

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

ADOPTED AS AMENDED 03/07/2008

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 **CIVIL INJUNCTIONS**

35 NEW SECTION. **Sec. 301.** The legislature recognizes that counsel is
36 not constitutionally required in civil actions (*In re Marriage of King*,

1 No. 79978-4 (Wash. Dec. 6, 2007)), but believes that it should be
2 required as a matter of public policy in actions brought against a
3 respondent criminal street gang member under section 303 of this act
4 who might risk the loss of procedural rights, in that the resulting
5 injunction may be enforced by criminal prosecution for contempt of
6 court.

7 NEW SECTION. **Sec. 302.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Gang" means "criminal street gang" as defined in RCW
10 9.94A.030.

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

13 NEW SECTION. **Sec. 303.** (1) Equitable relief is authorized to
14 enjoin, abate, and prevent criminal street gang activity, whether it is
15 a private or public nuisance. Relief is authorized to enjoin criminal
16 street gang-related offenses defined in RCW 9.94A.030(17) and
17 associated noncriminal acts or acts which are known precursors to gang-
18 related criminal acts as specified in subsection (2) of this section,
19 upon a showing that the individual gang member sought to be enjoined
20 has been convicted of a crime included within the definition of
21 "pattern of criminal street gang activity" under RCW 9.94A.030, and of
22 the following elements by a preponderance of the evidence:

23 (a) A gang is named as a respondent and contains at least five
24 members, at least two of whom possess active leadership roles at the
25 time of application, and that any person sought to be enjoined is an
26 active or current member of the gang;

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

31 (c) The respondent gang members have committed, during the five
32 years immediately prior to the filing of the petition, a pattern of
33 criminal street gang activity within the described geographical area.
34 It is necessary to demonstrate a nexus between criminal gang activity
35 and crime in the area;

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

7 (e) The plaintiffs have engaged in prevention and intervention
8 planning to serve a reasonable number of the gang's total membership
9 with prevention and intervention services to divert them from gang
10 activity.

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

14 (a) Associating with other gang members;

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

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

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

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

25 (f) Consuming alcohol in public;

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

28 (h) Defacing any public or private property or possessing graffiti
29 or tagging tools; or

30 (i) Violating any court defined curfew.

31 (3) The attorney general, the prosecuting attorney, or city
32 attorney or city prosecutor may maintain an action of an equitable
33 nature in the name of the state under this act. If a city applies for
34 equitable relief under this act, the city shall seek and obtain
35 approval of the prosecuting attorney of the county in which the city is
36 located to maintain the action.

37 (4) Service of the summons and complaint on the respondent gang
38 members may be made by representative service of at least five active

1 and current members of the gang, at least two of whom possess active
2 leadership roles at the time of application. A person served in a
3 representative capacity and who appears may request, if indigent, that
4 an attorney be appointed to represent him or her at public expense. If
5 the court appoints counsel, the plaintiff shall pay the cost of
6 representation. Notice of this shall be provided in the summons. A
7 person served in a representative capacity of the gang need not
8 testify, but may testify and cross-examine witnesses and present
9 testimony and other evidence on his or her own behalf.

10 (5) A court of competent jurisdiction shall conduct an evidentiary
11 hearing on the complaint for equitable relief filed under this act
12 whether or not any person served in a representative capacity of the
13 gang appears to contest the issuance of the injunction. The plaintiff
14 must prove by a preponderance of the evidence all of the elements set
15 forth in subsection (1) of this section that the persons served in a
16 representative capacity are current and active members of the gang, and
17 that the specific remedies requested are reasonable and necessary.

18 (6) If after trial the court grants the request for relief, it
19 shall issue an appropriate order of injunction against the gang and any
20 members of the gang within the delineated geographical area as
21 authorized by this section.

22 (7) An injunction issued under this section is not effective as to
23 any person unless the plaintiff makes a showing to the court, which may
24 be made ex parte, that the person is an active or current member or
25 associate of the gang, as defined in RCW 9.94A.030, and after
26 authorization by the court the person is served with personal notice of
27 the injunction. The notice must state that the person may request an
28 evidentiary hearing at which the plaintiffs must present evidence and
29 show by preponderance of evidence that the defendant is a member of the
30 gang. The individual need not testify, but may testify and may cross-
31 examine witnesses for the plaintiffs and may present testimony and
32 other evidence on his or her own behalf. The plaintiff may seek to add
33 any person to an existing gang injunction at any time using the
34 procedures in this subsection, regardless of whether the person was a
35 gang member or associate at the time that the request for relief was
36 requested or granted.

37 (8) The final order of injunction shall contain an opt out
38 provision, by which an alleged member previously included in the order

1 may petition at any time for removal from the injunction after a period
2 of three years in which no act by the alleged member has resulted in
3 either a contempt finding or a conviction of crime, and further that
4 there is no criminal charge pending at the time of the hearing. In the
5 petition, the alleged member may request a court hearing on the matter.

6 (9) All actions to punish any violation of the injunction shall be
7 by prosecution of the crime of contempt of court. It is an affirmative
8 defense that the person charged was a gang member but that he or she
9 was no longer an active or current member of the gang at the time of
10 the alleged violation.

11 (10) No nonprofit or charitable organization which is conducting
12 its affairs with ordinary care and skill, no labor organization, and no
13 governmental entity, shall be enjoined or abated under this chapter.

14 **PART IV**

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

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

17 **Sec. 401.** RCW 9.94A.533 and 2007 c 368 s 9 are each amended to
18 read as follows:

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

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

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

1 subject to a firearm enhancement. If the offender or an accomplice was
2 armed with a firearm as defined in RCW 9.41.010 and the offender is
3 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
4 commit one of the crimes listed in this subsection as eligible for any
5 firearm enhancements, the following additional times shall be added to
6 the standard sentence range determined under subsection (2) of this
7 section based on the felony crime of conviction as classified under RCW
8 9A.28.020:

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

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

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

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

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

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

1 (g) If the standard sentence range under this section exceeds the
2 statutory maximum sentence for the offense, the statutory maximum
3 sentence shall be the presumptive sentence unless the offender is a
4 persistent offender. If the addition of a firearm enhancement
5 increases the sentence so that it would exceed the statutory maximum
6 for the offense, the portion of the sentence representing the
7 enhancement may not be reduced.

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

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

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

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

35 (d) If the offender is being sentenced under (a), (b), and/or (c)
36 of this subsection for any deadly weapon enhancements and the offender
37 has previously been sentenced for any deadly weapon enhancements after
38 July 23, 1995, under (a), (b), and/or (c) of this subsection or

1 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
2 weapon enhancements under this subsection shall be twice the amount of
3 the enhancement listed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (iv) If the offender is being sentenced for any sexual motivation
37 enhancements under (i), (ii), and/or (iii) of this subsection and the
38 offender has previously been sentenced for any sexual motivation

1 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
2 this subsection, all sexual motivation enhancements under this
3 subsection shall be twice the amount of the enhancement listed;

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

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

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

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

24 (f) Nothing in this subsection prevents a sentencing court from
25 imposing a sentence outside the standard sentence range pursuant to RCW
26 9.94A.535.

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

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

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

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

20 (c) The increased penalty specified in (a) of this subsection is
21 unavailable in the event that the prosecution gives notice that it will
22 seek an exceptional sentence based on an aggravating factor under RCW
23 9.94A.535.

24 NEW SECTION. Sec. 402. A new section is added to chapter 9.94A
25 RCW to read as follows:

26 (1) In a prosecution of a criminal street gang-related felony
27 offense, the prosecution may file a special allegation that the felony
28 offense involved the compensation, threatening, or solicitation of a
29 minor in order to involve that minor in the commission of the felony
30 offense, as described under RCW 9.94A.533(10)(a).

31 (2) The state has the burden of proving a special allegation made
32 under this section beyond a reasonable doubt. If a jury is had, the
33 jury shall, if it finds the defendant guilty, also find a special
34 verdict as to whether the criminal street gang-related felony offense
35 involved the compensation, threatening, or solicitation of a minor in
36 order to involve that minor in the commission of the felony offense.
37 If no jury is had, the court shall make a finding of fact as to whether

1 the criminal street gang-related felony offense involved the
2 compensation, threatening, or solicitation of a minor in order to
3 involve that minor in the commission of the felony offense.

4 **Expansion Of The List Of Aggravating Factors**

5 **Sec. 403.** RCW 9.94A.535 and 2007 c 377 s 10 are each amended to
6 read as follows:

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

13 Whenever a sentence outside the standard sentence range is imposed,
14 the court shall set forth the reasons for its decision in written
15 findings of fact and conclusions of law. A sentence outside the
16 standard sentence range shall be a determinate sentence.

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

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

25 (1) Mitigating Circumstances - Court to Consider

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

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

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

35 (c) The defendant committed the crime under duress, coercion,

1 threat, or compulsion insufficient to constitute a complete defense but
2 which significantly affected his or her conduct.

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

5 (e) The defendant's capacity to appreciate the wrongfulness of his
6 or her conduct, or to conform his or her conduct to the requirements of
7 the law, was significantly impaired. Voluntary use of drugs or alcohol
8 is excluded.

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

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

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

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

21 (a) The defendant and the state both stipulate that justice is best
22 served by the imposition of an exceptional sentence outside the
23 standard range, and the court finds the exceptional sentence to be
24 consistent with and in furtherance of the interests of justice and the
25 purposes of the sentencing reform act.

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

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

33 (d) The failure to consider the defendant's prior criminal history
34 which was omitted from the offender score calculation pursuant to RCW
35 9.94A.525 results in a presumptive sentence that is clearly too
36 lenient.

37 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
38 the Court

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

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

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

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

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

14 (i) The current offense involved multiple victims or multiple
15 incidents per victim;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (i) The offense resulted in the pregnancy of a child victim of
23 rape.

24 (j) The defendant knew that the victim of the current offense was
25 a youth who was not residing with a legal custodian and the defendant
26 established or promoted the relationship for the primary purpose of
27 victimization.

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

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

34 (m) The offense involved a high degree of sophistication or
35 planning.

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

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

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

4 (q) The defendant demonstrated or displayed an egregious lack of
5 remorse.

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

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

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

13 (u) The current offense is a burglary and the victim of the
14 burglary was present in the building or residence when the crime was
15 committed.

16 (v) The offense was committed against a law enforcement officer who
17 was performing his or her official duties at the time of the offense,
18 the offender knew that the victim was a law enforcement officer, and
19 the victim's status as a law enforcement officer is not an element of
20 the offense.

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

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

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

29 (z)(i)(A) The current offense is theft in the first degree, theft
30 in the second degree, possession of stolen property in the first
31 degree, or possession of stolen property in the second degree; (B) the
32 stolen property involved is metal property; and (C) the property damage
33 to the victim caused in the course of the theft of metal property is
34 more than three times the value of the stolen metal property, or the
35 theft of the metal property creates a public hazard.

36 (ii) For purposes of this subsection, "metal property" means
37 commercial metal property or nonferrous metal property, as defined in
38 RCW 19.290.010.

1 (aa) The defendant committed the offense with the intent to
2 directly or indirectly cause any benefit, aggrandizement, gain, profit,
3 or other advantage to or for a criminal street gang as defined in RCW
4 9.94A.030, its reputation, influence, or membership.

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

6 **Sec. 404.** RCW 9.94A.545 and 2006 c 128 s 4 are each amended to
7 read as follows:

8 (1) Except as provided in RCW 9.94A.650 and in subsection (2) of
9 this section, on all sentences of confinement for one year or less, in
10 which the offender is convicted of a sex offense, a violent offense, a
11 crime against a person under RCW 9.94A.411, or felony violation of
12 chapter 69.50 or 69.52 RCW or an attempt, conspiracy, or solicitation
13 to commit such a crime, the court may impose up to one year of
14 community custody, subject to conditions and sanctions as authorized in
15 RCW 9.94A.715 and 9.94A.720. An offender shall be on community custody
16 as of the date of sentencing. However, during the time for which the
17 offender is in total or partial confinement pursuant to the sentence or
18 a violation of the sentence, the period of community custody shall
19 toll.

20 (2)(a) If the offender is guilty of failure to register under RCW
21 9A.44.130(~~(+10+)~~) (11)(a), the court shall impose a term of community
22 custody under RCW 9.94A.715.

23 (b) If the offender is a criminal street gang associate or member
24 and is found guilty of unlawful possession of a firearm under RCW
25 9.41.040, the court shall impose a term of community custody under RCW
26 9.94A.715.

27 (c) In a criminal case in which there has been a special
28 allegation, the state shall prove by a preponderance of the evidence
29 that the accused is a criminal street gang member or associate as
30 defined in RCW 9.94A.030 and has committed the crime of unlawful
31 possession of a firearm. The court shall make a finding of fact of
32 whether or not the accused was a criminal street gang member or
33 associate at the time of the commission of the crime, or if a jury
34 trial is had, the jury shall, if it finds the defendant guilty, also
35 find a special verdict as to whether or not the accused was a criminal
36 street gang member or associate during the commission of the crime.

1 **Sec. 405.** RCW 9.94A.715 and 2006 c 130 s 2 and 2006 c 128 s 5 are
2 each reenacted and amended to read as follows:

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

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

32 (b) As part of any sentence that includes a term of community
33 custody imposed under this subsection, the court shall also require the
34 offender to comply with any conditions imposed by the department under
35 RCW 9.94A.720. The department shall assess the offender's risk of
36 reoffense and may establish and modify additional conditions of the
37 offender's community custody based upon the risk to community safety.
38 In addition, the department may require the offender to participate in

1 rehabilitative programs, or otherwise perform affirmative conduct, and
2 to obey all laws. The department may impose electronic monitoring as
3 a condition of community custody for an offender sentenced to a term of
4 community custody under this section pursuant to a conviction for a sex
5 offense. Within the resources made available by the department for
6 this purpose, the department shall carry out any electronic monitoring
7 imposed under this section using the most appropriate technology given
8 the individual circumstances of the offender. As used in this section,
9 "electronic monitoring" means the monitoring of an offender using an
10 electronic offender tracking system including, but not limited to, a
11 system using radio frequency or active or passive global positioning
12 system technology.

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

19 (3) If an offender violates conditions imposed by the court or the
20 department pursuant to this section during community custody, the
21 department may transfer the offender to a more restrictive confinement
22 status and impose other available sanctions as provided in RCW
23 9.94A.737 and 9.94A.740.

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

29 (5) At any time prior to the completion or termination of a sex
30 offender's term of community custody, if the court finds that public
31 safety would be enhanced, the court may impose and enforce an order
32 extending any or all of the conditions imposed pursuant to this section
33 for a period up to the maximum allowable sentence for the crime as it
34 is classified in chapter 9A.20 RCW, regardless of the expiration of the
35 offender's term of community custody. If a violation of a condition
36 extended under this subsection occurs after the expiration of the
37 offender's term of community custody, it shall be deemed a violation of
38 the sentence for the purposes of RCW 9.94A.631 and may be punishable as

1 contempt of court as provided for in RCW 7.21.040. If the court
2 extends a condition beyond the expiration of the term of community
3 custody, the department is not responsible for supervision of the
4 offender's compliance with the condition.

5 (6) Within the funds available for community custody, the
6 department shall determine conditions and duration of community custody
7 on the basis of risk to community safety, and shall supervise offenders
8 during community custody on the basis of risk to community safety and
9 conditions imposed by the court. The secretary shall adopt rules to
10 implement the provisions of this subsection.

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

18 **Making Subsequent Convictions Of Malicious Mischief 3 A Gross**
19 **Misdemeanor Offense**

20 NEW SECTION. **Sec. 406.** A new section is added to chapter 9A.48
21 RCW to read as follows:

22 (1) A person is guilty of criminal street gang tagging and graffiti
23 if he or she commits malicious mischief in the third degree under RCW
24 9A.48.090(1)(b) and he or she:

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

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

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

32 (2) Criminal street gang tagging and graffiti is a gross
33 misdemeanor offense.

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

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

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

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

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

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

18 (5) "Community custody" means that portion of an offender's
19 sentence of confinement in lieu of earned release time or imposed
20 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
21 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
22 community subject to controls placed on the offender's movement and
23 activities by the department. For offenders placed on community
24 custody for crimes committed on or after July 1, 2000, the department
25 shall assess the offender's risk of reoffense and may establish and
26 modify conditions of community custody, in addition to those imposed by
27 the court, based upon the risk to community safety.

28 (6) "Community custody range" means the minimum and maximum period
29 of community custody included as part of a sentence under RCW
30 9.94A.715, as established by the commission or the legislature under
31 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

32 (7) "Community placement" means that period during which the
33 offender is subject to the conditions of community custody and/or
34 postrelease supervision, which begins either upon completion of the
35 term of confinement (postrelease supervision) or at such time as the
36 offender is transferred to community custody in lieu of earned release.
37 Community placement may consist of entirely community custody, entirely
38 postrelease supervision, or a combination of the two.

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

4 (9) "Community restitution" means compulsory service, without
5 compensation, performed for the benefit of the community by the
6 offender.

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

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

18 (12) "Conviction" means an adjudication of guilt pursuant to Titles
19 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
20 acceptance of a plea of guilty.

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

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

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

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

1 (c) The determination of a defendant's criminal history is distinct
2 from the determination of an offender score. A prior conviction that
3 was not included in an offender score calculated pursuant to a former
4 version of the sentencing reform act remains part of the defendant's
5 criminal history.

6 (15) "Criminal street gang" means any ongoing organization,
7 association, or group of three or more persons, whether formal or
8 informal, having a common name or common identifying sign or symbol,
9 having as one of its primary activities the commission of criminal
10 acts, and whose members or associates individually or collectively
11 engage in or have engaged in a pattern of criminal street gang
12 activity. This definition does not apply to employees engaged in
13 concerted activities for their mutual aid and protection, or to the
14 activities of labor and bona fide nonprofit organizations or their
15 members or agents.

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

20 (17) "Criminal street gang-related offense" means any felony or
21 misdemeanor offense, whether in this state or elsewhere, that is
22 committed for the benefit of, at the direction of, or in association
23 with any criminal street gang, or is committed with the intent to
24 promote, further, or assist in any criminal conduct by the gang, or is
25 committed for one or more of the following reasons:

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

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

29 (c) To exact revenge or retribution for the gang or any member of
30 the gang;

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

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

36 (f) To provide the gang with any advantage in, or any control or
37 dominance over any criminal market sector, including, but not limited
38 to, manufacturing, delivering, or selling any controlled substance

1 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
2 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
3 RCW); human trafficking (RCW 9A.40.100); or promoting pornography
4 (chapter 9.68 RCW).

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

9 ~~((16))~~ (19) "Day reporting" means a program of enhanced
10 supervision designed to monitor the offender's daily activities and
11 compliance with sentence conditions, and in which the offender is
12 required to report daily to a specific location designated by the
13 department or the sentencing court.

14 ~~((17))~~ (20) "Department" means the department of corrections.

15 ~~((18))~~ (21) "Determinate sentence" means a sentence that states
16 with exactitude the number of actual years, months, or days of total
17 confinement, of partial confinement, of community supervision, the
18 number of actual hours or days of community restitution work, or
19 dollars or terms of a legal financial obligation. The fact that an
20 offender through earned release can reduce the actual period of
21 confinement shall not affect the classification of the sentence as a
22 determinate sentence.

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

35 ~~((20))~~ (23) "Drug offender sentencing alternative" is a
36 sentencing option available to persons convicted of a felony offense
37 other than a violent offense or a sex offense and who are eligible for
38 the option under RCW 9.94A.660.

1 (~~(21)~~) (24) "Drug offense" means:
2 (a) Any felony violation of chapter 69.50 RCW except possession of
3 a controlled substance (RCW 69.50.4013) or forged prescription for a
4 controlled substance (RCW 69.50.403);
5 (b) Any offense defined as a felony under federal law that relates
6 to the possession, manufacture, distribution, or transportation of a
7 controlled substance; or
8 (c) Any out-of-state conviction for an offense that under the laws
9 of this state would be a felony classified as a drug offense under (a)
10 of this subsection.
11 (~~(22)~~) (25) "Earned release" means earned release from
12 confinement as provided in RCW 9.94A.728.
13 (~~(23)~~) (26) "Escape" means:
14 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
15 first degree (RCW 9A.76.110), escape in the second degree (RCW
16 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
17 willful failure to return from work release (RCW 72.65.070), or willful
18 failure to be available for supervision by the department while in
19 community custody (RCW 72.09.310); 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 an escape
22 under (a) of this subsection.
23 (~~(24)~~) (27) "Felony traffic offense" means:
24 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
25 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
26 run injury-accident (RCW 46.52.020(4)), felony driving while under the
27 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
28 felony physical control of a vehicle while under the influence of
29 intoxicating liquor or any drug (RCW 46.61.504(6)); or
30 (b) Any federal or out-of-state conviction for an offense that
31 under the laws of this state would be a felony classified as a felony
32 traffic offense under (a) of this subsection.
33 (~~(25)~~) (28) "Fine" means a specific sum of money ordered by the
34 sentencing court to be paid by the offender to the court over a
35 specific period of time.
36 (~~(26)~~) (29) "First-time offender" means any person who has no
37 prior convictions for a felony and is eligible for the first-time
38 offender waiver under RCW 9.94A.650.

1 (~~(27)~~) (30) "Home detention" means a program of partial
2 confinement available to offenders wherein the offender is confined in
3 a private residence subject to electronic surveillance.

4 (~~(28)~~) (31) "Legal financial obligation" means a sum of money
5 that is ordered by a superior court of the state of Washington for
6 legal financial obligations which may include restitution to the
7 victim, statutorily imposed crime victims' compensation fees as
8 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
9 drug funds, court-appointed attorneys' fees, and costs of defense,
10 fines, and any other financial obligation that is assessed to the
11 offender as a result of a felony conviction. Upon conviction for
12 vehicular assault while under the influence of intoxicating liquor or
13 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
14 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
15 legal financial obligations may also include payment to a public agency
16 of the expense of an emergency response to the incident resulting in
17 the conviction, subject to RCW 38.52.430.

18 (~~(29)~~) (32) "Most serious offense" means any of the following
19 felonies or a felony attempt to commit any of the following felonies:

20 (a) Any felony defined under any law as a class A felony or
21 criminal solicitation of or criminal conspiracy to commit a class A
22 felony;

23 (b) Assault in the second degree;

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

25 (d) Child molestation in the second degree;

26 (e) Controlled substance homicide;

27 (f) Extortion in the first degree;

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

29 (h) Indecent liberties;

30 (i) Kidnapping in the second degree;

31 (j) Leading organized crime;

32 (k) Manslaughter in the first degree;

33 (l) Manslaughter in the second degree;

34 (m) Promoting prostitution in the first degree;

35 (n) Rape in the third degree;

36 (o) Robbery in the second degree;

37 (p) Sexual exploitation;

1 (q) Vehicular assault, when caused by the operation or driving of
2 a vehicle by a person while under the influence of intoxicating liquor
3 or any drug or by the operation or driving of a vehicle in a reckless
4 manner;

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

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

11 (t) Any other felony with a deadly weapon verdict under RCW
12 9.94A.602;

13 (u) Any felony offense in effect at any time prior to December 2,
14 1993, that is comparable to a most serious offense under this
15 subsection, or any federal or out-of-state conviction for an offense
16 that under the laws of this state would be a felony classified as a
17 most serious offense under this subsection;

18 (v)(i) A prior conviction for indecent liberties under RCW
19 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
20 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
21 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
22 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

23 (ii) A prior conviction for indecent liberties under RCW
24 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
25 if: (A) The crime was committed against a child under the age of
26 fourteen; or (B) the relationship between the victim and perpetrator is
27 included in the definition of indecent liberties under RCW
28 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
29 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
30 through July 27, 1997.

31 (~~(+30+)~~) (33) "Nonviolent offense" means an offense which is not a
32 violent offense.

33 (~~(+31+)~~) (34) "Offender" means a person who has committed a felony
34 established by state law and is eighteen years of age or older or is
35 less than eighteen years of age but whose case is under superior court
36 jurisdiction under RCW 13.04.030 or has been transferred by the
37 appropriate juvenile court to a criminal court pursuant to RCW

1 13.40.110. Throughout this chapter, the terms "offender" and
2 "defendant" are used interchangeably.

3 ~~((+32+))~~ (35) "Partial confinement" means confinement for no more
4 than one year in a facility or institution operated or utilized under
5 contract by the state or any other unit of government, or, if home
6 detention or work crew has been ordered by the court, in an approved
7 residence, for a substantial portion of each day with the balance of
8 the day spent in the community. Partial confinement includes work
9 release, home detention, work crew, and a combination of work crew and
10 home detention.

11 ~~((+33+))~~ (36) "Pattern of criminal street gang activity" means:

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

15 (i) Any "serious violent" felony offense as defined in RCW
16 9.94A.030, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of
17 a Child 1 (RCW 9A.36.120);

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

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

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

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

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

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

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

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

30 (x) Any felony conviction by a person eighteen years of age or
31 older with a special finding of involving a juvenile in a felony
32 offense under section 402 of this act;

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

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

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

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

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

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

1 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
2 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
3 9A.56.075);
4 (xix) Extortion 1 (RCW 9A.56.120);
5 (xx) Extortion 2 (RCW 9A.56.130);
6 (xxi) Intimidating a Witness (RCW 9A.72.110);
7 (xxii) Tampering with a Witness (RCW 9A.72.120);
8 (xxiii) Reckless Endangerment (RCW 9A.36.050);
9 (xxiv) Coercion (RCW 9A.36.070);
10 (xxv) Harassment (RCW 9A.46.020); or
11 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
12 (b) That at least one of the offenses listed in (a) of this
13 subsection shall have occurred after July 1, 2008;
14 (c) That the most recent committed offense listed in (a) of this
15 subsection occurred within three years of a prior offense listed in (a)
16 of this subsection; and
17 (d) Of the offenses that were committed in (a) of this subsection,
18 the offenses occurred on separate occasions or were committed by two or
19 more persons.
20 (37) "Persistent offender" is an offender who:
21 (a)(i) Has been convicted in this state of any felony considered a
22 most serious offense; and
23 (ii) Has, before the commission of the offense under (a) of this
24 subsection, been convicted as an offender on at least two separate
25 occasions, whether in this state or elsewhere, of felonies that under
26 the laws of this state would be considered most serious offenses and
27 would be included in the offender score under RCW 9.94A.525; provided
28 that of the two or more previous convictions, at least one conviction
29 must have occurred before the commission of any of the other most
30 serious offenses for which the offender was previously convicted; or
31 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
32 of a child in the first degree, child molestation in the first degree,
33 rape in the second degree, rape of a child in the second degree, or
34 indecent liberties by forcible compulsion; (B) any of the following
35 offenses with a finding of sexual motivation: Murder in the first
36 degree, murder in the second degree, homicide by abuse, kidnapping in
37 the first degree, kidnapping in the second degree, assault in the first
38 degree, assault in the second degree, assault of a child in the first

1 degree, assault of a child in the second degree, or burglary in the
2 first degree; or (C) an attempt to commit any crime listed in this
3 subsection (~~(+33+)~~) (37)(b)(i); and

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

16 (~~(+34+)~~) (38) "Postrelease supervision" is that portion of an
17 offender's community placement that is not community custody.

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

34 (~~(+36+)~~) (40) "Private school" means a school regulated under
35 chapter 28A.195 or 28A.205 RCW.

36 (~~(+37+)~~) (41) "Public school" has the same meaning as in RCW
37 28A.150.010.

1 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
2 RCW 9A.44.130(~~(11)~~) (12);

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

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

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

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

11 (c) A felony with a finding of sexual motivation under RCW
12 9.94A.835 or 13.40.135; or

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

16 (~~(43)~~) (47) "Sexual motivation" means that one of the purposes
17 for which the defendant committed the crime was for the purpose of his
18 or her sexual gratification.

19 (~~(44)~~) (48) "Standard sentence range" means the sentencing
20 court's discretionary range in imposing a nonappealable sentence.

21 (~~(45)~~) (49) "Statutory maximum sentence" means the maximum length
22 of time for which an offender may be confined as punishment for a crime
23 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
24 the crime, or other statute defining the maximum penalty for a crime.

25 (~~(46)~~) (50) "Stranger" means that the victim did not know the
26 offender twenty-four hours before the offense.

27 (~~(47)~~) (51) "Total confinement" means confinement inside the
28 physical boundaries of a facility or institution operated or utilized
29 under contract by the state or any other unit of government for twenty-
30 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

31 (~~(48)~~) (52) "Transition training" means written and verbal
32 instructions and assistance provided by the department to the offender
33 during the two weeks prior to the offender's successful completion of
34 the work ethic camp program. The transition training shall include
35 instructions in the offender's requirements and obligations during the
36 offender's period of community custody.

37 (~~(49)~~) (53) "Victim" means any person who has sustained

1 emotional, psychological, physical, or financial injury to person or
2 property as a direct result of the crime charged.

3 ~~((+50+))~~ (54) "Violent offense" means:

4 (a) Any of the following felonies:

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

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

9 (iii) Manslaughter in the first degree;

10 (iv) Manslaughter in the second degree;

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

12 (vi) Kidnapping in the second degree;

13 (vii) Arson in the second degree;

14 (viii) Assault in the second degree;

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

16 (x) Extortion in the first degree;

17 (xi) Robbery in the second degree;

18 (xii) Drive-by shooting;

19 (xiii) Vehicular assault, when caused by the operation or driving
20 of a vehicle by a person while under the influence of intoxicating
21 liquor or any drug or by the operation or driving of a vehicle in a
22 reckless manner; and

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

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

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

33 ~~((+51+))~~ (55) "Work crew" means a program of partial confinement
34 consisting of civic improvement tasks for the benefit of the community
35 that complies with RCW 9.94A.725.

36 ~~((+52+))~~ (56) "Work ethic camp" means an alternative incarceration
37 program as provided in RCW 9.94A.690 designed to reduce recidivism and
38 lower the cost of corrections by requiring offenders to complete a

1 comprehensive array of real-world job and vocational experiences,
2 character-building work ethics training, life management skills
3 development, substance abuse rehabilitation, counseling, literacy
4 training, and basic adult education.

5 ~~((+53+))~~ (57) "Work release" means a program of partial confinement
6 available to offenders who are employed or engaged as a student in a
7 regular course of study at school.

8 **PART V**
9 **STATE PREEMPTION**

10 NEW SECTION. **Sec. 501.** (1) The state of Washington hereby fully
11 occupies and preempts the entire field of definitions used for purposes
12 of substantive criminal law relating to criminal street gangs, criminal
13 street gang-related offenses, criminal street gang associates and
14 members, and pattern of criminal street gang activity. These
15 definitions of "criminal street gang," "criminal street gang associate
16 or member," "criminal street gang-related offense," and "pattern of
17 criminal street gang activity" contained in RCW 9.94A.030 expressly
18 preempt any conflicting city or county codes or ordinances. Cities,
19 towns, counties, or other municipalities may enact laws and ordinances
20 relating to criminal street gangs that contain definitions that are
21 consistent with definitions pursuant to RCW 9.94A.030. Local laws and
22 ordinances that are inconsistent with the definitions shall not be
23 enacted and are preempted and repealed, regardless of the nature of the
24 code, charter, or home rule status of such city, town, county, or
25 municipality.

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

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

35 **PART VI**

1 for damages resulting from the temporary witness assistance program,
2 unless it is shown that the official, employee, or agency acted with
3 gross negligence or in bad faith.

4 NEW SECTION. **Sec. 603.** If specific funding for purposes of
5 section 602 of this act, referencing section 602 of this act by bill or
6 chapter and section number, is not provided by June 30, 2008, in the
7 omnibus operating appropriations act, section 602 of this act is null
8 and void.

9 **PART VII**
10 **STUDY ON BEST PRACTICES TO REDUCE GANG INVOLVEMENT WHILE**
11 **INCARCERATED**

12 NEW SECTION. **Sec. 701.** A new section is added to chapter 72.09
13 RCW to read as follows:

14 (1) The department shall study and establish best practices to
15 reduce gang involvement and recruitment among incarcerated offenders.
16 The department shall study and make recommendations regarding the
17 establishment of:

18 (a) Intervention programs within the institutions of the department
19 for offenders who are seeking to opt out of gangs. The intervention
20 programs shall include, but are not limited to, tattoo removal, anger
21 management, GED, and other interventions; and

22 (b) An intervention program to assist gang members with successful
23 reentry into the community.

24 (2) The department shall report to the legislature on its findings
25 and recommendations by January 1, 2009.

26 **PART VIII**
27 **MISCELLANEOUS**

28 NEW SECTION. **Sec. 801.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

