AN ACT Relating to the impact of controlled substances, primarily methamphetamine; amending RCW 2.28.170, 26.44.020, 26.44.020, 26.44.195, 74.34.020, 64.44.010, 64.44.020, 64.44.030, 64.44.040, 64.44.050, 64.44.060, 64.44.070, 9.94A.533, 9.94A.660, and 9.94A.500; adding a new section to chapter 70.96A RCW; adding a new section to chapter 72.09 RCW; adding a new section to chapter 64.44 RCW; adding a new chapter to Title 49 RCW; creating new sections; prescribing penalties; providing an effective date; and providing expiration dates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

PART I

SUBSTANCE ABUSE REDUCTION

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

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

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

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

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

(2) This section expires June 30, 2010.

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

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

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

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

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

NEW SECTION. Sec. 107. The Washington association of sheriffs and police chiefs, the Washington association of prosecuting attorneys, and the Washington association of county officials shall jointly develop measures to determine the efficacy of the programs in the pilot areas. These measures shall include comparison of arrest rates before the implementation of this act and after, reduction of recidivism, and any other factors that are determined to be relevant to evaluation of the programs. The organizations named in this section shall present their findings to the legislature by December 1, 2008.
Sec. 108. RCW 2.28.170 and 2005 c 504 s 504 are each amended to read as follows:

(1) Counties may establish and operate drug courts.

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

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

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

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

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

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

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

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

(A) That is a sex offense;

(B) That is a serious violent offense;

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

(D) During which the defendant caused substantial or great bodily harm or death to another person.
Sec. 109. RCW 26.44.020 and 2000 c 162 s 19 are each amended to read as follows:

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

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

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

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

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

(5) "Department" means the state department of social and health services.

(6) "Child" or "children" means any person under the age of eighteen years of age.

(7) "Professional school personnel" include, but are not limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(8) "Social service counselor" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.
(10) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

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

(12) "Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by any person under circumstances which indicate that the child's health, welfare, and safety is harmed, including conduct prohibited under RCW 9A.42.100, and excluding conduct permitted under RCW 9A.16.100. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) "Department" means the state department of social and health services.
(6) "Child" or "children" means any person under the age of eighteen years of age.

(7) "Professional school personnel" include, but are not limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(8) "Social service counselor" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(10) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

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

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

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

(14) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.
(15) "Negligent treatment or maltreatment" means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment. Poverty, homelessness, or exposure to domestic violence as defined in RCW 26.50.010 that is perpetrated against someone other than the child (does not constitute negligent treatment or maltreatment in and of itself).

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

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

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

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

Sec. 111. RCW 26.44.195 and 2005 c 512 s 6 are each amended to
read as follows:
(1) If the department, upon investigation of a report that a child
has been abused or neglected as defined in this chapter, determines
that the child has been subject to negligent treatment or maltreatment,
the department may offer services to the child's parents, guardians, or
legal custodians to: (a) Ameliorate the conditions that endangered the
welfare of the child; or (b) address or treat the effects of
maltreatment or neglect upon the child.

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

(3) If the child's parents, guardians, or legal custodians are
available and willing to participate on a voluntary basis in in-home
services, and the department determines that in-home services on a
voluntary basis are appropriate for the family, the department may
offer such services.

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

(5) Nothing in this section precludes the department from filing a
dependency petition as provided in chapter 13.34 RCW if it determines
that such action is necessary to protect the child from abuse or
neglect.
Nothing in this section shall be construed to create in any
person an entitlement to services or financial assistance in paying for
services or to create judicial authority to order the provision of
services to any person or family if the services are unavailable or
unsuitable or if the child or family is not eligible for such
services.))

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

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

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

(2) "Abuse" means the willful action or inaction that inflicts
injury, unreasonable confinement, intimidation, or punishment on a
vulnerable adult. In instances of abuse of a vulnerable adult who is
unable to express or demonstrate physical harm, pain, or mental
anguish, the abuse is presumed to cause physical harm, pain, or mental
anguish. Abuse includes sexual abuse, mental abuse, physical abuse,
and exploitation of a vulnerable adult, which have the following
meanings:

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

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

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

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

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

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

(5) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed by the department.

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

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

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

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

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

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

12. "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

13. "Vulnerable adult" includes a person:

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

(b) Found incapacitated under chapter 11.88 RCW; or

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

(d) Admitted to any facility; or

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

(f) Receiving services from an individual provider.
NEW SECTION. Sec. 113. The department of community, trade, and economic development shall review federal, state, and local funding sources and funding levels available to local meth action teams through the Washington state methamphetamine initiative to determine whether funding is adequate to accomplish the mission of the meth action teams. The department shall also review the funding levels for drug task forces in the state of Washington to determine whether they may require additional resources to successfully interdict drug trafficking organizations and clandestine labs statewide. The department shall report findings and recommendations to the legislature by November 1, 2006.

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

NEW SECTION. Sec. 115. The agency council on coordinated transportation shall adopt, as a part of its strategic program, a plan to increase access by recovering addicts to existing special needs transportation services already offered by medicaid brokerages and local transportation coalitions. The council may also implement an awareness campaign through department of corrections community corrections officers and service providers licensed by the department of social and health services division of alcohol and substance abuse to promote to recovering addicts seeking treatment the use of special needs transportation services, the council web site, and the statewide trip planner. The council shall report back to the legislature regarding the implementation of these strategies by November 1, 2006.

NEW SECTION. Sec. 116. The department of social and health services, in consultation with the attorney general, shall report to the legislature by January 15, 2007, on the status of ongoing multimedia campaigns to prevent methamphetamine use and underage drinking, and promote treatment, within the state of Washington.
PART II
DRUG-FREE WORKPLACE PROGRAM

NEW SECTION. Sec. 201. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

(2) "Alcohol test" means a chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence or absence of alcohol within an individual's body systems.

(3) "Chain of custody" means the methodology of tracking specimens for the purpose of maintaining control and accountability from initial collection to final disposition for all specimens and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results.

(4) "Collection site" means a place where individuals present themselves for the purpose of providing a urine, breath, or other specimen to be analyzed for the presence of drugs or alcohol.

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) "Prescription medication" means a drug or medication lawfully prescribed by a physician, or other health care provider licensed to prescribe medication, for an individual and taken in accordance with the prescription.
(19) "Rehabilitation program" means a program approved by the department that is capable of providing expert identification, assessment, and resolution of employee drug or alcohol abuse in a confidential and timely service. Any rehabilitation program under this chapter must contain a two-year continuing care component.

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

(21) "Substance" means drugs or alcohol.

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

(23) "Threshold detection level" means the level at which the presence of a drug or alcohol can be reasonably expected to be detected by an initial and confirmation test performed by a laboratory meeting the standards specified in this chapter. The threshold detection level indicates the level at which a valid conclusion can be drawn that the drug or alcohol is present in the employee's specimen.

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

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

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

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

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

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

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

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

(4) An employer whose substance abuse testing program reasonably meets, as of July 1, 2006, the requirements for the premium discount provided in this section is not eligible for certification.

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

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

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

(8) An employer, who has had in place for two years prior to the effective date of this section, a drug-free workplace program that
meets the requirements of section 203 of this act, shall qualify for a
two percent workers' compensation premium discount under Title 51 RCW.

NEW SECTION.  Sec. 203.  (1) A drug-free workplace program
established under this chapter must contain all of the following elements:
(a) A written policy statement in compliance with section 204 of
this act;
(b) Substance abuse testing in compliance with section 205 of this
act;
(c) An employee assistance program in compliance with section 206
of this act;
(d) Employee education in compliance with section 208 of this act;
and
(e) Supervisor training in compliance with section 209 of this act.
(2) In addition to the requirements of subsection (1) of this
section, a drug-free workplace program established under this chapter
must be implemented in compliance with the confidentiality standards
provided in section 211 of this act.

NEW SECTION.  Sec. 204.  (1) An alcohol and drug-free workplace
program established under this chapter must contain a written substance
abuse policy statement in order to qualify for the premium discount
provided under section 202 of this act. The policy must:
(a) Notify employees that the use or being under any influence of
alcohol during working hours is prohibited;
(b) Notify employees that the use, purchase, possession, or
transfer of drugs or having drugs in their system is prohibited and
that prescription or nonprescription medications are not prohibited
when taken in accordance with a lawful prescription or consistent with
standard dosage recommendations;
(c) Identify the types of testing an employee or job applicant may
be required to submit to or other basis used to determine when such a
test will be required;
(d) Identify the actions the employer may take against an employee
or job applicant on the basis of a verified positive test result;
(e) Contain a statement advising an employee or job applicant of
the existence of this chapter;
(f) Contain a general statement concerning confidentiality;
(g) Identify the consequences of refusing to submit to a drug test;
(h) Contain a statement advising an employee of the employee assistance program;
(i) Contain a statement that an employee or job applicant who receives a verified positive test result may contest or explain the result to the employer within five working days after receiving written notification of the positive test result;
(j) Contain a statement informing an employee of the provisions of the federal drug-free workplace act, if applicable to the employer; and
(k) Notify employees that the employer may discipline an employee for failure to report an injury in the workplace.

(2) An employer not having a substance abuse testing program in effect on July 1, 2006, shall ensure that at least sixty days elapse between a general one-time notice to all employees that a substance abuse testing program is being implemented and the beginning of the actual testing. An employer having a substance abuse testing program in place before July 1, 2006, is not required to provide a sixty-day notice period.

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

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

(a) Require job applicants to submit to a drug test after extending an offer of employment. The employer may use a refusal to submit to a drug test or a verified positive test as a basis for not hiring the job applicant;
(b) Investigate each workplace injury that results in a worker needing off-site medical attention and require an employee to submit to drug and alcohol tests if the employer reasonably believes the employee has caused or contributed to an injury which resulted in the need for off-site medical attention. An employer need not require that an employee submit to drug and alcohol tests if a supervisor, trained in accordance with section 209 of this act, reasonably believes that the injury was due to the inexperience of the employee or due to a defective or unsafe product or working condition, or other circumstances beyond the control of the employee. Under this chapter, a first-time verified positive test result may not be used as a basis to terminate an employee's employment. However, nothing in this section prohibits an employee from being terminated for reasons other than the positive test result;

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

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

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

(a) A specimen must be collected with due regard to the privacy of
the individual providing the specimen and in a manner reasonably
calculated to prevent substitution or contamination of the specimen.
(b) Specimen collection and analysis must be documented. The
documentation procedures must include:
(i) Labeling of specimen containers so as to reasonably preclude
the likelihood of erroneous identification of test results; and
(ii) An opportunity for the employee or job applicant to provide to
a medical review officer information the employee or applicant
considers relevant to the drug test, including identification of
currently or recently used prescription or nonprescription medication
or other relevant medical information.
(c) Specimen collection, storage, and transportation to the testing
site must be performed in a manner that reasonably precludes specimen
contamination or adulteration.
(d) An initial and confirmation test conducted under this section,
not including the taking or collecting of a specimen to be tested, must
be conducted by a laboratory as described in subsection (4) of this
section.
(e) A specimen for a test may be taken or collected by any of the
following persons:
(i) A physician, a physician's assistant, a registered professional
nurse, a licensed practical nurse, a nurse practitioner, or a certified
paramedic who is present at the scene of an accident for the purpose of
rendering emergency medical service or treatment;
(ii) A qualified person certified or employed by a laboratory
certified by the substance abuse and mental health administration or
the college of American pathologists; or
(iii) A qualified person certified or employed by a collection
company using collection procedures adopted by the United States
department of health and human services and the United States
department of transportation for alcohol collection.
(f) Within five working days after receipt of a verified positive
test result from the laboratory, an employer shall inform an employee
or job applicant in writing of the positive test result, the
consequences of the result, and the options available to the employee
or job applicant.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A laboratory shall disclose to the employer a written test
result report within seven working days after receipt of the sample.
A laboratory report of a substance abuse test result must, at a
minimum, state:
(i) The name and address of the laboratory that performed the test and the positive identification of the person tested;

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

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

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

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

(c) A laboratory shall provide technical assistance through the use of a medical review officer to the employer, employee, or job applicant for the purpose of interpreting a positive confirmed drug test result that could have been caused by prescription or nonprescription medication taken by the employee or job applicant. The medical review officer shall interpret and evaluate the laboratory's positive drug test result and eliminate test results that could have been caused by prescription medication or other medically documented sources in accordance with the United States Department of Health and Human Services medical review officer manual.

(5) A positive initial drug test must be confirmed using the gas chromatography/mass spectrometry method or an equivalent or more accurate scientifically accepted method approved by the Substance Abuse and Mental Health Services Administration as the technology becomes available in a cost-effective form.

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

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

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

(b) The employer shall publish notice of the employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing the services; and
(c) The employer shall provide the employee with notice of the policies and procedures regarding access to and use of the employee assistance program.

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

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

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

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

(ii) Comply with any treatment recommendations;

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

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

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

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

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

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

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

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

(a) Refusal to submit to a drug or alcohol test;
(b) Refusal to agree to or failure to comply with the conditions of a last-chance agreement; 
(c) A second verified positive drug or alcohol test result; or 
(d) After the first verified positive drug or alcohol test, any violation of employer rules pertaining to alcohol and drugs. 

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

NEW SECTION. Sec. 208. As part of a program established under this chapter, an employer shall provide all employees with an annual education program on substance abuse, in general, and its effects on the workplace, specifically. An employer with employees who have difficulty communicating in English shall make reasonable efforts to help the employees understand the substance of the education program. An education program for a minimum of one hour should include but is not limited to the following information: 
(1) The explanation of the disease model of addiction for alcohol and drugs; 
(2) The effects and dangers of the commonly abused substances in the workplace; and 
(3) The employer's policies and procedures regarding substance abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so.

NEW SECTION. Sec. 209. In addition to the education program provided in section 208 of this act, an employer shall provide all supervisory personnel with a minimum of two hours of supervisor training, that should include but is not limited to the following information: 
(1) How to recognize signs of employee substance abuse; 
(2) How to document and collaborate signs of employee substance abuse; 
(3) How to refer employees to the employee assistance program or proper treatment providers; and 
(4) Circumstances and procedures for postinjury testing.
NEW SECTION. Sec. 210. (1) A physician-patient relationship is not created between an employee or job applicant and an employer, medical review officer, or person performing or evaluating a drug or alcohol test solely by the establishment, implementation, or administration of a drug or alcohol testing program.

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

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

(4) This chapter may not be construed to prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed by a statute or rule for the purpose of monitoring exposure of employees to toxic or other unhealthy materials in the workplace or in the performance of job responsibilities. The screening or tests must be limited to testing for the specific material expressly identified in the statute or rule, unless prior written consent of the employee is obtained for other tests.

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

NEW SECTION. Sec. 211. Confidentiality standards that apply to substance abuse testing programs implemented under this chapter include the following:
(1) Information, interviews, reports, statements, memoranda, and test results, written or otherwise, received through a substance abuse testing program are confidential communications, and may not be used or received in evidence, obtained in discovery, or disclosed in a civil or administrative proceeding, except as provided in subsection (5) of this section.

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

(3) Any release of the information must be pursuant to a written consent form that complies with RCW 70.02.030 and is signed voluntarily by the person tested, unless the release is compelled by the division of alcohol and substance abuse of the department or a court of competent jurisdiction in accordance with state and federal confidentiality laws, or unless required by a professional or occupational licensing board in a related disciplinary proceeding. Any disclosure by any agency approved by the department must be in accordance with RCW 70.96A.150. The consent form must contain at a minimum:

(a) The name of the person who is authorized to obtain the information;
(b) The purpose of the disclosure;
(c) The precise information to be disclosed;
(d) The duration of the consent; and
(e) The signature of the person authorizing release of the information.

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

(5) Nothing in this chapter prohibits:

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

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

NEW SECTION. Sec. 213. (1) The department of labor and industries
may adopt rules necessary for the implementation of this chapter
including but not limited to provisions for penalties and repayment of
premium discounts by employers that are decertified by the department
of social and health services under section 212 of this act.
(2) The department of labor and industries shall conduct an
evaluation of the effect of the premium discount provided for under
section 202 of this act on workplace safety and the state of Washington
industrial insurance fund. The department of labor and industries
shall report its preliminary findings to the appropriate committees of
the legislature on September 1st of 2007 and 2008 and shall issue a
comprehensive final report on December 1, 2009.

NEW SECTION. Sec. 214. The department shall conduct an evaluation
to determine the costs and benefits of the program under this chapter.
If the department contracts for the performance of any or all of the
evaluation, no more than ten percent of the contract amount may be used
to cover indirect expenses. The department shall report its
preliminary findings to the legislature on September 1st of 2007 and
2008 and shall issue a comprehensive final report on December 1, 2009.
NEW SECTION. Sec. 215. Notwithstanding any other provisions of this chapter, the total premium discounts available under section 202 of this act shall not exceed five million dollars during any fiscal year.

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

PART III
CLEANUP OF CONTAMINATED PROPERTY

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

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

(1) "Authorized contractor" means a person who decontaminates, demolishes, or disposes of contaminated property as required by this chapter who is certified by the department as provided for in RCW 64.44.060.

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

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

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

(5) "Officer" means a local health officer authorized under chapters 70.05, 70.08, and 70.46 RCW.
"Property" means any real or personal property, (site, structure, or part of a structure which) or segregable part thereof, that is involved in or affected by the unauthorized manufacture, distribution, or storage of hazardous chemicals. This includes but is not limited to single-family residences, units of multiplexes, condominiums, apartment buildings, motels, hotels, boats, motor vehicles, trailers, manufactured housing, any shop, booth, garden, or storage shed, and all contents of the items referenced in this subsection.

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

Whenever a law enforcement agency becomes aware that property has been contaminated by hazardous chemicals, that agency shall report the contamination to the local health officer. The local health officer shall cause a posting of a written warning on the premises within one working day of notification of the contamination and shall inspect the property within fourteen days after receiving the notice of contamination. The warning shall inform the potential occupants that hazardous chemicals may exist on, or have been removed from, the premises and that entry is unsafe. If a property owner believes that a tenant has contaminated property that was being leased or rented, and the property is vacated or abandoned, then the property owner shall contact the local health officer about the possible contamination. Local health officers or boards may charge property owners reasonable fees for inspections of suspected contaminated property requested by property owners.

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

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

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

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

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

(1) If after the inspection of the property, the local health officer finds that it is contaminated, then the local health officer shall issue an order declaring the property unfit and prohibiting its use. The local health officer shall cause the order to be served either personally or by certified mail, with return receipt requested, upon all occupants and persons having any interest therein as shown upon the records of the auditor's office of the county in which such property is located. The local health officer shall also cause the order to be posted in a conspicuous place on the property. If the whereabouts of such persons is unknown and the same cannot be ascertained by the local health officer in the exercise of reasonable diligence, and the health officer makes an affidavit to that effect, then the serving of the order upon such persons may be made either by personal service or by mailing a copy of the order by certified mail, postage prepaid, return receipt requested, to each person at the address appearing on the last equalized tax assessment roll of the county where the property is located or at the address known to the county assessor, and the order shall be posted conspicuously at the residence. A copy of the order shall also be mailed, addressed to each person or party having a recorded right, title, estate, lien, or interest in the property. The order shall contain a notice that a hearing before the local health board or
1 officer shall be held upon the request of a person required to be
2 notified of the order under this section. The request for a hearing
3 must be made within ten days of serving the order. The hearing shall
4 then be held within not less than twenty days nor more than thirty days
5 after the serving of the order. The officer shall prohibit use as long
6 as the property is found to be contaminated. A copy of the order shall
7 also be filed with the auditor of the county in which the property is
8 located, where the order pertains to real property, and such filing of
9 the complaint or order shall have the same force and effect as other
10 lis pendens notices provided by law. In any hearing concerning whether
11 property is fit for use, the property owner has the burden of showing
12 that the property is decontaminated or fit for use. The owner or any
13 person having an interest in the property may file an appeal on any
14 order issued by the local health board or officer within thirty days
15 from the date of service of the order with the appeals commission
16 established pursuant to RCW 35.80.030. All proceedings before the
17 appeals commission, including any subsequent appeals to superior court,
18 shall be governed by the procedures established in chapter 35.80 RCW.
19
20 (2) If the local health officer determines immediate action is
21 necessary to protect public health, safety, or the environment, the
22 officer may issue or cause to be issued an emergency order, and any
23 person to whom such an order is directed shall comply immediately.
24 Emergency orders issued pursuant to this section shall expire no later
25 than seventy-two hours after issuance and shall not impair the health
26 officer from seeking an order under subsection (1) of this section.

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

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

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

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

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

(3) No provision of this section may be construed to limit the
ability of the government agents and local health officers to permit
occupants or owners of the property at issue to remove uncontaminated
personal property from the premises.

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

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

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

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

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

(1) A contractor, supervisor, or worker may not perform
decontamination, demolition, or disposal work unless issued a
certificate by the state department of health. The department shall
establish performance standards for contractors, supervisors, and
workers by rule in accordance with chapter 34.05 RCW, the
administrative procedure act. The department shall train and test, or
may approve courses to train and test, contractors, supervisors, and
((their employees)) workers on the essential elements in assessing
property used as an illegal ((drug)) controlled substances
manufacturing or storage site to determine hazard reduction measures
needed, techniques for adequately reducing contaminants, use of
personal protective equipment, methods for proper decontamination,
demolition, removal, and disposal of contaminated property, and
relevant federal and state regulations. Upon successful completion of
the training, and after a background check, the contractor, supervisor,
or ((employee)) worker shall be certified.

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

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

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

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

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

(c) Failing to file a work plan;

(d) Failing to perform work pursuant to the work plan;

(e) Failing to perform work that meets the requirements of
the department and the requirements of the local health officers;

The certificate was obtained by error, misrepresentation, or
fraud; or)

(f) Failing to properly dispose of contaminated property;

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

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

(i) If the person has been certified pursuant to RCW 74.20A.320 by
the department of social and health services as a person who is not in
compliance with a support order or a residential or visitation order.
If the person has continued to meet all other requirements for
reinstatement during the suspension, reissuance of the license or
certificate shall be automatic upon the department's receipt of a
release issued by the department of social and health services stating
that the person is in compliance with the order.
(5) A contractor, supervisor, or worker who violates any provision of this chapter may be assessed a fine not to exceed five hundred dollars for each violation.

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

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

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

(1) The state board of health shall promulgate rules and standards for carrying out the provisions in this chapter in accordance with chapter 34.05 RCW, the administrative procedure act. The local board of health and the local health officer are authorized to exercise such powers as may be necessary to carry out this chapter. The department shall provide technical assistance to local health boards and health officers to carry out their duties under this chapter.

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

(3) The department shall adopt rules regarding independent third party sampling including those pertaining to:
   
   (a) Verification of possible property contamination due to the illegal manufacture of controlled substances;
   
   (b) Verification of satisfactory decontamination of property deemed contaminated and unfit for use;
   
   (c) Certification of independent third party samplers;
   
   (d) Qualifications and performance standards for independent third party samplers;
(e) Administration of background checks for third party sampler applicants; and

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

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

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

The department may evaluate annually a number of the property decontamination projects performed by licensed contractors to determine the adequacy of the decontamination work, using the services of an independent environmental contractor or state or local agency. If a project fails the evaluation and inspection, the contractor is subject to a civil penalty and license suspension, pursuant to RCW 64.44.060 (4) and (5); and the contractor is prohibited from performing additional work until deficiencies have been corrected.

NEW SECTION. Sec. 309. The department of health shall report to the legislature on the feasibility of providing incentives and protections to landlords to encourage housing rentals to recovering substance abusers or those convicted of drug crimes. A final report must be submitted to the appropriate committees of the legislature by January 1, 2007.

NEW SECTION. Sec. 310. The department of ecology shall, in consultation with interested local health jurisdictions and their corresponding city or county governments, conduct a pilot program to demonstrate application of existing legal methods and grant programs administered under the model toxics control act in chapter 70.105D RCW, and other available authorities and funds to clean up methamphetamine-contaminated property for a public purpose. This pilot program shall include: (1) A facility with hazardous substance releases to soil or ground water resulting from a former methamphetamine lab or other historic uses of the property that created liability under chapter

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70.105D RCW; and (2) a facility where the primary issue is
decontamination or demolition of methamphetamine contaminated
structures and other solid waste related issues. The department of
ecology shall submit a report on the pilot program to the appropriate
committees of the legislature by January 1, 2007.

PART IV
CRIMINAL SANCTIONS AND PROCEDURE

Sec. 401. RCW 9.94A.533 and 2003 c 53 s 58 are each amended to
read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;
(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);
(c) Twelve months for offenses committed under RCW 69.50.4013.

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

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

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

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

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

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

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

(c) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

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

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

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

(2) A motion for a sentence under this section may be made by the court, the offender, or the state. If the sentencing court determines that the offender is eligible for this alternative, the court may order an examination of the offender. The examination shall, at a minimum, address the following issues:
(a) Whether the offender suffers from drug addiction;
(b) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;
(c) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and
(d) Whether the offender and the community will benefit from the use of the alternative.

(3) The examination report must contain:
(a) Information on the issues required to be addressed in subsection (2) of this section; and
(b) A proposed treatment plan that must, at a minimum, contain:
   (i) A proposed treatment provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services;
   (ii) The recommended frequency and length of treatment, including both residential chemical dependency treatment and treatment in the community;
   (iii) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and
   (iv) Recommended crime-related prohibitions and affirmative conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Perform community restitution work;

(f) Stay out of areas designated by the sentencing court;
(g) Such other conditions as the court may require such as affirmative conditions.

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

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

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

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

(9) If an offender sentenced to the prison-based alternative under subsection (5) of this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

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

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

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

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

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

Unless specifically waived by the court, the court shall order the
department to complete a chemical dependency screening report before
imposing a sentence upon a defendant who has been convicted of a
violation of the uniform controlled substances act under chapter 69.50
RCW ((or ()), a criminal solicitation to commit such a violation under
chapter 9A.28 RCW, or any felony where the court finds that the
offender has a chemical dependency that has contributed to his or her
offense. In addition, the court shall, at the time of plea or
conviction, order the department to complete a presentence report
before imposing a sentence upon a defendant who has been convicted of
a felony sexual offense. The department of corrections shall give
priority to presentence investigations for sexual offenders. If the
court determines that the defendant may be a mentally ill person as
defined in RCW 71.24.025, although the defendant has not established
that at the time of the crime he or she lacked the capacity to commit
the crime, was incompetent to commit the crime, or was insane at the
time of the crime, the court shall order the department to complete a
presentence report before imposing a sentence.

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

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

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

NEW SECTION. Sec. 404. The Washington institute for public policy
shall conduct a study of criminal sentencing provisions of neighboring
states for all crimes involving methamphetamine. The institute shall
report to the legislature on any criminal sentencing increases
necessary under Washington law to reduce or remove any incentives
methamphetamine traffickers and manufacturers may have to locate in

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

PART V
MISCELLANEOUS

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

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

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

NEW SECTION. Sec. 504. Sections 110 and 111 of this act take

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