When substance abuse treatment is necessary, employees must use  
10 treatment services approved by the department, which include a  
11 continuing care component lasting for two years.

12 (a) The employee assistance program shall monitor the employee's  
13 progress while in treatment, including the two-year continuing care  
14 component, and notify the employer when an employee is not complying  
15 with the programs's treatment recommendations.

16 (b) The employer shall monitor job performance and conduct follow-  
17 up testing.

18 (3) An employer may terminate an employee for the following  
19 reasons:

20 (a) Refusal to submit to a drug or alcohol test;

21 (b) Refusal to agree to or failure to comply with the conditions of  
22 a last-chance agreement;

23 (c) A second verified positive drug or alcohol test result; or

24 (d) After the first verified positive drug or alcohol test, any  
25 violation of employer rules pertaining to alcohol and drugs.

26 (4) Nothing in this chapter limits the right of any employer who  
27 participates in the worker's compensation premium discount program  
28 under this chapter to terminate employment for any other reason.

29 NEW SECTION. **Sec. 208.** As part of a program established under  
30 this chapter, an employer shall provide all employees with an annual  
31 education program on substance abuse, in general, and its effects on  
32 the workplace, specifically. An employer with employees who have  
33 difficulty communicating in English shall make reasonable efforts to  
34 help the employees understand the substance of the education program.  
35 An education program for a minimum of one hour should include but is  
36 not limited to the following information:

- 1 (1) The explanation of the disease model of addiction for alcohol  
2 and drugs;
- 3 (2) The effects and dangers of the commonly abused substances in  
4 the workplace; and
- 5 (3) The employer's policies and procedures regarding substance  
6 abuse in the workplace and how employees who wish to obtain substance  
7 abuse treatment can do so.

8 NEW SECTION. **Sec. 209.** In addition to the education program  
9 provided in section 208 of this act, an employer shall provide all  
10 supervisory personnel with a minimum of two hours of supervisor  
11 training, that should include but is not limited to the following  
12 information:

- 13 (1) How to recognize signs of employee substance abuse;
- 14 (2) How to document and collaborate signs of employee substance  
15 abuse;
- 16 (3) How to refer employees to the employee assistance program or  
17 proper treatment providers; and
- 18 (4) Circumstances and procedures for postinjury testing.

19 NEW SECTION. **Sec. 210.** (1) A physician-patient relationship is  
20 not created between an employee or job applicant and an employer,  
21 medical review officer, or person performing or evaluating a drug or  
22 alcohol test solely by the establishment, implementation, or  
23 administration of a drug or alcohol testing program.

24 (2) This chapter may not be construed to prevent an employer from  
25 establishing reasonable work rules related to employee possession, use,  
26 sale, or solicitation of drugs, including convictions for drug-related  
27 offenses, and taking action based upon a violation of any of those  
28 rules.

29 (3) This chapter may not be construed to operate retroactively.  
30 This chapter does not abrogate the right of an employer under state or  
31 federal law to conduct drug or alcohol tests or implement employee drug  
32 or alcohol testing programs. However, only those programs that meet  
33 the criteria outlined in this chapter qualify for workers' compensation  
34 insurance premiums discounts.

35 (4) This chapter may not be construed to prohibit an employer from  
36 conducting medical screening or other tests required, permitted, or not

1 disallowed by a statute or rule for the purpose of monitoring exposure  
2 of employees to toxic or other unhealthy materials in the workplace or  
3 in the performance of job responsibilities. The screening or tests  
4 must be limited to testing for the specific material expressly  
5 identified in the statute or rule, unless prior written consent of the  
6 employee is obtained for other tests.

7 (5) This chapter does not establish a legal duty for employers to  
8 conduct alcohol or drug tests of employees or job applicants. A cause  
9 of action may not arise in favor of a person based upon the failure of  
10 an employer to establish or conduct a program or policy for substance  
11 abuse testing or to conduct a program or policy in conformance with the  
12 standards and procedures established in this chapter. This chapter  
13 does not create individual rights of action and may be enforced only by  
14 the department by denial of the workers' compensation premium discount  
15 provided in section 202 of this act.

16 NEW SECTION. **Sec. 211.** Confidentiality standards that apply to  
17 substance abuse testing programs implemented under this chapter include  
18 the following:

19 (1) Information, interviews, reports, statements, memoranda, and  
20 test results, written or otherwise, received through a substance abuse  
21 testing program are confidential communications, and may not be used or  
22 received in evidence, obtained in discovery, or disclosed in a civil or  
23 administrative proceeding, except as provided in subsection (5) of this  
24 section.

25 (2) An employer, laboratory, medical review officer, employee  
26 assistance program, drug or alcohol rehabilitation program, and their  
27 agents who receive or have access to information concerning test  
28 results shall keep the information confidential, except as provided in  
29 subsection (5) of this section.

30 (3) Any release of the information must be pursuant to a written  
31 consent form that complies with RCW 70.02.030 and is signed voluntarily  
32 by the person tested, unless the release is compelled by the division  
33 of alcohol and substance abuse of the department or a court of  
34 competent jurisdiction in accordance with state and federal  
35 confidentiality laws, or unless required by a professional or  
36 occupational licensing board in a related disciplinary proceeding. Any

1 disclosure by any agency approved by the department must be in  
2 accordance with RCW 70.96A.150. The consent form must contain at a  
3 minimum:

4 (a) The name of the person who is authorized to obtain the  
5 information;

6 (b) The purpose of the disclosure;

7 (c) The precise information to be disclosed;

8 (d) The duration of the consent; and

9 (e) The signature of the person authorizing release of the  
10 information.

11 (4) Information on test results may not be released or used in a  
12 criminal proceeding against the employee or job applicant. Information  
13 released contrary to this subsection is inadmissible as evidence in a  
14 criminal proceeding.

15 (5) Nothing in this chapter prohibits:

16 (a) An employer from using information concerning an employee or  
17 job applicant's substance abuse test results in a lawful manner with  
18 respect to that employee or applicant; or

19 (b) An entity that obtains the information from disclosing or using  
20 the information in a lawful manner as part of a matter relating to the  
21 substance abuse test, the test result, or an employer action with  
22 respect to the job applicant or employee.

23 NEW SECTION. **Sec. 212.** The department shall adopt by rule  
24 procedures and forms for the certification of employers who establish  
25 and maintain a drug-free workplace that complies with this chapter.  
26 The department shall adopt by rule procedures for the decertification  
27 of employers formally certified for the workers' compensation premium  
28 discount provided under this chapter. The department may charge a fee  
29 for the certification of a drug-free workplace program in an amount  
30 that must approximate its administrative costs related to the  
31 certification. Certification of an employer is required for each year  
32 in which a premium discount is granted. The department may adopt any  
33 other rules necessary for the implementation of this chapter.

34 NEW SECTION. **Sec. 213.** (1) The department of labor and industries  
35 may adopt rules necessary for the implementation of this chapter

1 including but not limited to provisions for penalties and repayment of  
2 premium discounts by employers that are decertified by the department  
3 of social and health services under section 212 of this act.

4 (2) The department of labor and industries shall conduct an  
5 evaluation of the effect of the premium discount provided for under  
6 section 202 of this act on workplace safety and the state of Washington  
7 industrial insurance fund. The department of labor and industries  
8 shall report its preliminary findings to the appropriate committees of  
9 the legislature on September 1st of 2007 and 2008 and shall issue a  
10 comprehensive final report on December 1, 2009.

11 NEW SECTION. **Sec. 214.** The department shall conduct an evaluation  
12 to determine the costs and benefits of the program under this chapter.  
13 If the department contracts for the performance of any or all of the  
14 evaluation, no more than ten percent of the contract amount may be used  
15 to cover indirect expenses. The department shall report its  
16 preliminary findings to the legislature on September 1st of 2007 and  
17 2008 and shall issue a comprehensive final report on December 1, 2009.

18 NEW SECTION. **Sec. 215.** Notwithstanding any other provisions of  
19 this chapter, the total premium discounts available under section 202  
20 of this act shall not exceed five million dollars during any fiscal  
21 year.

22 NEW SECTION. **Sec. 216.** Sections 201 through 215 of this act  
23 constitute a new chapter in Title 49 RCW.

### 24 **PART III**

#### 25 **CLEANUP OF CONTAMINATED PROPERTY**

26 **Sec. 301.** RCW 64.44.010 and 1999 c 292 s 2 are each amended to  
27 read as follows:

28 The words and phrases defined in this section shall have the  
29 following meanings when used in this chapter unless the context clearly  
30 indicates otherwise.

31 (1) "Authorized contractor" means a person who decontaminates,  
32 demolishes, or disposes of contaminated property as required by this

1 chapter who is certified by the department as provided for in RCW  
2 64.44.060.

3 (2) "Contaminated" or "contamination" means polluted by hazardous  
4 chemicals so that the property is unfit for human habitation or use due  
5 to immediate or long-term hazards. Property that at one time was  
6 contaminated but has been satisfactorily decontaminated according to  
7 procedures established by the state board of health is not  
8 "contaminated."

9 (3) "Department" means the department of health.

10 (4) "Hazardous chemicals" means the following substances (~~used~~  
11 ~~in~~) associated with the illegal manufacture of (illegal drugs)  
12 controlled substances: (a) Hazardous substances as defined in RCW  
13 70.105D.020(~~, and~~); (b) precursor substances as defined in RCW  
14 69.43.010 which the state board of health, in consultation with the  
15 state board of pharmacy, has determined present an immediate or long-  
16 term health hazard to humans; and (c) the controlled substance or  
17 substances being manufactured, as defined in RCW 69.50.101.

18 (~~(4)~~) (5) "Officer" means a local health officer authorized under  
19 chapters 70.05, 70.08, and 70.46 RCW.

20 (~~(5)~~) (6) "Property" means any real or personal property, (site,  
21 structure, or part of a structure which) or segregable part thereof,  
22 that is involved in or affected by the unauthorized manufacture,  
23 distribution, or storage of hazardous chemicals. This includes but is  
24 not limited to single-family residences, units of multiplexes,  
25 condominiums, apartment buildings, motels, hotels, boats, motor  
26 vehicles, trailers, manufactured housing, (or) any shop, booth,  
27 (or) garden, or storage shed, and all contents of the items  
28 referenced in this subsection.

29 **Sec. 302.** RCW 64.44.020 and 1999 c 292 s 3 are each amended to  
30 read as follows:

31 Whenever a law enforcement agency becomes aware that property has  
32 been contaminated by hazardous chemicals, that agency shall report the  
33 contamination to the local health officer. The local health officer  
34 shall (~~post~~) cause a posting of a written warning on the premises  
35 within one working day of notification of the contamination and shall  
36 inspect the property within fourteen days after receiving the notice of  
37 contamination. The warning shall inform the potential occupants that

1 hazardous chemicals may exist on, or have been removed from, the  
2 premises and that entry is unsafe. If a property owner believes that  
3 a tenant has contaminated property that was being leased or rented, and  
4 the property is vacated or abandoned, then the property owner shall  
5 contact the local health officer about the possible contamination.  
6 Local health officers or boards may charge property owners reasonable  
7 fees for inspections of suspected contaminated property requested by  
8 property owners.

9 A local health officer may enter, inspect, and survey at reasonable  
10 times any properties for which there are reasonable grounds to believe  
11 that the property has become contaminated. If the property is  
12 contaminated, the local health officer shall post a written notice  
13 declaring that the officer intends to issue an order prohibiting use of  
14 the property as long as the property is contaminated.

15 If access to the property is denied, a local health officer in  
16 consultation with law enforcement may seek a warrant for the purpose of  
17 conducting administrative inspections. A superior, district, or  
18 municipal court within the jurisdiction of the property may, based upon  
19 probable cause that the property is contaminated, issue warrants for  
20 the purpose of conducting administrative inspections.

21 Local health officers must report all cases of contaminated  
22 property to the state department of health. The department may make  
23 the list of contaminated properties available to health associations,  
24 landlord and realtor organizations, prosecutors, and other interested  
25 groups. The department shall promptly update the list of contaminated  
26 properties to remove those which have been decontaminated according to  
27 provisions of this chapter.

28 The local health officer may determine when the services of an  
29 authorized contractor are necessary.

30 **Sec. 303.** RCW 64.44.030 and 1999 c 292 s 4 are each amended to  
31 read as follows:

32 (1) If after the inspection of the property, the local health  
33 officer finds that it is contaminated, then the ((~~property shall be~~  
34 ~~found unfit for~~)) local health officer shall issue an order declaring  
35 the property unfit and prohibiting its use. The local health officer  
36 shall cause the order to be served ((~~an order prohibiting use~~)) either  
37 personally or by certified mail, with return receipt requested, upon

1 all occupants and persons having any interest therein as shown upon the  
2 records of the auditor's office of the county in which such property is  
3 located. The local health officer shall also (~~(post)~~) cause the order  
4 (~~(prohibiting use)~~) to be posted in a conspicuous place on the  
5 property. If the whereabouts of such persons is unknown and the same  
6 cannot be ascertained by the local health officer in the exercise of  
7 reasonable diligence, and the health officer makes an affidavit to that  
8 effect, then the serving of the order upon such persons may be made  
9 either by personal service or by mailing a copy of the order by  
10 certified mail, postage prepaid, return receipt requested, to each  
11 person at the address appearing on the last equalized tax assessment  
12 roll of the county where the property is located or at the address  
13 known to the county assessor, and the order shall be posted  
14 conspicuously at the residence. A copy of the order shall also be  
15 mailed, addressed to each person or party having a recorded right,  
16 title, estate, lien, or interest in the property. The order shall  
17 contain a notice that a hearing before the local health board or  
18 officer shall be held upon the request of a person required to be  
19 notified of the order under this section. The request for a hearing  
20 must be made within ten days of serving the order. The hearing shall  
21 then be held within not less than twenty days nor more than thirty days  
22 after the serving of the order. The officer shall prohibit use as long  
23 as the property is found to be contaminated. A copy of the order shall  
24 also be filed with the auditor of the county in which the property is  
25 located, where the order pertains to real property, and such filing of  
26 the complaint or order shall have the same force and effect as other  
27 lis pendens notices provided by law. In any hearing concerning whether  
28 property is fit for use, the property owner has the burden of showing  
29 that the property is decontaminated or fit for use. The owner or any  
30 person having an interest in the property may file an appeal on any  
31 order issued by the local health board or officer within thirty days  
32 from the date of service of the order with the appeals commission  
33 established pursuant to RCW 35.80.030. All proceedings before the  
34 appeals commission, including any subsequent appeals to superior court,  
35 shall be governed by the procedures established in chapter 35.80 RCW.

36 (2) If the local health officer determines immediate action is  
37 necessary to protect public health, safety, or the environment, the  
38 officer may issue or cause to be issued an emergency order, and any



1 person to whom such an order is directed shall comply immediately.  
2 Emergency orders issued pursuant to this section shall expire no later  
3 than seventy-two hours after issuance and shall not impair the health  
4 officer from seeking an order under subsection (1) of this section.

5 **Sec. 304.** RCW 64.44.040 and 1999 c 292 s 5 are each amended to  
6 read as follows:

7 (1) Upon issuance of an order declaring property unfit and  
8 prohibiting its use, the city or county in which the contaminated  
9 property is located may take action to prohibit use, occupancy, or  
10 removal of such property; condemn, decontaminate, or demolish the  
11 property; or ((to)) require that the property be vacated or the  
12 contents removed from the property. The city or county may use an  
13 authorized contractor if property is demolished, decontaminated, or  
14 removed under this section. The city, county, or contractor shall  
15 comply with all orders of the health officer during these processes.  
16 No city or county may condemn, decontaminate, or demolish property  
17 pursuant to this section until all procedures granting the right of  
18 notice and the opportunity to appeal in RCW 64.44.030 have been  
19 exhausted, but may prohibit use, occupancy, or removal of contaminated  
20 property pending appeal of the order.

21 (2)(a) It is unlawful for any person to enter upon any property, or  
22 to remove any property, that has been found unfit for use by a local  
23 health officer pursuant to RCW 64.44.030.

24 (b) This subsection does not apply to: (i) Health officials, law  
25 enforcement officials, or other government agents performing their  
26 official duties; (ii) authorized contractors or owners performing  
27 decontamination pursuant to authorization by the local health officer;  
28 and (iii) any person acting with permission of a local health officer,  
29 or of a superior court or hearing examiner following an appeal of a  
30 decision of the local health officer.

31 (c) Any person who violates this subsection is guilty of a  
32 misdemeanor.

33 (3) No provision of this section may be construed to limit the  
34 ability of the local health officer to permit occupants or owners of  
35 the property at issue to remove uncontaminated personal property from  
36 the premises.

1           **Sec. 305.** RCW 64.44.050 and 1999 c 292 s 6 are each amended to  
2 read as follows:

3           (1) An owner of contaminated property who desires to have the  
4 property decontaminated, demolished, or disposed of shall use the  
5 services of an authorized contractor unless otherwise authorized by the  
6 local health officer. The contractor and property owner shall prepare  
7 and submit a written work plan for decontamination, demolition, or  
8 disposal to the local health officer. The local health officer may  
9 charge a reasonable fee for review of the work plan. If the work plan  
10 is approved and the decontamination, demolition, or disposal is  
11 completed and the property is retested according to the plan and  
12 properly documented, then the health officer shall allow reuse of the  
13 property. A release for reuse document shall be recorded in the real  
14 property records indicating the property has been decontaminated,  
15 demolished, or disposed of in accordance with rules of the state  
16 department of health. The property owner is responsible for: (a) The  
17 costs of any property testing which may be required to demonstrate the  
18 presence or absence of hazardous chemicals; and (b) the costs of the  
19 property's decontamination, demolition, and disposal expenses, as well  
20 as costs incurred by the local health officer resulting from the  
21 enforcement of this chapter.

22           (2) The local health officer has thirty days from the issuance of  
23 an order declaring a property unfit and prohibiting its use to  
24 establish a reasonable timeline for decontamination. The department of  
25 health shall establish the factors to be considered by the local health  
26 officer in establishing the appropriate amount of time.

27           The local health officer shall notify the property owner of the  
28 proposed time frame by United States mail to the last known address.  
29 Notice shall be postmarked no later than the thirtieth day from the  
30 issuance of the order. The property owner may request a modification  
31 of the time frame by submitting a letter identifying the circumstances  
32 which justify such an extension to the local health officer within  
33 thirty-five days of the date of the postmark on the notification  
34 regardless of when received.

35           **Sec. 306.** RCW 64.44.060 and 1999 c 292 s 7 are each amended to  
36 read as follows:

37           (1) A contractor, supervisor, or worker may not perform

1 decontamination, demolition, or disposal work unless issued a  
2 certificate by the state department of health. The department shall  
3 establish performance standards for contractors, supervisors, and  
4 workers by rule in accordance with chapter 34.05 RCW, the  
5 administrative procedure act. The department shall train and test, or  
6 may approve courses to train and test, contractors, supervisors, and  
7 ~~((their employees))~~ workers on the essential elements in assessing  
8 property used as an illegal ~~((drug))~~ controlled substances  
9 manufacturing or storage site to determine hazard reduction measures  
10 needed, techniques for adequately reducing contaminants, use of  
11 personal protective equipment, methods for proper decontamination,  
12 demolition, removal, and disposal of contaminated property, and  
13 relevant federal and state regulations. Upon successful completion of  
14 the training, and after a background check, the contractor, supervisor,  
15 or ~~((employee))~~ worker shall be certified.

16 (2) The department may require the successful completion of annual  
17 refresher courses provided or approved by the department for the  
18 continued certification of the contractor or employee.

19 (3) The department shall provide for reciprocal certification of  
20 any individual trained to engage in decontamination, demolition, or  
21 disposal work in another state when the prior training is shown to be  
22 substantially similar to the training required by the department. The  
23 department may require such individuals to take an examination or  
24 refresher course before certification.

25 (4) The department may deny, suspend, ~~((or))~~ revoke, or place  
26 restrictions on a certificate for failure to comply with the  
27 requirements of this chapter or any rule adopted pursuant to this  
28 chapter. A certificate may be denied, suspended, ~~((or))~~ revoked, or  
29 have restrictions placed on it on any of the following grounds:

30 (a) Failing to perform decontamination, demolition, or disposal  
31 work under the supervision of trained personnel;

32 (b) Failing to perform decontamination, demolition, or disposal  
33 work using department of health certified decontamination personnel;

34 (c) Failing to file a work plan;

35 ~~((+e))~~ (d) Failing to perform work pursuant to the work plan;

36 ~~((+d))~~ (e) Failing to perform work that meets the requirements of  
37 the department and the requirements of the local health officers;

1        ~~((e) The certificate was obtained by error, misrepresentation, or~~  
2 ~~fraud; or))~~

3        (f) Failing to properly dispose of contaminated property;

4        (g) Committing fraud or misrepresentation in: (i) Applying for or  
5 obtaining a certification, recertification, or reinstatement; (ii)  
6 seeking approval of a work plan; and (iii) documenting completion of  
7 work to the department or local health officer;

8        (h) Failing the evaluation and inspection of decontamination  
9 projects pursuant to section 308 of this act; or

10        (i) If the person has been certified pursuant to RCW 74.20A.320 by  
11 the department of social and health services as a person who is not in  
12 compliance with a support order or a residential or visitation order.  
13 If the person has continued to meet all other requirements for  
14 reinstatement during the suspension, reissuance of the license or  
15 certificate shall be automatic upon the department's receipt of a  
16 release issued by the department of social and health services stating  
17 that the person is in compliance with the order.

18        (5) A contractor, supervisor, or worker who violates any provision  
19 of this chapter may be assessed a fine not to exceed five hundred  
20 dollars for each violation.

21        (6) The department of health shall prescribe fees as provided for  
22 in RCW 43.70.250 for: The issuance and renewal of certificates,  
23 conducting background checks of applicants, the administration of  
24 examinations, and ~~((f))~~ the review of training courses.

25        (7) The decontamination account is hereby established in the state  
26 treasury. All fees collected under this chapter shall be deposited in  
27 this account. Moneys in the account may only be spent after  
28 appropriation for costs incurred by the department in the  
29 administration and enforcement of this chapter.

30        **Sec. 307.** RCW 64.44.070 and 1999 c 292 s 8 are each amended to  
31 read as follows:

32        (1) The state board of health shall promulgate rules and standards  
33 for carrying out the provisions in this chapter in accordance with  
34 chapter 34.05 RCW, the administrative procedure act. The local board  
35 of health and the local health officer are authorized to exercise such  
36 powers as may be necessary to carry out this chapter. The department

1 shall provide technical assistance to local health boards and health  
2 officers to carry out their duties under this chapter.

3 (2) The department shall adopt rules for decontamination of a  
4 property used as ~~((an illegal drug))~~ a laboratory for the production of  
5 controlled substances and methods for the testing of porous and  
6 nonporous surfaces, ground water, surface water, soil, and septic tanks  
7 for contamination. The rules shall establish decontamination standards  
8 for hazardous chemicals, including but not limited to methamphetamine,  
9 lead, mercury, and total volatile organic compounds.

10 (3) The department shall adopt rules regarding independent third  
11 party sampling including those pertaining to:

12 (a) Verification of possible property contamination due to the  
13 illegal manufacture of controlled substances;

14 (b) Verification of satisfactory decontamination of property deemed  
15 contaminated and unfit for use;

16 (c) Certification of independent third party samplers;

17 (d) Qualifications and performance standards for independent third  
18 party samplers;

19 (e) Administration of background checks for third party sampler  
20 applicants; and

21 (f) The denial, suspension, or revocation of independent third  
22 party sampler certification.

23 (4) For the purposes of this section, an independent third party  
24 sampler is a person who is not an employee, agent, representative,  
25 partner, joint venturer, shareholder, or parent or subsidiary company  
26 of the authorized contractor, the authorized contractor's company, or  
27 the property owner.

28 NEW SECTION. Sec. 308. A new section is added to chapter 64.44  
29 RCW to read as follows:

30 The department may evaluate annually a number of the property  
31 decontamination projects performed by licensed contractors to determine  
32 the adequacy of the decontamination work, using the services of an  
33 independent environmental contractor or state or local agency. If a  
34 project fails the evaluation and inspection, the contractor is subject  
35 to a civil penalty and license suspension, pursuant to RCW 64.44.060

36 (4) and (5); and the contractor is prohibited from performing  
37 additional work until deficiencies have been corrected.



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

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

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

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

25 (d) If the offender is being sentenced for any firearm enhancements  
26 under (a), (b), and/or (c) of this subsection and the offender has  
27 previously been sentenced for any deadly weapon enhancements after July  
28 23, 1995, under (a), (b), and/or (c) of this subsection or subsection  
29 (4)(a), (b), and/or (c) of this section, or both, all firearm  
30 enhancements under this subsection shall be twice the amount of the  
31 enhancement listed;

32 (e) Notwithstanding any other provision of law, all firearm  
33 enhancements under this section are mandatory, shall be served in total  
34 confinement, and shall run consecutively to all other sentencing  
35 provisions, including other firearm or deadly weapon enhancements, for  
36 all offenses sentenced under this chapter. However, whether or not a  
37 mandatory minimum term has expired, an offender serving a sentence

1 under this subsection may be granted an extraordinary medical placement  
2 when authorized under RCW 9.94A.728(4);

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

8 (g) If the standard sentence range under this section exceeds the  
9 statutory maximum sentence for the offense, the statutory maximum  
10 sentence shall be the presumptive sentence unless the offender is a  
11 persistent offender. If the addition of a firearm enhancement  
12 increases the sentence so that it would exceed the statutory maximum  
13 for the offense, the portion of the sentence representing the  
14 enhancement may not be reduced.

15 (4) The following additional times shall be added to the standard  
16 sentence range for felony crimes committed after July 23, 1995, if the  
17 offender or an accomplice was armed with a deadly weapon other than a  
18 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
19 for one of the crimes listed in this subsection as eligible for any  
20 deadly weapon enhancements based on the classification of the completed  
21 felony crime. If the offender is being sentenced for more than one  
22 offense, the deadly weapon enhancement or enhancements must be added to  
23 the total period of confinement for all offenses, regardless of which  
24 underlying offense is subject to a deadly weapon enhancement. If the  
25 offender or an accomplice was armed with a deadly weapon other than a  
26 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
27 for an anticipatory offense under chapter 9A.28 RCW to commit one of  
28 the crimes listed in this subsection as eligible for any deadly weapon  
29 enhancements, the following additional times shall be added to the  
30 standard sentence range determined under subsection (2) of this section  
31 based on the felony crime of conviction as classified under RCW  
32 9A.28.020:

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

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



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

4 (d) If the offender is being sentenced under (a), (b), and/or (c)  
5 of this subsection for any deadly weapon enhancements and the offender  
6 has previously been sentenced for any deadly weapon enhancements after  
7 July 23, 1995, under (a), (b), and/or (c) of this subsection or  
8 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly  
9 weapon enhancements under this subsection shall be twice the amount of  
10 the enhancement listed;

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

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

24 (g) If the standard sentence range under this section exceeds the  
25 statutory maximum sentence for the offense, the statutory maximum  
26 sentence shall be the presumptive sentence unless the offender is a  
27 persistent offender. If the addition of a deadly weapon enhancement  
28 increases the sentence so that it would exceed the statutory maximum  
29 for the offense, the portion of the sentence representing the  
30 enhancement may not be reduced.

31 (5) The following additional times shall be added to the standard  
32 sentence range if the offender or an accomplice committed the offense  
33 while in a county jail or state correctional facility and the offender  
34 is being sentenced for one of the crimes listed in this subsection. If  
35 the offender or an accomplice committed one of the crimes listed in  
36 this subsection while in a county jail or state correctional facility,  
37 and the offender is being sentenced for an anticipatory offense under  
38 chapter 9A.28 RCW to commit one of the crimes listed in this

1 subsection, the following additional times shall be added to the  
2 standard sentence range determined under subsection (2) of this  
3 section:

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

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

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

9 For the purposes of this subsection, all of the real property of a  
10 state correctional facility or county jail shall be deemed to be part  
11 of that facility or county jail.

12 (6) An additional twenty-four months shall be added to the standard  
13 sentence range for any ranked offense involving a violation of chapter  
14 69.50 RCW if the offense was also a violation of RCW 69.50.435 or  
15 9.94A.605. All enhancements under this subsection shall run  
16 consecutively to all other sentencing provisions, for all offenses  
17 sentenced under this chapter.

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

22 **Sec. 402.** RCW 9.94A.660 and 2005 c 460 s 1 are each amended to  
23 read as follows:

24 (1) An offender is eligible for the special drug offender  
25 sentencing alternative if:

26 (a) The offender is convicted of a felony that is not a violent  
27 offense or sex offense and the violation does not involve a sentence  
28 enhancement under RCW 9.94A.533 (3) or (4);

29 (b) The offender has no current or prior convictions for a sex  
30 offense at any time or violent offense within ten years before  
31 conviction of the current offense, in this state, another state, or the  
32 United States;

33 (c) For a violation of the Uniform Controlled Substances Act under  
34 chapter 69.50 RCW or a criminal solicitation to commit such a violation  
35 under chapter 9A.28 RCW, the offense involved only a small quantity of  
36 the particular controlled substance as determined by the judge upon

1 consideration of such factors as the weight, purity, packaging, sale  
2 price, and street value of the controlled substance;

3 (d) The offender has not been found by the United States attorney  
4 general to be subject to a deportation detainer or order and does not  
5 become subject to a deportation order during the period of the  
6 sentence;

7 (e) The standard sentence range for the current offense is greater  
8 than one year; and

9 (f) The offender has not received a drug offender sentencing  
10 alternative more than once in the prior ten years before the current  
11 offense.

12 (2) A motion for a sentence under this section may be made by the  
13 court, the offender, or the state. If the sentencing court determines  
14 that the offender is eligible for this alternative, the court may order  
15 an examination of the offender. The examination shall, at a minimum,  
16 address the following issues:

17 (a) Whether the offender suffers from drug addiction;

18 (b) Whether the addiction is such that there is a probability that  
19 criminal behavior will occur in the future;

20 (c) Whether effective treatment for the offender's addiction is  
21 available from a provider that has been licensed or certified by the  
22 division of alcohol and substance abuse of the department of social and  
23 health services; and

24 (d) Whether the offender and the community will benefit from the  
25 use of the alternative.

26 (3) The examination report must contain:

27 (a) Information on the issues required to be addressed in  
28 subsection (2) of this section; and

29 (b) A proposed treatment plan that must, at a minimum, contain:

30 (i) A proposed treatment provider that has been licensed or  
31 certified by the division of alcohol and substance abuse of the  
32 department of social and health services;

33 (ii) The recommended frequency and length of treatment, including  
34 both residential chemical dependency treatment and treatment in the  
35 community;

36 (iii) A proposed monitoring plan, including any requirements  
37 regarding living conditions, lifestyle requirements, and monitoring by  
38 family members and others; and

1 (iv) Recommended crime-related prohibitions and affirmative  
2 conditions.

3 (4) After receipt of the examination report, if the court  
4 determines that a sentence under this section is appropriate, the court  
5 shall waive imposition of a sentence within the standard sentence range  
6 and impose a sentence consisting of either a prison-based alternative  
7 under subsection (5) of this section or a residential chemical  
8 dependency treatment-based alternative under subsection (6) of this  
9 section. The residential chemical dependency treatment-based  
10 alternative is only available if the midpoint of the standard range is  
11 twenty-four months or less.

12 (5) The prison-based alternative shall include:

13 (a) A period of total confinement in a state facility for one-half  
14 of the midpoint of the standard sentence range or twelve months,  
15 whichever is greater. During incarceration in the state facility,  
16 offenders sentenced under this subsection shall undergo a comprehensive  
17 substance abuse assessment and receive, within available resources,  
18 treatment services appropriate for the offender. The treatment  
19 services shall be designed by the division of alcohol and substance  
20 abuse of the department of social and health services, in cooperation  
21 with the department of corrections;

22 (b) The remainder of the midpoint of the standard range as a term  
23 of community custody which must include appropriate substance abuse  
24 treatment in a program that has been approved by the division of  
25 alcohol and substance abuse of the department of social and health  
26 services. If the department finds that conditions have been willfully  
27 violated, the offender may be reclassified to serve the remaining  
28 balance of the original sentence. An offender who fails to complete  
29 the program or who is administratively terminated from the program  
30 shall be reclassified to serve the unexpired term of his or her  
31 sentence as ordered by the sentencing court;

32 (c) Crime-related prohibitions including a condition not to use  
33 illegal controlled substances;

34 (d) A requirement to submit to urinalysis or other testing to  
35 monitor that status; and

36 (e) A term of community custody pursuant to RCW 9.94A.715 to be  
37 imposed upon failure to complete or administrative termination from the  
38 special drug offender sentencing alternative program.

1 (6) The residential chemical dependency treatment-based alternative  
2 shall include:

3 (a) A term of community custody equal to one-half of the midpoint  
4 of the standard sentence range or two years, whichever is greater,  
5 conditioned on the offender entering and remaining in residential  
6 chemical dependency treatment certified under chapter 70.96A RCW for a  
7 period set by the court between three and six months. If the court  
8 imposes a term of community custody, the department shall, within  
9 available resources, make chemical dependency assessment and treatment  
10 services available to the offender during the term of community  
11 custody. The court shall impose, as conditions of community custody,  
12 treatment and other conditions as proposed in the plan under subsection  
13 (3)(b) of this section. The department may impose conditions and  
14 sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7),  
15 9.94A.737, and 9.94A.740. The court shall schedule a progress hearing  
16 during the period of residential chemical dependency treatment, and  
17 schedule a treatment termination hearing for three months before the  
18 expiration of the term of community custody;

19 (b) Before the progress hearing and treatment termination hearing,  
20 the treatment provider and the department shall submit written reports  
21 to the court and parties regarding the offender's compliance with  
22 treatment and monitoring requirements, and recommendations regarding  
23 termination from treatment. At the hearing, the court may:

24 (i) Authorize the department to terminate the offender's community  
25 custody status on the expiration date determined under (a) of this  
26 subsection; or

27 (ii) Continue the hearing to a date before the expiration date of  
28 community custody, with or without modifying the conditions of  
29 community custody; or

30 (iii) Impose a term of total confinement equal to one-half the  
31 midpoint of the standard sentence range, followed by a term of  
32 community custody under RCW 9.94A.715;

33 (c) If the court imposes a term of total confinement under (b)(iii)  
34 of this subsection, the department shall, within available resources,  
35 make chemical dependency assessment and treatment services available to  
36 the offender during the terms of total confinement and community  
37 custody.

1 (7) If the court imposes a sentence under this section, the court  
2 may prohibit the offender from using alcohol or controlled substances  
3 and may require that the monitoring for controlled substances be  
4 conducted by the department or by a treatment alternatives to street  
5 crime program or a comparable court or agency-referred program. The  
6 offender may be required to pay thirty dollars per month while on  
7 community custody to offset the cost of monitoring. In addition, the  
8 court may impose any of the following conditions:

9 (a) Devote time to a specific employment or training;

10 (b) Remain within prescribed geographical boundaries and notify the  
11 court or the community corrections officer before any change in the  
12 offender's address or employment;

13 (c) Report as directed to a community corrections officer;

14 (d) Pay all court-ordered legal financial obligations;

15 (e) Perform community restitution work;

16 (f) Stay out of areas designated by the sentencing court;

17 (g) Such other conditions as the court may require such as  
18 affirmative conditions.

19 (8)(a) The court may bring any offender sentenced under this  
20 section back into court at any time on its own initiative to evaluate  
21 the offender's progress in treatment or to determine if any violations  
22 of the conditions of the sentence have occurred.

23 (b) If the offender is brought back to court, the court may modify  
24 the terms of the community custody or impose sanctions under (c) of  
25 this subsection.

26 (c) The court may order the offender to serve a term of total  
27 confinement within the standard range of the offender's current offense  
28 at any time during the period of community custody if the offender  
29 violates the conditions of the sentence or if the offender is failing  
30 to make satisfactory progress in treatment.

31 (d) An offender ordered to serve a term of total confinement under  
32 (c) of this subsection shall receive credit for any time previously  
33 served under this section.

34 (9) If an offender sentenced to the prison-based alternative under  
35 subsection (5) of this section is found by the United States attorney  
36 general to be subject to a deportation order, a hearing shall be held  
37 by the department unless waived by the offender, and, if the department  
38 finds that the offender is subject to a valid deportation order, the

1 department may administratively terminate the offender from the program  
2 and reclassify the offender to serve the remaining balance of the  
3 original sentence.

4 (10) An offender sentenced under this section shall be subject to  
5 all rules relating to earned release time with respect to any period  
6 served in total confinement.

7 (11) Costs of examinations and preparing treatment plans under  
8 subsections (2) and (3) of this section may be paid, at the option of  
9 the county, from funds provided to the county from the criminal justice  
10 treatment account under RCW 70.96A.350.

11 **Sec. 403.** RCW 9.94A.500 and 2000 c 75 s 8 are each amended to read  
12 as follows:

13 (1) Before imposing a sentence upon a defendant, the court shall  
14 conduct a sentencing hearing. The sentencing hearing shall be held  
15 within forty court days following conviction. Upon the motion of  
16 either party for good cause shown, or on its own motion, the court may  
17 extend the time period for conducting the sentencing hearing.

18 Except in cases where the defendant shall be sentenced to a term of  
19 total confinement for life without the possibility of release or, when  
20 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
21 first degree, sentenced to death, the court may order the department to  
22 complete a risk assessment report. If available before sentencing, the  
23 report shall be provided to the court.

24 Unless specifically waived by the court, the court shall order the  
25 department to complete a chemical dependency screening report before  
26 imposing a sentence upon a defendant who has been convicted of a  
27 violation of the uniform controlled substances act under chapter 69.50  
28 RCW (~~(9A.28)~~), a criminal solicitation to commit such a violation under  
29 chapter 9A.28 RCW, or any felony where the court finds that the  
30 offender has a chemical dependency that has contributed to his or her  
31 offense. In addition, the court shall, at the time of plea or  
32 conviction, order the department to complete a presentence report  
33 before imposing a sentence upon a defendant who has been convicted of  
34 a felony sexual offense. The department of corrections shall give  
35 priority to presentence investigations for sexual offenders. If the  
36 court determines that the defendant may be a mentally ill person as  
37 defined in RCW 71.24.025, although the defendant has not established

1 that at the time of the crime he or she lacked the capacity to commit  
2 the crime, was incompetent to commit the crime, or was insane at the  
3 time of the crime, the court shall order the department to complete a  
4 presentence report before imposing a sentence.

5 The court shall consider the risk assessment report and presentence  
6 reports, if any, including any victim impact statement and criminal  
7 history, and allow arguments from the prosecutor, the defense counsel,  
8 the offender, the victim, the survivor of the victim, or a  
9 representative of the victim or survivor, and an investigative law  
10 enforcement officer as to the sentence to be imposed.

11 If the court is satisfied by a preponderance of the evidence that  
12 the defendant has a criminal history, the court shall specify the  
13 convictions it has found to exist. All of this information shall be  
14 part of the record. Copies of all risk assessment reports and  
15 presentence reports presented to the sentencing court and all written  
16 findings of facts and conclusions of law as to sentencing entered by  
17 the court shall be sent to the department by the clerk of the court at  
18 the conclusion of the sentencing and shall accompany the offender if  
19 the offender is committed to the custody of the department. Court  
20 clerks shall provide, without charge, certified copies of documents  
21 relating to criminal convictions requested by prosecuting attorneys.

22 (2) To prevent wrongful disclosure of information related to mental  
23 health services, as defined in RCW 71.05.445 and ~~((71.34.225))~~  
24 71.34.345, a court may take only those steps necessary during a  
25 sentencing hearing or any hearing in which the department presents  
26 information related to mental health services to the court. The steps  
27 may be taken on motion of the defendant, the prosecuting attorney, or  
28 on the court's own motion. The court may seal the portion of the  
29 record relating to information relating to mental health services,  
30 exclude the public from the hearing during presentation or discussion  
31 of information relating to mental health services, or grant other  
32 relief to achieve the result intended by this subsection, but nothing  
33 in this subsection shall be construed to prevent the subsequent release  
34 of information related to mental health services as authorized by RCW  
35 71.05.445, ~~((71.34.225))~~ 71.34.345, or 72.09.585. Any person who  
36 otherwise is permitted to attend any hearing pursuant to chapter 7.69  
37 or 7.69A RCW shall not be excluded from the hearing solely because the



1 department intends to disclose or discloses information related to  
2 mental health services.

3 NEW SECTION. **Sec. 404.** The Washington institute for public policy  
4 shall conduct a study of criminal sentencing provisions of neighboring  
5 states for all crimes involving methamphetamine. The institute shall  
6 report to the legislature on any criminal sentencing increases  
7 necessary under Washington law to reduce or remove any incentives  
8 methamphetamine traffickers and manufacturers may have to locate in  
9 Washington. The report shall be completed by January 1, 2007.

10 NEW SECTION. **Sec. 405.** The Washington institute for public policy  
11 shall conduct a study of the drug offender sentencing alternative. The  
12 institute shall study recidivism rates for offenders who received  
13 substance abuse treatment while in confinement as compared to offenders  
14 who received treatment in the community or received no treatment. The  
15 institute shall report to the legislature by January 1, 2007.

16 **PART V**  
17 **MISCELLANEOUS**

18 NEW SECTION. **Sec. 501.** Part headings used in this act are no part  
19 of the law.

20 NEW SECTION. **Sec. 502.** If specific funding for the purposes of  
21 section 113 of this act, referencing this act and section 113 of this  
22 act by bill or chapter number and section number, is not provided by  
23 June 30, 2006, in the omnibus appropriations act, section 113 of this  
24 act is null and void.

25 NEW SECTION. **Sec. 503.** Section 109 of this act expires January 1,  
26 2007.

27 NEW SECTION. **Sec. 504.** Sections 110 and 111 of this act take  
28 effect January 1, 2007."

1           On page 1, line 2 of the title, after "methamphetamine;" strike the  
2 remainder of the title and insert "amending RCW 2.28.170, 26.44.020,  
3 26.44.020, 26.44.195, 74.34.020, 64.44.010, 64.44.020, 64.44.030,  
4 64.44.040, 64.44.050, 64.44.060, 64.44.070, 9.94A.533, 9.94A.660, and  
5 9.94A.500; adding a new section to chapter 70.96A RCW; adding a new  
6 section to chapter 72.09 RCW; adding a new section to chapter 64.44  
7 RCW; adding a new chapter to Title 49 RCW; creating new sections;  
8 prescribing penalties; providing an effective date; and providing  
9 expiration dates."

--- END ---