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SECOND SUBSTITUTE SENATE BILL 6239

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State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, Johnson, Doumit, Oke, Stevens and Esser; by request of Attorney General)

READ FIRST TIME 02/7/06.

1 AN ACT Relating to the impact of controlled substances, primarily  
2 methamphetamine; amending RCW 2.28.170, 26.44.020, 26.44.020,  
3 26.44.195, 74.34.020, 64.44.010, 64.44.020, 64.44.030, 64.44.040,  
4 64.44.050, 64.44.060, 64.44.070, 9.94A.533, 9.94A.660, and 9.94A.500;  
5 adding a new section to chapter 70.96A RCW; adding a new section to  
6 chapter 72.09 RCW; adding a new section to chapter 64.44 RCW; adding a  
7 new chapter to Title 49 RCW; creating new sections; prescribing  
8 penalties; providing an effective date; and providing expiration dates.

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

10 **PART I**

11 **SUBSTANCE ABUSE REDUCTION**

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

14 (1) Any county that has imposed the sales and use tax authorized by  
15 RCW 82.14.460 may seek a state appropriation of up to one hundred  
16 thousand dollars annually beginning in fiscal year 2008 and ending in  
17 fiscal year 2010. The funds shall be used to provide additional  
18 support to counties for mental health or substance abuse treatment for

1 persons with methamphetamine addiction. Local governments receiving  
2 funds under this section may not use the funds to supplant existing  
3 funding.

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

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

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

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

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

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

26 NEW SECTION. **Sec. 105.** Three pilot enforcement areas shall be  
27 established for a period of four fiscal years, beginning July 1, 2006,  
28 and ending June 30, 2010, with one in the southwestern region of the  
29 state, comprising of Pacific, Wahkiakum, Lewis, Grays Harbor, and  
30 Cowlitz counties; one in the southeastern region of the state,  
31 comprising of Walla Walla, Columbia, Garfield, and Asotin counties; and  
32 one in the northeastern part of the state, comprising of Stevens,  
33 Ferry, Pend Oreille, and Lincoln counties. The counties comprising a

1 specific pilot area shall coordinate with each other to establish and  
2 implement a regional strategy to enforce illegal drug laws.

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

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

26 NEW SECTION. **Sec. 107.** The Washington association of sheriffs and  
27 police chiefs, the Washington association of prosecuting attorneys, and  
28 the Washington association of county officials shall jointly develop  
29 measures to determine the efficacy of the programs in the pilot areas.  
30 These measures shall include comparison of arrest rates before the  
31 implementation of this act and after, reduction of recidivism, and any  
32 other factors that are determined to be relevant to evaluation of the  
33 programs. The organizations named in this section shall present their  
34 findings to the legislature by December 1, 2008.

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

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

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

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

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

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

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

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

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

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

32       (A) That is a sex offense;

33       (B) That is a serious violent offense;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (10) "Pharmacist" means any registered pharmacist under chapter  
2 18.64 RCW, whether acting in an individual capacity or as an employee  
3 or agent of any public or private organization or institution.

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

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

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

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

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

27 (16) "Child protective services" means those services provided by  
28 the department designed to protect children from child abuse and  
29 neglect and safeguard such children from future abuse and neglect, and  
30 conduct investigations of child abuse and neglect reports.  
31 Investigations may be conducted regardless of the location of the  
32 alleged abuse or neglect. Child protective services includes referral  
33 to services to ameliorate conditions that endanger the welfare of  
34 children, the coordination of necessary programs and services relevant  
35 to the prevention, intervention, and treatment of child abuse and  
36 neglect, and services to children to ensure that each child has a  
37 permanent home. In determining whether protective services should be

1 provided, the department shall not decline to provide such services  
2 solely because of the child's unwillingness or developmental inability  
3 to describe the nature and severity of the abuse or neglect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (10) "Pharmacist" means any registered pharmacist under chapter  
18 18.64 RCW, whether acting in an individual capacity or as an employee  
19 or agent of any public or private organization or institution.

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

24 (12) "Abuse or neglect" means sexual abuse, sexual exploitation, or  
25 injury of a child by any person under circumstances which cause harm to  
26 the child's health, welfare, or safety, including conduct prohibited  
27 under RCW 9A.42.100, and excluding conduct permitted under RCW  
28 9A.16.100; or the negligent treatment or maltreatment of a child by a  
29 person responsible for or providing care to the child. An abused child  
30 is a child who has been subjected to child abuse or neglect as defined  
31 in this section.

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

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

1 (15) "Negligent treatment or maltreatment" means an act or a  
2 failure to act, or the cumulative effects of a pattern of conduct,  
3 behavior, or inaction, that evidences a serious disregard of  
4 consequences of such magnitude as to constitute a clear and present  
5 danger to a child's health, welfare, or safety. When considering  
6 whether a clear and present danger exists, evidence of a parent's  
7 substance abuse as a contributing factor to negligent treatment or  
8 maltreatment shall be given great weight. The fact that siblings share  
9 a bedroom is not, in and of itself, negligent treatment or  
10 maltreatment. Poverty, homelessness, or exposure to domestic violence  
11 as defined in RCW 26.50.010 that is perpetrated against someone other  
12 than the child (~~(do-[does])~~) does not constitute negligent treatment or  
13 maltreatment in and of (~~(themselves-[itself])~~) itself.

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

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

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

35 (19) "Unfounded" means available information indicates that, more  
36 likely than not, child abuse or neglect did not occur. No unfounded  
37 allegation of child abuse or neglect may be disclosed to a child-

1 placing agency, private adoption agency, or any other provider licensed  
2 under chapter 74.15 RCW.

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

5 (1) If the department, upon investigation of a report that a child  
6 has been abused or neglected as defined in this chapter, determines  
7 that the child has been subject to negligent treatment or maltreatment,  
8 the department may offer services to the child's parents, guardians, or  
9 legal custodians to: (a) Ameliorate the conditions that endangered the  
10 welfare of the child; or (b) address or treat the effects of  
11 mistreatment or neglect upon the child.

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

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

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

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



1 licensing requirements, and includes restraints that are otherwise  
2 being used inappropriately.

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

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

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

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

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

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

27 (7) "Individual provider" means a person under contract with the  
28 department to provide services in the home under chapter 74.09 or  
29 74.39A RCW.

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

37 (9) "Neglect" means (a) a pattern of conduct or inaction by a  
38 person or entity with a duty of care that fails to provide the goods

1 and services that maintain physical or mental health of a vulnerable  
2 adult, or that fails to avoid or prevent physical or mental harm or  
3 pain to a vulnerable adult, including but not limited to conduct  
4 prohibited under RCW 9A.42.100; or (b) an act or omission that  
5 demonstrates a serious disregard of consequences of such a magnitude as  
6 to constitute a clear and present danger to the vulnerable adult's  
7 health, welfare, or safety.

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

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

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

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

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

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

31 (c) Who has a developmental disability as defined under RCW  
32 71A.10.020; or

33 (d) Admitted to any facility; or

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

37 (f) Receiving services from an individual provider.

1        NEW SECTION.    **Sec. 113.** The department of community, trade, and  
2 economic development shall review federal, state, and local funding  
3 sources and funding levels available to local meth action teams through  
4 the Washington state methamphetamine initiative to determine whether  
5 funding is adequate to accomplish the mission of the meth action teams.  
6 The department shall also review the funding levels for drug task  
7 forces in the state of Washington to determine whether they may require  
8 additional resources to successfully interdict drug trafficking  
9 organizations and clandestine labs statewide. The department shall  
10 report findings and recommendations to the legislature by November 1,  
11 2006.

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

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

30        NEW SECTION.    **Sec. 116.** The department of social and health  
31 services, in consultation with the attorney general, shall report to  
32 the legislature by January 15, 2007, on the status of ongoing  
33 multimedia campaigns to prevent methamphetamine use and underage  
34 drinking, and promote treatment, within the state of Washington.

1 PART II

2 DRUG-FREE WORKPLACE PROGRAM

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

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

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

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

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

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

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

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

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

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

35 (10) "Employee assistance program" means a program designed to  
36 assist in the identification and resolution of job performance problems  
37 associated with employees impaired by personal concerns. A minimum  
38 level of core services must include: Consultation and professional,

1 confidential, appropriate, and timely problem assessment services;  
2 short-term problem resolution; referrals for appropriate diagnosis,  
3 treatment, and assistance; follow-up and monitoring; employee  
4 education; and supervisory training.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (a) Is certified by the division of alcohol and substance abuse of  
36 the department as provided in section 212 of this act. The employer  
37 must maintain an alcohol and drug-free workplace program in accordance

1 with the standards, procedures, and rules established in or under this  
2 chapter. If the employer fails to maintain the program as required,  
3 the employer shall not qualify for the premium discount provided under  
4 this section;

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

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

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

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

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

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

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

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

36 (8) An employer, who has had in place for two years prior to the  
37 effective date of this section, a drug-free workplace program that

1 meets the requirements of section 203 of this act, shall qualify for a  
2 two percent workers' compensation premium discount under Title 51 RCW.

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

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

8 (b) Substance abuse testing in compliance with section 205 of this  
9 act;

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

12 (d) Employee education in compliance with section 208 of this act;  
13 and

14 (e) Supervisor training in compliance with section 209 of this act.

15 (2) In addition to the requirements of subsection (1) of this  
16 section, a drug-free workplace program established under this chapter  
17 must be implemented in compliance with the confidentiality standards  
18 provided in section 211 of this act.

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

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

25 (b) Notify employees that the use, purchase, possession, or  
26 transfer of drugs or having drugs in their system is prohibited and  
27 that prescription or nonprescription medications are not prohibited  
28 when taken in accordance with a lawful prescription or consistent with  
29 standard dosage recommendations;

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

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

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

1 (f) Contain a general statement concerning confidentiality;  
2 (g) Identify the consequences of refusing to submit to a drug test;  
3 (h) Contain a statement advising an employee of the employee  
4 assistance program;

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

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

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

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

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

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

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

1 (b) Investigate each workplace injury that results in a worker  
2 needing off-site medical attention and require an employee to submit to  
3 drug and alcohol tests if the employer reasonably believes the employee  
4 has caused or contributed to an injury which resulted in the need for  
5 off-site medical attention. An employer need not require that an  
6 employee submit to drug and alcohol tests if a supervisor, trained in  
7 accordance with section 209 of this act, reasonably believes that the  
8 injury was due to the inexperience of the employee or due to a  
9 defective or unsafe product or working condition, or other  
10 circumstances beyond the control of the employee. Under this chapter,  
11 a first-time verified positive test result may not be used as a basis  
12 to terminate an employee's employment. However, nothing in this  
13 section prohibits an employee from being terminated for reasons other  
14 than the positive test result;

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

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

34 (3) Specimen collection and substance abuse testing under this  
35 section must be performed in accordance with regulations and procedures  
36 approved by the United States department of health and human services  
37 and the United States department of transportation regulations for

1 alcohol and drug testing and must include testing for marijuana,  
2 cocaine, amphetamines, opiates, and phencyclidine. Employers may test  
3 for any drug listed in section 201(7) of this act.

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

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

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

11 (ii) An opportunity for the employee or job applicant to provide to  
12 a medical review officer information the employee or applicant  
13 considers relevant to the drug test, including identification of  
14 currently or recently used prescription or nonprescription medication  
15 or other relevant medical information.

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

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

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

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

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

32 (iii) A qualified person certified or employed by a collection  
33 company using collection procedures adopted by the United States  
34 department of health and human services and the United States  
35 department of transportation for alcohol collection.

36 (f) Within five working days after receipt of a verified positive  
37 test result from the laboratory, an employer shall inform an employee

1 or job applicant in writing of the positive test result, the  
2 consequences of the result, and the options available to the employee  
3 or job applicant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (c) A laboratory shall provide technical assistance through the use  
12 of a medical review officer to the employer, employee, or job applicant  
13 for the purpose of interpreting a positive confirmed drug test result  
14 that could have been caused by prescription or nonprescription  
15 medication taken by the employee or job applicant. The medical review  
16 officer shall interpret and evaluate the laboratory's positive drug  
17 test result and eliminate test results that could have been caused by  
18 prescription medication or other medically documented sources in  
19 accordance with the United States department of health and human  
20 services medical review officer manual.

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

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

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

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

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

1 (c) The employer shall provide the employee with notice of the  
2 policies and procedures regarding access to and use of the employee  
3 assistance program.

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

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

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

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

17 (ii) Comply with any treatment recommendations;

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

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

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

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

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

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

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

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

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

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

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

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

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

9 NEW SECTION. **Sec. 208.** As part of a program established under  
10 this chapter, an employer shall provide all employees with an annual  
11 education program on substance abuse, in general, and its effects on  
12 the workplace, specifically. An employer with employees who have  
13 difficulty communicating in English shall make reasonable efforts to  
14 help the employees understand the substance of the education program.  
15 An education program for a minimum of one hour should include but is  
16 not limited to the following information:

17 (1) The explanation of the disease model of addiction for alcohol  
18 and drugs;

19 (2) The effects and dangers of the commonly abused substances in  
20 the workplace; and

21 (3) The employer's policies and procedures regarding substance  
22 abuse in the workplace and how employees who wish to obtain substance  
23 abuse treatment can do so.

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

29 (1) How to recognize signs of employee substance abuse;

30 (2) How to document and collaborate signs of employee substance  
31 abuse;

32 (3) How to refer employees to the employee assistance program or  
33 proper treatment providers; and

34 (4) Circumstances and procedures for postinjury testing.

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

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

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

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

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

34        NEW SECTION.    **Sec. 211.**    Confidentiality standards that apply to  
35 substance abuse testing programs implemented under this chapter include  
36 the following:

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

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

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

22 (a) The name of the person who is authorized to obtain the  
23 information;

24 (b) The purpose of the disclosure;

25 (c) The precise information to be disclosed;

26 (d) The duration of the consent; and

27 (e) The signature of the person authorizing release of the  
28 information.

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

33 (5) Nothing in this chapter prohibits:

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

37 (b) An entity that obtains the information from disclosing or using

1 the information in a lawful manner as part of a matter relating to the  
2 substance abuse test, the test result, or an employer action with  
3 respect to the job applicant or employee.

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

15 NEW SECTION. **Sec. 213.** (1) The department of labor and industries  
16 may adopt rules necessary for the implementation of this chapter  
17 including but not limited to provisions for penalties and repayment of  
18 premium discounts by employers that are decertified by the department  
19 of social and health services under section 212 of this act.

20 (2) The department of labor and industries shall conduct an  
21 evaluation of the effect of the premium discount provided for under  
22 section 202 of this act on workplace safety and the state of Washington  
23 industrial insurance fund. The department of labor and industries  
24 shall report its preliminary findings to the appropriate committees of  
25 the legislature on September 1st of 2007 and 2008 and shall issue a  
26 comprehensive final report on December 1, 2009.

27 NEW SECTION. **Sec. 214.** The department shall conduct an evaluation  
28 to determine the costs and benefits of the program under this chapter.  
29 If the department contracts for the performance of any or all of the  
30 evaluation, no more than ten percent of the contract amount may be used  
31 to cover indirect expenses. The department shall report its  
32 preliminary findings to the legislature on September 1st of 2007 and  
33 2008 and shall issue a comprehensive final report on December 1, 2009.



1        ~~((5))~~ (6) "Property" means any real or personal property, ~~((site,~~  
2 ~~structure, or part of a structure which))~~ or segregable part thereof,  
3 that is involved in or affected by the unauthorized manufacture,  
4 distribution, or storage of hazardous chemicals. This includes but is  
5 not limited to single-family residences, units of multiplexes,  
6 condominiums, apartment buildings, motels, hotels, boats, motor  
7 vehicles, trailers, manufactured housing, ~~((or))~~ any shop, booth,  
8 ~~((or))~~ garden, or storage shed, and all contents of the items  
9 referenced in this subsection.

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

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

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

33        If access to the property is denied, a local health officer in  
34 consultation with law enforcement may seek a warrant for the purpose of  
35 conducting administrative inspections and seizure of property. A  
36 superior, district, or municipal court within the jurisdiction of the

1 property may, based upon probable cause that the property is  
2 contaminated, issue warrants for the purpose of conducting  
3 administrative inspections and seizure of property.

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

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

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

15 (1) If after the inspection of the property, the local health  
16 officer finds that it is contaminated, then the ((property shall be  
17 found unfit for)) local health officer shall issue an order declaring  
18 the property unfit and prohibiting its use. The local health officer  
19 shall cause the order to be served ((an order prohibiting use)) either  
20 personally or by certified mail, with return receipt requested, upon  
21 all occupants and persons having any interest therein as shown upon the  
22 records of the auditor's office of the county in which such property is  
23 located. The local health officer shall also ((post)) cause the order  
24 ((prohibiting use)) to be posted in a conspicuous place on the  
25 property. If the whereabouts of such persons is unknown and the same  
26 cannot be ascertained by the local health officer in the exercise of  
27 reasonable diligence, and the health officer makes an affidavit to that  
28 effect, then the serving of the order upon such persons may be made  
29 either by personal service or by mailing a copy of the order by  
30 certified mail, postage prepaid, return receipt requested, to each  
31 person at the address appearing on the last equalized tax assessment  
32 roll of the county where the property is located or at the address  
33 known to the county assessor, and the order shall be posted  
34 conspicuously at the residence. A copy of the order shall also be  
35 mailed, addressed to each person or party having a recorded right,  
36 title, estate, lien, or interest in the property. The order shall  
37 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 (2) If the local health officer determines immediate action is  
20 necessary to protect public health, safety, or the environment, the  
21 officer may issue or cause to be issued an emergency order, and any  
22 person to whom such an order is directed shall comply immediately.  
23 Emergency orders issued pursuant to this section shall expire no later  
24 than seventy-two hours after issuance and shall not impair the health  
25 officer from seeking an order under subsection (1) of this section.

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

28 (1) Upon issuance of an order declaring property unfit and  
29 prohibiting its use, the city or county in which the contaminated  
30 property is located may take action to prohibit use, occupancy, or  
31 removal of such property; condemn, decontaminate, or demolish the  
32 property; or ((to)) require that the property be vacated or the  
33 contents removed from the property. The city or county may use an  
34 authorized contractor if property is demolished, decontaminated, or  
35 removed under this section. The city, county, or contractor shall  
36 comply with all orders of the health officer during these processes.  
37 No city or county may condemn, decontaminate, or demolish property

1 pursuant to this section until all procedures granting the right of  
2 notice and the opportunity to appeal in RCW 64.44.030 have been  
3 exhausted, but may prohibit use, occupancy, or removal of contaminated  
4 property pending appeal of the order.

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

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

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

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

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

23 (1) An owner of contaminated property who desires to have the  
24 property decontaminated, demolished, or disposed of shall use the  
25 services of an authorized contractor unless otherwise authorized by the  
26 local health officer. The contractor and property owner shall prepare  
27 and submit a written work plan for decontamination, demolition, or  
28 disposal to the local health officer. The local health officer may  
29 charge a reasonable fee for review of the work plan. If the work plan  
30 is approved and the decontamination, demolition, or disposal is  
31 completed and the property is retested according to the plan and  
32 properly documented, then the health officer shall allow reuse of the  
33 property. A release for reuse document shall be recorded in the real  
34 property records indicating the property has been decontaminated,  
35 demolished, or disposed of in accordance with rules of the state  
36 department of health. The property owner is responsible for: (a) The  
37 costs of any property testing which may be required to demonstrate the

1 presence or absence of hazardous chemicals; and (b) the costs of the  
2 property's decontamination, demolition, and disposal expenses, as well  
3 as costs incurred by the local health officer resulting from the  
4 enforcement of this chapter.

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

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

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

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

36 (2) The department may require the successful completion of annual

1 refresher courses provided or approved by the department for the  
2 continued certification of the contractor or employee.

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

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

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

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

18 (c) Failing to file a work plan;

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

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

22 ~~((+e) The certificate was obtained by error, misrepresentation, or~~  
23 ~~fraud; or))~~

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

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

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

31 (i) If the person has been certified pursuant to RCW 74.20A.320 by  
32 the department of social and health services as a person who is not in  
33 compliance with a support order or a residential or visitation order.  
34 If the person has continued to meet all other requirements for  
35 reinstatement during the suspension, reissuance of the license or  
36 certificate shall be automatic upon the department's receipt of a  
37 release issued by the department of social and health services stating  
38 that the person is in compliance with the order.

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

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

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

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

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

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

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

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

33 (b) Verification of satisfactory decontamination of property deemed  
34 contaminated and unfit for use;

35 (c) Certification of independent third party samplers;

36 (d) Qualifications and performance standards for independent third  
37 party samplers;

1 (e) Administration of background checks for third party sampler  
2 applicants; and

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

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

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

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

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

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

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

6 **PART IV**

7 **CRIMINAL SANCTIONS AND PROCEDURE**

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

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

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

18 (3) The following additional times shall be added to the standard  
19 sentence range for felony crimes committed after July 23, 1995, if the  
20 offender or an accomplice was armed with a firearm as defined in RCW  
21 9.41.010 and the offender is being sentenced for one of the crimes  
22 listed in this subsection as eligible for any firearm enhancements  
23 based on the classification of the completed felony crime. If the  
24 offender is being sentenced for more than one offense, the firearm  
25 enhancement or enhancements must be added to the total period of  
26 confinement for all offenses, regardless of which underlying offense is  
27 subject to a firearm enhancement. If the offender or an accomplice was  
28 armed with a firearm as defined in RCW 9.41.010 and the offender is  
29 being sentenced for an anticipatory offense under chapter 9A.28 RCW to  
30 commit one of the crimes listed in this subsection as eligible for any  
31 firearm enhancements, the following additional times shall be added to  
32 the standard sentence range determined under subsection (2) of this  
33 section based on the felony crime of conviction as classified under RCW  
34 9A.28.020:

35 (a) Five years for any felony defined under any law as a class A

1 felony or with a statutory maximum sentence of at least twenty years,  
2 or both, and not covered under (f) of this subsection;

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

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

9 (d) If the offender is being sentenced for any firearm enhancements  
10 under (a), (b), and/or (c) of this subsection and the offender has  
11 previously been sentenced for any deadly weapon enhancements after July  
12 23, 1995, under (a), (b), and/or (c) of this subsection or subsection  
13 (4)(a), (b), and/or (c) of this section, or both, all firearm  
14 enhancements under this subsection shall be twice the amount of the  
15 enhancement listed;

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

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

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

36 (4) The following additional times shall be added to the standard  
37 sentence range for felony crimes committed after July 23, 1995, if the  
38 offender or an accomplice was armed with a deadly weapon other than a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (6) An additional twenty-four months shall be added to the standard  
35 sentence range for any ranked offense involving a violation of chapter  
36 69.50 RCW if the offense was also a violation of RCW 69.50.435 or  
37 9.94A.605. All enhancements under this subsection shall run

1 consecutively to all other sentencing provisions, for all offenses  
2 sentenced under this chapter.

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

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

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

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

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

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

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

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

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

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

1 (a) Whether the offender suffers from drug addiction;  
2 (b) Whether the addiction is such that there is a probability that  
3 criminal behavior will occur in the future;  
4 (c) Whether effective treatment for the offender's addiction is  
5 available from a provider that has been licensed or certified by the  
6 division of alcohol and substance abuse of the department of social and  
7 health services; and  
8 (d) Whether the offender and the community will benefit from the  
9 use of the alternative.

10 (3) The examination report must contain:

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

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

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

35 (a) A period of total confinement in a state facility for one-half  
36 of the midpoint of the standard sentence range or twelve months,  
37 whichever is greater. During incarceration in the state facility,  
38 offenders sentenced under this subsection shall undergo a comprehensive

1 substance abuse assessment and receive, within available resources,  
2 treatment services appropriate for the offender. The treatment  
3 services shall be designed by the division of alcohol and substance  
4 abuse of the department of social and health services, in cooperation  
5 with the department of corrections;

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

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

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

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

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

25 (a) A term of community custody equal to one-half of the midpoint  
26 of the standard sentence range or two years, whichever is greater,  
27 conditioned on the offender entering and remaining in residential  
28 chemical dependency treatment certified under chapter 70.96A RCW for a  
29 period set by the court between three and six months. If the court  
30 imposes a term of community custody, the department shall, within  
31 available resources, make chemical dependency assessment and treatment  
32 services available to the offender during the term of community  
33 custody. The court shall impose, as conditions of community custody,  
34 treatment and other conditions as proposed in the plan under subsection  
35 (3)(b) of this section. The department may impose conditions and  
36 sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7),  
37 9.94A.737, and 9.94A.740. The court shall schedule a progress hearing

1 during the period of residential chemical dependency treatment, and  
2 schedule a treatment termination hearing for three months before the  
3 expiration of the term of community custody;

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

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

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

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

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

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

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

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

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

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

37 (e) Perform community restitution work;

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

1 (g) Such other conditions as the court may require such as  
2 affirmative conditions.

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

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

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

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

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

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

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

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

35 (1) Before imposing a sentence upon a defendant, the court shall  
36 conduct a sentencing hearing. The sentencing hearing shall be held

1 within forty court days following conviction. Upon the motion of  
2 either party for good cause shown, or on its own motion, the court may  
3 extend the time period for conducting the sentencing hearing.

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

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

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

34 If the court is satisfied by a preponderance of the evidence that  
35 the defendant has a criminal history, the court shall specify the  
36 convictions it has found to exist. All of this information shall be  
37 part of the record. Copies of all risk assessment reports and  
38 presentence reports presented to the sentencing court and all written

1 findings of facts and conclusions of law as to sentencing entered by  
2 the court shall be sent to the department by the clerk of the court at  
3 the conclusion of the sentencing and shall accompany the offender if  
4 the offender is committed to the custody of the department. Court  
5 clerks shall provide, without charge, certified copies of documents  
6 relating to criminal convictions requested by prosecuting attorneys.

7 (2) To prevent wrongful disclosure of information related to mental  
8 health services, as defined in RCW 71.05.445 and ((71.34.225))  
9 71.34.345, a court may take only those steps necessary during a  
10 sentencing hearing or any hearing in which the department presents  
11 information related to mental health services to the court. The steps  
12 may be taken on motion of the defendant, the prosecuting attorney, or  
13 on the court's own motion. The court may seal the portion of the  
14 record relating to information relating to mental health services,  
15 exclude the public from the hearing during presentation or discussion  
16 of information relating to mental health services, or grant other  
17 relief to achieve the result intended by this subsection, but nothing  
18 in this subsection shall be construed to prevent the subsequent release  
19 of information related to mental health services as authorized by RCW  
20 71.05.445, ((71.34.225)) 71.34.345, or 72.09.585. Any person who  
21 otherwise is permitted to attend any hearing pursuant to chapter 7.69  
22 or 7.69A RCW shall not be excluded from the hearing solely because the  
23 department intends to disclose or discloses information related to  
24 mental health services.

25 NEW SECTION. **Sec. 404.** The Washington institute for public policy  
26 shall conduct a study of criminal sentencing provisions of neighboring  
27 states for all crimes involving methamphetamine. The institute shall  
28 report to the legislature on any criminal sentencing increases  
29 necessary under Washington law to reduce or remove any incentives  
30 methamphetamine traffickers and manufacturers may have to locate in  
31 Washington. The report shall be completed by January 1, 2007.

32 NEW SECTION. **Sec. 405.** The Washington institute for public policy  
33 shall conduct a study of the drug offender sentencing alternative. The  
34 institute shall study recidivism rates for offenders who received  
35 substance abuse treatment while in confinement as compared to offenders

1 who received treatment in the community or received no treatment. The  
2 institute shall report to the legislature by January 1, 2007.

3 **PART V**  
4 **MISCELLANEOUS**

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

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

12 NEW SECTION. **Sec. 503.** Section 109 of this act expires January 1,  
13 2007.

14 NEW SECTION. **Sec. 504.** Sections 110 and 111 of this act take  
15 effect January 1, 2007.

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