

E2SHB 2712 - S COMM AMD
By Committee on Ways & Means

ADOPTED AND ENGROSSED 03/07/08

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

3 "PART I

4 NEAR-TERM RELIEF FOR 2008

5 Washington Association Of Sheriffs And Police
6 Chiefs Grant Program To Communities

7 NEW SECTION. **Sec. 101.** A new section is added to chapter 36.28A
8 RCW to read as follows:

9 (1) When funded, the Washington association of sheriffs and police
10 chiefs shall establish a grant program to assist local law enforcement
11 agencies in the support of special enforcement emphasis targeting gang
12 crime. Grant applications shall be reviewed and awarded through peer
13 review panels. Grant applicants are encouraged to utilize
14 multijurisdictional efforts.

15 (2) Each grant applicant shall:

16 (a) Show a significant gang problem in the jurisdiction or
17 jurisdictions receiving the grant;

18 (b) Verify that grant awards are sufficient to cover increased
19 investigation, prosecution, and jail costs;

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

22 (d) Demonstrate community coordination focusing on prevention,
23 intervention, and suppression; and

24 (e) Collect data on performance pursuant to section 103 of this
25 act.

26 (3) The cost of administering the grants shall not exceed sixty
27 thousand dollars, or four percent of appropriated funding, whichever is
28 greater.

1 **Graffiti/Tagging Abatement Grant**

2 NEW SECTION. **Sec. 102.** A new section is added to chapter 36.28A
3 RCW to read as follows:

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

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

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

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

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

16 (d) Show how the local citizens and business owners of the
17 community will benefit from the proposed graffiti or tagging abatement
18 process being presented in the grant application; and

19 (e) Collect data on performance pursuant to section 103 of this
20 act.

21 (3) The cost of administering the grants shall not exceed
22 twenty-five thousand dollars, or four percent of funding, whichever is
23 greater.

24 NEW SECTION. **Sec. 103.** A new section is added to chapter 36.28A
25 RCW to read as follows:

26 For the grant programs created in sections 101 and 102 of this act
27 and within the funds provided for these programs, the Washington
28 association of sheriffs and police chiefs shall, upon consultation with
29 the Washington state institute for public policy, identify performance
30 measures, periodic reporting requirements, data needs, and a framework
31 for evaluating the effectiveness of grant programs in graffiti and
32 tagging abatement and reducing gang crime.

33 **PART II**

34 **STATEWIDE GANG INFORMATION DATABASE**

1 if: (a) No new or updated information has been entered into the
2 database within the previous five years; (b) there are no pending
3 criminal charges against such person in any court in this state or
4 another state or in any federal court; (c) the person has not been
5 convicted of a new crime in this state, another state, or federal court
6 within the last five years; and (d) it has been five years since the
7 person completed his or her term of total confinement.

8 (7) Each law enforcement and criminal justice agency using the
9 database is required to:

10 (a) Identify a system administrator that is responsible for
11 annually auditing the use of the system within his or her respective
12 agency to ensure agency compliance with policies established for the
13 use of the database;

14 (b) Ensure that all users of the database receive training on the
15 use of the database before granting the users access to the database;

16 (c) Ensure that any information entered into the database relates
17 to a criminal street gang associate or gang member who is twelve years
18 old or older;

19 (d) Annually produce a gang threat assessment report including
20 available data sources such as uniform crime reports, record management
21 systems, and entries into the statewide gang database. Local public
22 schools shall also be encouraged to provide data to the local gang
23 threat assessment report.

24 (8) The database and all contents in the database are confidential
25 and exempt from public disclosure under chapter 42.56 RCW.

26 (9) Any public employee or public agency as defined in RCW
27 4.24.470, or units of local government and its employees, as provided
28 in RCW 36.28A.010, and the Washington association of sheriffs and
29 police chiefs and its employees are immune from civil liability for
30 damages arising from incidents involving a person who has been included
31 in the database, unless it is shown that an employee acted with gross
32 negligence or bad faith.

33 **Sec. 202.** RCW 42.56.240 and 2005 c 274 s 404 are each amended to
34 read as follows:

35 The following investigative, law enforcement, and crime victim
36 information is exempt from public inspection and copying under this
37 chapter:

1 (1) Specific intelligence information and specific investigative
2 records compiled by investigative, law enforcement, and penology
3 agencies, and state agencies vested with the responsibility to
4 discipline members of any profession, the nondisclosure of which is
5 essential to effective law enforcement or for the protection of any
6 person's right to privacy;

7 (2) Information revealing the identity of persons who are witnesses
8 to or victims of crime or who file complaints with investigative, law
9 enforcement, or penology agencies, other than the commission, if
10 disclosure would endanger any person's life, physical safety, or
11 property. If at the time a complaint is filed the complainant, victim,
12 or witness indicates a desire for disclosure or nondisclosure, such
13 desire shall govern. However, all complaints filed with the commission
14 about any elected official or candidate for public office must be made
15 in writing and signed by the complainant under oath;

16 (3) Any records of investigative reports prepared by any state,
17 county, municipal, or other law enforcement agency pertaining to sex
18 offenses contained in chapter 9A.44 RCW or sexually violent offenses as
19 defined in RCW 71.09.020, which have been transferred to the Washington
20 association of sheriffs and police chiefs for permanent electronic
21 retention and retrieval pursuant to RCW 40.14.070(2)(b);

22 (4) License applications under RCW 9.41.070; copies of license
23 applications or information on the applications may be released to law
24 enforcement or corrections agencies; (~~and~~)

25 (5) Information revealing the identity of child victims of sexual
26 assault who are under age eighteen. Identifying information means the
27 child victim's name, address, location, photograph, and in cases in
28 which the child victim is a relative or stepchild of the alleged
29 perpetrator, identification of the relationship between the child and
30 the alleged perpetrator; and

31 (6) The statewide gang database referenced in section 201 of this
32 act.

33 **PART III**

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

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

1 **Sec. 301.** RCW 9.94A.533 and 2007 c 368 s 9 are each amended to
2 read as follows:

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

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

11 (3) The following additional times shall be added to the standard
12 sentence range for felony crimes committed after July 23, 1995, if the
13 offender or an accomplice was armed with a firearm as defined in RCW
14 9.41.010 and the offender is being sentenced for one of the crimes
15 listed in this subsection as eligible for any firearm enhancements
16 based on the classification of the completed felony crime. If the
17 offender is being sentenced for more than one offense, the firearm
18 enhancement or enhancements must be added to the total period of
19 confinement for all offenses, regardless of which underlying offense is
20 subject to a firearm enhancement. If the offender or an accomplice was
21 armed with a firearm as defined in RCW 9.41.010 and the offender is
22 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
23 commit one of the crimes listed in this subsection as eligible for any
24 firearm enhancements, the following additional times shall be added to
25 the standard sentence range determined under subsection (2) of this
26 section based on the felony crime of conviction as classified under RCW
27 9A.28.020:

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

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

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

37 (d) If the offender is being sentenced for any firearm enhancements
38 under (a), (b), and/or (c) of this subsection and the offender has

1 previously been sentenced for any deadly weapon enhancements after July
2 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
3 (4)(a), (b), and/or (c) of this section, or both, all firearm
4 enhancements under this subsection shall be twice the amount of the
5 enhancement listed;

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

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

19 (g) If the standard sentence range under this section exceeds the
20 statutory maximum sentence for the offense, the statutory maximum
21 sentence shall be the presumptive sentence unless the offender is a
22 persistent offender. If the addition of a firearm enhancement
23 increases the sentence so that it would exceed the statutory maximum
24 for the offense, the portion of the sentence representing the
25 enhancement may not be reduced.

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

1 the crimes listed in this subsection as eligible for any deadly weapon
2 enhancements, the following additional times shall be added to the
3 standard sentence range determined under subsection (2) of this section
4 based on the felony crime of conviction as classified under RCW
5 9A.28.020:

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

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

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

15 (d) If the offender is being sentenced under (a), (b), and/or (c)
16 of this subsection for any deadly weapon enhancements and the offender
17 has previously been sentenced for any deadly weapon enhancements after
18 July 23, 1995, under (a), (b), and/or (c) of this subsection or
19 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
20 weapon enhancements under this subsection shall be twice the amount of
21 the enhancement listed;

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

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

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

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

4 (5) The following additional times shall be added to the standard
5 sentence range if the offender or an accomplice committed the offense
6 while in a county jail or state correctional facility and the offender
7 is being sentenced for one of the crimes listed in this subsection. If
8 the offender or an accomplice committed one of the crimes listed in
9 this subsection while in a county jail or state correctional facility,
10 and the offender is being sentenced for an anticipatory offense under
11 chapter 9A.28 RCW to commit one of the crimes listed in this
12 subsection, the following additional times shall be added to the
13 standard sentence range determined under subsection (2) of this
14 section:

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

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

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

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

23 (6) An additional twenty-four months shall be added to the standard
24 sentence range for any ranked offense involving a violation of chapter
25 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
26 9.94A.605. All enhancements under this subsection shall run
27 consecutively to all other sentencing provisions, for all offenses
28 sentenced under this chapter.

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

33 (8)(a) The following additional times shall be added to the
34 standard sentence range for felony crimes committed on or after July 1,
35 2006, if the offense was committed with sexual motivation, as that term
36 is defined in RCW 9.94A.030. If the offender is being sentenced for
37 more than one offense, the sexual motivation enhancement must be added
38 to the total period of total confinement for all offenses, regardless

1 of which underlying offense is subject to a sexual motivation
2 enhancement. If the offender committed the offense with sexual
3 motivation and the offender is being sentenced for an anticipatory
4 offense under chapter 9A.28 RCW, the following additional times shall
5 be added to the standard sentence range determined under subsection (2)
6 of this section based on the felony crime of conviction as classified
7 under RCW 9A.28.020:

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

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

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

16 (iv) If the offender is being sentenced for any sexual motivation
17 enhancements under (i), (ii), and/or (iii) of this subsection and the
18 offender has previously been sentenced for any sexual motivation
19 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
20 this subsection, all sexual motivation enhancements under this
21 subsection shall be twice the amount of the enhancement listed;

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

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

32 (d) If the standard sentence range under this subsection exceeds
33 the statutory maximum sentence for the offense, the statutory maximum
34 sentence shall be the presumptive sentence unless the offender is a
35 persistent offender. If the addition of a sexual motivation
36 enhancement increases the sentence so that it would exceed the
37 statutory maximum for the offense, the portion of the sentence
38 representing the enhancement may not be reduced;

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

4 (f) Nothing in this subsection prevents a sentencing court from
5 imposing a sentence outside the standard sentence range pursuant to RCW
6 9.94A.535.

7 (9) An additional one-year enhancement shall be added to the
8 standard sentence range for the felony crimes of RCW 9A.44.073,
9 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
10 or after July 22, 2007, if the offender engaged, agreed, or offered to
11 engage the victim in the sexual conduct in return for a fee. If the
12 offender is being sentenced for more than one offense, the one-year
13 enhancement must be added to the total period of total confinement for
14 all offenses, regardless of which underlying offense is subject to the
15 enhancement. If the offender is being sentenced for an anticipatory
16 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
17 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
18 solicited another, or conspired to engage, agree, or offer to engage
19 the victim in (~~{the}~~) the sexual conduct in return for a fee, an
20 additional one-year enhancement shall be added to the standard sentence
21 range determined under subsection (2) of this section. For purposes of
22 this subsection, "sexual conduct" means sexual intercourse or sexual
23 contact, both as defined in chapter 9A.44 RCW.

24 (10)(a) For a person age eighteen or older convicted of any
25 criminal street gang-related felony offense for which the person
26 compensated, threatened, or solicited a minor in order to involve the
27 minor in the commission of the felony offense, the standard sentence
28 range is determined by locating the sentencing grid sentence range
29 defined by the appropriate offender score and the seriousness level of
30 the completed crime, and multiplying the range by one hundred twenty-
31 five percent. If the standard sentence range under this subsection
32 exceeds the statutory maximum sentence for the offense, the statutory
33 maximum sentence is the presumptive sentence unless the offender is a
34 persistent offender.

35 (b) This subsection does not apply to any criminal street gang-
36 related felony offense for which involving a minor in the commission of
37 the felony offense is an element of the offense.

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

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

9 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

24 (e) The defendant's capacity to appreciate the wrongfulness of his
25 or her conduct, or to conform his or her conduct to the requirements of
26 the law, was significantly impaired. Voluntary use of drugs or alcohol
27 is excluded.

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

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

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

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

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

3 (a) The defendant and the state both stipulate that justice is best
4 served by the imposition of an exceptional sentence outside the
5 standard range, and the court finds the exceptional sentence to be
6 consistent with and in furtherance of the interests of justice and the
7 purposes of the sentencing reform act.

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

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

15 (d) The failure to consider the defendant's prior criminal history
16 which was omitted from the offender score calculation pursuant to RCW
17 9.94A.525 results in a presumptive sentence that is clearly too
18 lenient.

19 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
20 the Court

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

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

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

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

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

34 (i) The current offense involved multiple victims or multiple
35 incidents per victim;

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

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

3 (iv) The defendant used his or her position of trust, confidence,
4 or fiduciary responsibility to facilitate the commission of the current
5 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (i) The offense resulted in the pregnancy of a child victim of
6 rape.

7 (j) The defendant knew that the victim of the current offense was
8 a youth who was not residing with a legal custodian and the defendant
9 established or promoted the relationship for the primary purpose of
10 victimization.

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

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

17 (m) The offense involved a high degree of sophistication or
18 planning.

19 (n) The defendant used his or her position of trust, confidence, or
20 fiduciary responsibility to facilitate the commission of the current
21 offense.

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

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

25 (q) The defendant demonstrated or displayed an egregious lack of
26 remorse.

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

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

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

34 (u) The current offense is a burglary and the victim of the
35 burglary was present in the building or residence when the crime was
36 committed.

37 (v) The offense was committed against a law enforcement officer who
38 was performing his or her official duties at the time of the offense,

1 the offender knew that the victim was a law enforcement officer, and
2 the victim's status as a law enforcement officer is not an element of
3 the offense.

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

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

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

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

19 (ii) For purposes of this subsection, "metal property" means
20 commercial metal property or nonferrous metal property, as defined in
21 RCW 19.290.010.

22 (aa) The defendant committed the offense with the intent to
23 directly or indirectly cause any benefit, aggrandizement, gain, profit,
24 or other advantage to or for a criminal street gang as defined in RCW
25 9.94A.030, its reputation, influence, or membership.

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

27 **Sec. 304.** RCW 9.94A.545 and 2006 c 128 s 4 are each amended to
28 read as follows:

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

1 as of the date of sentencing. However, during the time for which the
2 offender is in total or partial confinement pursuant to the sentence or
3 a violation of the sentence, the period of community custody shall
4 toll.

5 (2)(a) If the offender is guilty of failure to register under RCW
6 9A.44.130(~~(+10+)~~) (11)(a), the court shall impose a term of community
7 custody under RCW 9.94A.715.

8 (b) If the offender is a criminal street gang associate or member
9 and is found guilty of unlawful possession of a firearm under RCW
10 9.41.040, the court shall impose a term of community custody under RCW
11 9.94A.715.

12 (c) In a criminal case in which there has been a special
13 allegation, the state shall prove by a preponderance of the evidence
14 that the accused is a criminal street gang member or associate as
15 defined in RCW 9.94A.030 and has committed the crime of unlawful
16 possession of a firearm. The court shall make a finding of fact of
17 whether or not the accused was a criminal street gang member or
18 associate at the time of the commission of the crime, or if a jury
19 trial is had, the jury shall, if it finds the defendant guilty, also
20 find a special verdict as to whether or not the accused was a criminal
21 street gang member or associate during the commission of the crime.

22 **Sec. 305.** RCW 9.94A.715 and 2006 c 130 s 2 and 2006 c 128 s 5 are
23 each reenacted and amended to read as follows:

24 (1) When a court sentences a person to the custody of the
25 department for a sex offense not sentenced under RCW 9.94A.712, a
26 violent offense, any crime against persons under RCW 9.94A.411(2), an
27 offense involving the unlawful possession of a firearm under RCW
28 9.41.040, where the offender is a criminal street gang member or
29 associate, or a felony offense under chapter 69.50 or 69.52 RCW,
30 committed on or after July 1, 2000, or when a court sentences a person
31 to a term of confinement of one year or less for a violation of RCW
32 9A.44.130(~~(+10+)~~) (11)(a) committed on or after June 7, 2006, the court
33 shall in addition to the other terms of the sentence, sentence the
34 offender to community custody for the community custody range
35 established under RCW 9.94A.850 or up to the period of earned release
36 awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer.
37 The community custody shall begin: (a) Upon completion of the term of

1 confinement; (b) at such time as the offender is transferred to
2 community custody in lieu of earned release in accordance with RCW
3 9.94A.728 (1) and (2); or (c) with regard to offenders sentenced under
4 RCW 9.94A.660, upon failure to complete or administrative termination
5 from the special drug offender sentencing alternative program. Except
6 as provided in RCW 9.94A.501, the department shall supervise any
7 sentence of community custody imposed under this section.

8 (2)(a) Unless a condition is waived by the court, the conditions of
9 community custody shall include those provided for in RCW 9.94A.700(4).
10 The conditions may also include those provided for in RCW 9.94A.700(5).
11 The court may also order the offender to participate in rehabilitative
12 programs or otherwise perform affirmative conduct reasonably related to
13 the circumstances of the offense, the offender's risk of reoffending,
14 or the safety of the community, and the department shall enforce such
15 conditions pursuant to subsection (6) of this section.

16 (b) As part of any sentence that includes a term of community
17 custody imposed under this subsection, the court shall also require the
18 offender to comply with any conditions imposed by the department under
19 RCW 9.94A.720. The department shall assess the offender's risk of
20 reoffense and may establish and modify additional conditions of the
21 offender's community custody based upon the risk to community safety.
22 In addition, the department may require the offender to participate in
23 rehabilitative programs, or otherwise perform affirmative conduct, and
24 to obey all laws. The department may impose electronic monitoring as
25 a condition of community custody for an offender sentenced to a term of
26 community custody under this section pursuant to a conviction for a sex
27 offense. Within the resources made available by the department for
28 this purpose, the department shall carry out any electronic monitoring
29 imposed under this section using the most appropriate technology given
30 the individual circumstances of the offender. As used in this section,
31 "electronic monitoring" means the monitoring of an offender using an
32 electronic offender tracking system including, but not limited to, a
33 system using radio frequency or active or passive global positioning
34 system technology.

35 (c) The department may not impose conditions that are contrary to
36 those ordered by the court and may not contravene or decrease court
37 imposed conditions. The department shall notify the offender in

1 writing of any such conditions or modifications. In setting,
2 modifying, and enforcing conditions of community custody, the
3 department shall be deemed to be performing a quasi-judicial function.

4 (3) If an offender violates conditions imposed by the court or the
5 department pursuant to this section during community custody, the
6 department may transfer the offender to a more restrictive confinement
7 status and impose other available sanctions as provided in RCW
8 9.94A.737 and 9.94A.740.

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

14 (5) At any time prior to the completion or termination of a sex
15 offender's term of community custody, if the court finds that public
16 safety would be enhanced, the court may impose and enforce an order
17 extending any or all of the conditions imposed pursuant to this section
18 for a period up to the maximum allowable sentence for the crime as it
19 is classified in chapter 9A.20 RCW, regardless of the expiration of the
20 offender's term of community custody. If a violation of a condition
21 extended under this subsection occurs after the expiration of the
22 offender's term of community custody, it shall be deemed a violation of
23 the sentence for the purposes of RCW 9.94A.631 and may be punishable as
24 contempt of court as provided for in RCW 7.21.040. If the court
25 extends a condition beyond the expiration of the term of community
26 custody, the department is not responsible for supervision of the
27 offender's compliance with the condition.

28 (6) Within the funds available for community custody, the
29 department shall determine conditions and duration of community custody
30 on the basis of risk to community safety, and shall supervise offenders
31 during community custody on the basis of risk to community safety and
32 conditions imposed by the court. The secretary shall adopt rules to
33 implement the provisions of this subsection.

34 (7) By the close of the next business day after receiving notice of
35 a condition imposed or modified by the department, an offender may
36 request an administrative review under rules adopted by the department.
37 The condition shall remain in effect unless the reviewing officer finds

1 that it is not reasonably related to any of the following: (a) The
2 crime of conviction; (b) the offender's risk of reoffending; or (c) the
3 safety of the community.

4 **Making Subsequent Convictions Of Malicious Mischief 3 A Gross**
5 **Misdemeanor Offense**

6 NEW SECTION. **Sec. 306.** A new section is added to chapter 9A.48
7 RCW to read as follows:

8 (1) A person is guilty of criminal street gang tagging and graffiti
9 if he or she commits malicious mischief in the third degree under RCW
10 9A.48.090(1)(b) and he or she:

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

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

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

18 (2) Criminal street gang tagging and graffiti is a gross
19 misdemeanor offense.

20 **Civil Cause Of Action For Graffiti And Tagging**

21 NEW SECTION. **Sec. 307.** A new section is added to chapter 4.24 RCW
22 to read as follows:

23 (1) An adult or emancipated minor who commits criminal street gang
24 tagging and graffiti under section 306 of this act by causing physical
25 damage to the property of another is liable in addition to actual
26 damages, for a penalty to the owner in the amount of the value of the
27 damaged property not to exceed one thousand dollars, plus an additional
28 penalty of not less than one hundred dollars nor more than two hundred
29 dollars, plus all reasonable attorneys' fees and court costs expended
30 by the owner.

31 (2) A conviction for violation of section 306 of this act is not a
32 condition precedent to maintenance of a civil action authorized by this
33 section.

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

4 **Sec. 308.** RCW 10.22.010 and 1999 c 143 s 45 are each amended to
5 read as follows:

6 When a defendant is prosecuted in a criminal action for a
7 misdemeanor, other than a violation of section 306 of this act, for
8 which the person injured by the act constituting the offense has a
9 remedy by a civil action, the offense may be compromised as provided in
10 RCW 10.22.020, except when it was committed:

- 11 (1) By or upon an officer while in the execution of the duties of
12 his office((~~-~~));
- 13 (2) Riotously;
- 14 (3) With an intent to commit a felony; or
- 15 (4) By one family or household member against another as defined in
16 RCW 10.99.020 and was a crime of domestic violence as defined in RCW
17 10.99.020.

18 **Criminal Street Gang Definition**

19 **Sec. 309.** RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006
20 c 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and
21 amended to read as follows:

22 Unless the context clearly requires otherwise, the definitions in
23 this section apply throughout this chapter.

- 24 (1) "Board" means the indeterminate sentence review board created
25 under chapter 9.95 RCW.
- 26 (2) "Collect," or any derivative thereof, "collect and remit," or
27 "collect and deliver," when used with reference to the department,
28 means that the department, either directly or through a collection
29 agreement authorized by RCW 9.94A.760, is responsible for monitoring
30 and enforcing the offender's sentence with regard to the legal
31 financial obligation, receiving payment thereof from the offender, and,
32 consistent with current law, delivering daily the entire payment to the
33 superior court clerk without depositing it in a departmental account.
- 34 (3) "Commission" means the sentencing guidelines commission.

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

5 (5) "Community custody" means that portion of an offender's
6 sentence of confinement in lieu of earned release time or imposed
7 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
8 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
9 community subject to controls placed on the offender's movement and
10 activities by the department. For offenders placed on community
11 custody for crimes committed on or after July 1, 2000, the department
12 shall assess the offender's risk of reoffense and may establish and
13 modify conditions of community custody, in addition to those imposed by
14 the court, based upon the risk to community safety.

15 (6) "Community custody range" means the minimum and maximum period
16 of community custody included as part of a sentence under RCW
17 9.94A.715, as established by the commission or the legislature under
18 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

19 (7) "Community placement" means that period during which the
20 offender is subject to the conditions of community custody and/or
21 postrelease supervision, which begins either upon completion of the
22 term of confinement (postrelease supervision) or at such time as the
23 offender is transferred to community custody in lieu of earned release.
24 Community placement may consist of entirely community custody, entirely
25 postrelease supervision, or a combination of the two.

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

29 (9) "Community restitution" means compulsory service, without
30 compensation, performed for the benefit of the community by the
31 offender.

32 (10) "Community supervision" means a period of time during which a
33 convicted offender is subject to crime-related prohibitions and other
34 sentence conditions imposed by a court pursuant to this chapter or RCW
35 16.52.200(6) or 46.61.524. Where the court finds that any offender has
36 a chemical dependency that has contributed to his or her offense, the
37 conditions of supervision may, subject to available resources, include
38 treatment. For purposes of the interstate compact for out-of-state

1 supervision of parolees and probationers, RCW 9.95.270, community
2 supervision is the functional equivalent of probation and should be
3 considered the same as probation by other states.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 ~~((+16+))~~ (19) "Day reporting" means a program of enhanced
36 supervision designed to monitor the offender's daily activities and
37 compliance with sentence conditions, and in which the offender is

1 required to report daily to a specific location designated by the
2 department or the sentencing court.

3 ~~((+17))~~ (20) "Department" means the department of corrections.

4 ~~((+18))~~ (21) "Determinate sentence" means a sentence that states
5 with exactitude the number of actual years, months, or days of total
6 confinement, of partial confinement, of community supervision, the
7 number of actual hours or days of community restitution work, or
8 dollars or terms of a legal financial obligation. The fact that an
9 offender through earned release can reduce the actual period of
10 confinement shall not affect the classification of the sentence as a
11 determinate sentence.

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

24 ~~((+20))~~ (23) "Drug offender sentencing alternative" is a
25 sentencing option available to persons convicted of a felony offense
26 other than a violent offense or a sex offense and who are eligible for
27 the option under RCW 9.94A.660.

28 ~~((+21))~~ (24) "Drug offense" means:

29 (a) Any felony violation of chapter 69.50 RCW except possession of
30 a controlled substance (RCW 69.50.4013) or forged prescription for a
31 controlled substance (RCW 69.50.403);

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

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

1 ~~((+22+))~~ (25) "Earned release" means earned release from
2 confinement as provided in RCW 9.94A.728.

3 ~~((+23+))~~ (26) "Escape" means:

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

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

13 ~~((+24+))~~ (27) "Felony traffic offense" means:

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

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

23 ~~((+25+))~~ (28) "Fine" means a specific sum of money ordered by the
24 sentencing court to be paid by the offender to the court over a
25 specific period of time.

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

29 ~~((+27+))~~ (30) "Home detention" means a program of partial
30 confinement available to offenders wherein the offender is confined in
31 a private residence subject to electronic surveillance.

32 ~~((+28+))~~ (31) "Legal financial obligation" means a sum of money
33 that is ordered by a superior court of the state of Washington for
34 legal financial obligations which may include restitution to the
35 victim, statutorily imposed crime victims' compensation fees as
36 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
37 drug funds, court-appointed attorneys' fees, and costs of defense,
38 fines, and any other financial obligation that is assessed to the

1 offender as a result of a felony conviction. Upon conviction for
2 vehicular assault while under the influence of intoxicating liquor or
3 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
4 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
5 legal financial obligations may also include payment to a public agency
6 of the expense of an emergency response to the incident resulting in
7 the conviction, subject to RCW 38.52.430.

8 ~~((+29+))~~ (32) "Most serious offense" means any of the following
9 felonies or a felony attempt to commit any of the following felonies:

10 (a) Any felony defined under any law as a class A felony or
11 criminal solicitation of or criminal conspiracy to commit a class A
12 felony;

13 (b) Assault in the second degree;

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

15 (d) Child molestation in the second degree;

16 (e) Controlled substance homicide;

17 (f) Extortion in the first degree;

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

19 (h) Indecent liberties;

20 (i) Kidnapping in the second degree;

21 (j) Leading organized crime;

22 (k) Manslaughter in the first degree;

23 (l) Manslaughter in the second degree;

24 (m) Promoting prostitution in the first degree;

25 (n) Rape in the third degree;

26 (o) Robbery in the second degree;

27 (p) Sexual exploitation;

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

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

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

1 (t) Any other felony with a deadly weapon verdict under RCW
2 9.94A.602;

3 (u) Any felony offense in effect at any time prior to December 2,
4 1993, that is comparable to a most serious offense under this
5 subsection, or any federal or out-of-state conviction for an offense
6 that under the laws of this state would be a felony classified as a
7 most serious offense under this subsection;

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

13 (ii) A prior conviction for indecent liberties under RCW
14 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
15 if: (A) The crime was committed against a child under the age of
16 fourteen; or (B) the relationship between the victim and perpetrator is
17 included in the definition of indecent liberties under RCW
18 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
19 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
20 through July 27, 1997.

21 (~~(+30+)~~) (33) "Nonviolent offense" means an offense which is not a
22 violent offense.

23 (~~(+31+)~~) (34) "Offender" means a person who has committed a felony
24 established by state law and is eighteen years of age or older or is
25 less than eighteen years of age but whose case is under superior court
26 jurisdiction under RCW 13.04.030 or has been transferred by the
27 appropriate juvenile court to a criminal court pursuant to RCW
28 13.40.110. Throughout this chapter, the terms "offender" and
29 "defendant" are used interchangeably.

30 (~~(+32+)~~) (35) "Partial confinement" means confinement for no more
31 than one year in a facility or institution operated or utilized under
32 contract by the state or any other unit of government, or, if home
33 detention or work crew has been ordered by the court, in an approved
34 residence, for a substantial portion of each day with the balance of
35 the day spent in the community. Partial confinement includes work
36 release, home detention, work crew, and a combination of work crew and
37 home detention.

38 (~~(+33+)~~) (36) "Pattern of criminal street gang activity" means:

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

4 (i) Any "serious violent" felony offense as defined in RCW
5 9.94A.030, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of
6 a Child 1 (RCW 9A.36.120);

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

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

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

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

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

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

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

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

19 (x) Any felony conviction by a person eighteen years of age or
20 older with a special finding of involving a juvenile in a felony
21 offense under section 302 of this act;

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

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

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

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

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

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

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

29 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
30 9A.56.075);

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

32 (xx) Extortion 2 (RCW 9A.56.130);

33 (xxi) Intimidating a Witness (RCW 9A.72.110);

34 (xxii) Tampering with a Witness (RCW 9A.72.120);

35 (xxiii) Reckless Endangerment (RCW 9A.36.050);

36 (xxiv) Coercion (RCW 9A.36.070);

37 (xxv) Harassment (RCW 9A.46.020); or

38 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

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

3 (c) That the most recent committed offense listed in (a) of this
4 subsection occurred within three years of a prior offense listed in (a)
5 of this subsection; and

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

9 (37) "Persistent offender" is an offender who:

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

12 (ii) Has, before the commission of the offense under (a) of this
13 subsection, been convicted as an offender on at least two separate
14 occasions, whether in this state or elsewhere, of felonies that under
15 the laws of this state would be considered most serious offenses and
16 would be included in the offender score under RCW 9.94A.525; provided
17 that of the two or more previous convictions, at least one conviction
18 must have occurred before the commission of any of the other most
19 serious offenses for which the offender was previously convicted; or

20 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
21 of a child in the first degree, child molestation in the first degree,
22 rape in the second degree, rape of a child in the second degree, or
23 indecent liberties by forcible compulsion; (B) any of the following
24 offenses with a finding of sexual motivation: Murder in the first
25 degree, murder in the second degree, homicide by abuse, kidnapping in
26 the first degree, kidnapping in the second degree, assault in the first
27 degree, assault in the second degree, assault of a child in the first
28 degree, assault of a child in the second degree, or burglary in the
29 first degree; or (C) an attempt to commit any crime listed in this
30 subsection (~~((+33+))~~) (37)(b)(i); and

31 (ii) Has, before the commission of the offense under (b)(i) of this
32 subsection, been convicted as an offender on at least one occasion,
33 whether in this state or elsewhere, of an offense listed in (b)(i) of
34 this subsection or any federal or out-of-state offense or offense under
35 prior Washington law that is comparable to the offenses listed in
36 (b)(i) of this subsection. A conviction for rape of a child in the
37 first degree constitutes a conviction under (b)(i) of this subsection
38 only when the offender was sixteen years of age or older when the

1 offender committed the offense. A conviction for rape of a child in
2 the second degree constitutes a conviction under (b)(i) of this
3 subsection only when the offender was eighteen years of age or older
4 when the offender committed the offense.

5 ~~((+34+))~~ (38) "Postrelease supervision" is that portion of an
6 offender's community placement that is not community custody.

7 ~~((+35+))~~ (39) "Predatory" means: (a) The perpetrator of the crime
8 was a stranger to the victim, as defined in this section; (b) the
9 perpetrator established or promoted a relationship with the victim
10 prior to the offense and the victimization of the victim was a
11 significant reason the perpetrator established or promoted the
12 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
13 volunteer, or other person in authority in any public or private school
14 and the victim was a student of the school under his or her authority
15 or supervision. For purposes of this subsection, "school" does not
16 include home-based instruction as defined in RCW 28A.225.010; (ii) a
17 coach, trainer, volunteer, or other person in authority in any
18 recreational activity and the victim was a participant in the activity
19 under his or her authority or supervision; or (iii) a pastor, elder,
20 volunteer, or other person in authority in any church or religious
21 organization, and the victim was a member or participant of the
22 organization under his or her authority.

23 ~~((+36+))~~ (40) "Private school" means a school regulated under
24 chapter 28A.195 or 28A.205 RCW.

25 ~~((+37+))~~ (41) "Public school" has the same meaning as in RCW
26 28A.150.010.

27 ~~((+38+))~~ (42) "Restitution" means a specific sum of money ordered
28 by the sentencing court to be paid by the offender to the court over a
29 specified period of time as payment of damages. The sum may include
30 both public and private costs.

31 ~~((+39+))~~ (43) "Risk assessment" means the application of an
32 objective instrument supported by research and adopted by the
33 department for the purpose of assessing an offender's risk of
34 reoffense, taking into consideration the nature of the harm done by the
35 offender, place and circumstances of the offender related to risk, the
36 offender's relationship to any victim, and any information provided to
37 the department by victims. The results of a risk assessment shall not
38 be based on unconfirmed or unconfirmable allegations.

1 (~~(40)~~) (44) "Serious traffic offense" means:
2 (a) Nonfelony driving while under the influence of intoxicating
3 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
4 while under the influence of intoxicating liquor or any drug (RCW
5 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
6 attended vehicle (RCW 46.52.020(5)); or
7 (b) Any federal, out-of-state, county, or municipal conviction for
8 an offense that under the laws of this state would be classified as a
9 serious traffic offense under (a) of this subsection.

10 (~~(41)~~) (45) "Serious violent offense" is a subcategory of violent
11 offense and means:
12 (a)(i) Murder in the first degree;
13 (ii) Homicide by abuse;
14 (iii) Murder in the second degree;
15 (iv) Manslaughter in the first degree;
16 (v) Assault in the first degree;
17 (vi) Kidnapping in the first degree;
18 (vii) Rape in the first degree;
19 (viii) Assault of a child in the first degree; or
20 (ix) An attempt, criminal solicitation, or criminal conspiracy to
21 commit one of these felonies; or
22 (b) Any federal or out-of-state conviction for an offense that
23 under the laws of this state would be a felony classified as a serious
24 violent offense under (a) of this subsection.

25 (~~(42)~~) (46) "Sex offense" means:
26 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
27 RCW 9A.44.130(~~(11)~~) (12);
28 (ii) A violation of RCW 9A.64.020;
29 (iii) A felony that is a violation of chapter 9.68A RCW other than
30 RCW 9.68A.080; or
31 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
32 criminal solicitation, or criminal conspiracy to commit such crimes;
33 (b) Any conviction for a felony offense in effect at any time prior
34 to July 1, 1976, that is comparable to a felony classified as a sex
35 offense in (a) of this subsection;
36 (c) A felony with a finding of sexual motivation under RCW
37 9.94A.835 or 13.40.135; or

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

4 (~~(43)~~) (47) "Sexual motivation" means that one of the purposes
5 for which the defendant committed the crime was for the purpose of his
6 or her sexual gratification.

7 (~~(44)~~) (48) "Standard sentence range" means the sentencing
8 court's discretionary range in imposing a nonappealable sentence.

9 (~~(45)~~) (49) "Statutory maximum sentence" means the maximum length
10 of time for which an offender may be confined as punishment for a crime
11 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
12 the crime, or other statute defining the maximum penalty for a crime.

13 (~~(46)~~) (50) "Stranger" means that the victim did not know the
14 offender twenty-four hours before the offense.

15 (~~(47)~~) (51) "Total confinement" means confinement inside the
16 physical boundaries of a facility or institution operated or utilized
17 under contract by the state or any other unit of government for twenty-
18 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

19 (~~(48)~~) (52) "Transition training" means written and verbal
20 instructions and assistance provided by the department to the offender
21 during the two weeks prior to the offender's successful completion of
22 the work ethic camp program. The transition training shall include
23 instructions in the offender's requirements and obligations during the
24 offender's period of community custody.

25 (~~(49)~~) (53) "Victim" means any person who has sustained
26 emotional, psychological, physical, or financial injury to person or
27 property as a direct result of the crime charged.

28 (~~(50)~~) (54) "Violent offense" means:

29 (a) Any of the following felonies:

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

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

34 (iii) Manslaughter in the first degree;

35 (iv) Manslaughter in the second degree;

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

37 (vi) Kidnapping in the second degree;

38 (vii) Arson in the second degree;

1 (viii) Assault in the second degree;
2 (ix) Assault of a child in the second degree;
3 (x) Extortion in the first degree;
4 (xi) Robbery in the second degree;
5 (xii) Drive-by shooting;
6 (xiii) Vehicular assault, when caused by the operation or driving
7 of a vehicle by a person while under the influence of intoxicating
8 liquor or any drug or by the operation or driving of a vehicle in a
9 reckless manner; and
10 (xiv) Vehicular homicide, when proximately caused by the driving of
11 any vehicle by any person while under the influence of intoxicating
12 liquor or any drug as defined by RCW 46.61.502, or by the operation of
13 any vehicle in a reckless manner;
14 (b) Any conviction for a felony offense in effect at any time prior
15 to July 1, 1976, that is comparable to a felony classified as a violent
16 offense in (a) of this subsection; and
17 (c) Any federal or out-of-state conviction for an offense that
18 under the laws of this state would be a felony classified as a violent
19 offense under (a) or (b) of this subsection.
20 ((+51+)) (55) "Work crew" means a program of partial confinement
21 consisting of civic improvement tasks for the benefit of the community
22 that complies with RCW 9.94A.725.
23 ((+52+)) (56) "Work ethic camp" means an alternative incarceration
24 program as provided in RCW 9.94A.690 designed to reduce recidivism and
25 lower the cost of corrections by requiring offenders to complete a
26 comprehensive array of real-world job and vocational experiences,
27 character-building work ethics training, life management skills
28 development, substance abuse rehabilitation, counseling, literacy
29 training, and basic adult education.
30 ((+53+)) (57) "Work release" means a program of partial confinement
31 available to offenders who are employed or engaged as a student in a
32 regular course of study at school.

33 **PART IV**
34 **STATE PREEMPTION**

35 NEW SECTION. **Sec. 401.** (1) The state of Washington hereby fully
36 occupies and preempts the entire field of definitions used for purposes

1 of substantive criminal law relating to criminal street gangs, criminal
2 street gang-related offenses, criminal street gang associates and
3 members, and pattern of criminal street gang activity. These
4 definitions of "criminal street gang," "criminal street gang associate
5 or member," "criminal street gang-related offense," and "pattern of
6 criminal street gang activity" contained in RCW 9.94A.030 expressly
7 preempt any conflicting city or county codes or ordinances. Cities,
8 towns, counties, or other municipalities may enact laws and ordinances
9 relating to criminal street gangs that contain definitions that are
10 consistent with definitions pursuant to RCW 9.94A.030. Local laws and
11 ordinances that are inconsistent with the definitions shall not be
12 enacted and are preempted and repealed, regardless of the nature of the
13 code, charter, or home rule status of such city, town, county, or
14 municipality.

15 (2) The preemption provided in this chapter does not apply to
16 "gang" as defined in RCW 28A.600.455 under the common school provisions
17 act or "gang" as defined in RCW 59.18.030 under the landlord-tenant
18 act.

19 (3) The preemption provided for in this chapter does not restrict
20 the adoption or use of a uniform state definition of "gang," "gang
21 member," or "gang associate," for purposes of the creation and
22 maintenance of the statewide gang database for law enforcement
23 intelligence purposes under section 201 of this act.

24 **PART V**

25 **TEMPORARY WITNESS RELOCATION PROGRAM**

26 NEW SECTION. **Sec. 501.** A new section is added to chapter 43.31
27 RCW to read as follows:

28 The legislature recognizes that witnesses are often fearful of
29 testifying against criminal gang members. Witnesses may be subject to
30 harassment, intimidation, and threats. While the state does not ensure
31 protection of witnesses, the state intends to provide resources to
32 assist local prosecutors in combating gang-related crimes and to help
33 citizens perform their civic duty to testify in these cases.

34 NEW SECTION. **Sec. 502.** A new section is added to chapter 43.31
35 RCW to read as follows:

1 (1) Subject to available funds, the department of community, trade,
2 and economic development shall establish a temporary witness assistance
3 grant program for witnesses of felony criminal street gang-related
4 offenses. The department of community, trade, and economic development
5 shall develop a formula for distributing temporary witness assistance
6 grants and consideration shall primarily be given to those county
7 prosecutors that show that there is a significant gang problem in their
8 jurisdiction.

9 (2) As part of the temporary witness assistance grant program, the
10 department of community, trade, and economic development shall work in
11 collaboration with each local prosecuting attorney to determine how and
12 how much grant funding shall be distributed in order to reimburse
13 county prosecutors in assisting witnesses of felony gang-related
14 offenses with temporary assistance, relocation, and shelter.

15 (3) Each temporary witness assistance grant awarded shall be
16 limited to a maximum of five thousand dollars per witness of a felony
17 criminal street gang-related offense or for a period of no more than
18 three months.

19 (4) Based upon the prior approval of the department of community,
20 trade, and economic development, approved county prosecutor costs
21 incurred for providing temporary witness assistance shall be reimbursed
22 to the respective county prosecutor's office on a quarterly basis.

23 (5) An appointed or elected public official, public employee, or
24 public agency as defined in RCW 4.24.470 is immune from civil liability
25 for damages resulting from the temporary witness assistance program,
26 unless it is shown that the official, employee, or agency acted with
27 gross negligence or in bad faith.

28 NEW SECTION. **Sec. 503.** If specific funding for purposes of
29 section 502 of this act, referencing section 502 of this act by bill or
30 chapter and section number, is not provided by June 30, 2008, in the
31 omnibus operating appropriations act, section 502 of this act is null
32 and void.

33 **PART VI**
34 **STUDY ON BEST PRACTICES TO REDUCE GANG INVOLVEMENT WHILE**
35 **INCARCERATED**

ADOPTED AND ENGROSSED 03/07/08

1 On page 1, line 1 of the title, after "gangs;" strike the remainder
2 of the title and insert "amending RCW 42.56.240, 9.94A.533, 9.94A.535,
3 9.94A.545, and 10.22.010; reenacting and amending RCW 9.94A.715 and
4 9.94A.030; adding a new section to chapter 43.20A RCW; adding new
5 sections to chapter 36.28A RCW; adding a new section to chapter 43.43
6 RCW; adding a new section to chapter 9.94A RCW; adding a new section to
7 chapter 9A.48 RCW; adding a new section to chapter 4.24 RCW; adding a
8 new section to chapter 28A.300 RCW; adding new sections to chapter
9 43.31 RCW; adding a new section to chapter 72.09 RCW; adding a new
10 chapter to Title 9 RCW; creating new sections; and prescribing
11 penalties."

--- END ---