AN ACT Relating to criminal street gangs; amending RCW 9.94A.533, 9.94A.535, 9.94A.545, 9A.48.090, and 10.22.010; reenacting and amending RCW 9.94A.715 and 9.94A.030; adding a new section to chapter 43.20A RCW; adding new sections to chapter 36.28A RCW; adding a new section to chapter 43.43 RCW; adding a new section to chapter 9.94A RCW; adding a new section to chapter 4.24 RCW; adding a new section to chapter 43.31 RCW; adding a new section to chapter 72.09 RCW; adding a new chapter to Title 7 RCW; creating a new section; prescribing penalties; and making appropriations.

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

PART I

FIVE PILOT PROJECTS FOR FISCAL YEARS 2009-2011

NEW SECTION. Sec. 101. A new section is added to chapter 43.20A RCW to read as follows:

(1) The governor's juvenile justice advisory committee shall issue a request for proposal to implement five pilot projects throughout the state that focus on combating criminal street gangs and violence.
(a) The projects shall be designed to have a three-prong approach
to preventing, intervening, and suppressing gang-related violence.

(b) Consideration for grant awards shall primarily be given to, but
is not limited to, those applicants that show that gang violence is an
increasing problem in their respective city and that addressing the
impact of street gangs is a high priority within their local community.

(c) Grant applications shall include project processes and
protocols for defining objectives and measurable results.

(d) The costs of administration shall not exceed four percent of
appropriated funding.

(e) Grants awarded under this section shall be used to supplement,
not supplant, other moneys that are available for combating criminal
street gangs and violence.

(2) The governor's juvenile justice advisory committee shall
convene a state gang work group. The committee, working in
collaboration with the work group, shall meet quarterly each year to
provide oversight of the pilot projects established in subsection (1)
of this section. The work group shall include a total of twenty
members that consist of the following:

(a) One member from each of the two largest caucuses of the senate,
appointed by the president of the senate;

(b) One member from each of the two largest caucuses of the house
of representatives, appointed by the speaker of the house of
representatives;

(c) The attorney general or the attorney general's designee;

(d) A prosecutor appointed by the Washington association of
prosecuting attorneys;

(e) A defender appointed by the Washington defender association of
the Washington association of criminal defense lawyers;

(f) The state superintendent of public instruction or the
superintendent's designee;

(g) The secretary of the department of corrections or the
secretary's designee;

(h) The secretary of the department of social and health services
or the secretary's designee;

(i) The chief of the Washington state patrol or the chief's
designee;

(j) A representative of the association of cities;
(k) A representative of the Washington state association of counties; and

(l) Representatives, appointed by the governor, that shall include, but are not limited to:

(i) City law enforcement;

(ii) County law enforcement;

(iii) Court administrators; and

(iv) Experts in gang or delinquency prevention.

(3) The members of the state gang work group shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060, within available resources.

NEW SECTION. Sec. 102. The sum of ten million dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 2009, from the general fund to the department of social and health services for the purposes of section 101 of this act.

PART II
NEAR-TERM RELIEF FOR 2008

Two Million Dollar Washington Association Of Sheriffs And Police Chiefs Grant Program To Communities

NEW SECTION. Sec. 201. A new section is added to chapter 36.28A RCW to read as follows:

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

(2) Each grant applicant shall:

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

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

(c) Design an enforcement program that best suits the specific gang problem in the jurisdiction or jurisdictions receiving the grant; and
One Million Dollar Graffiti/Tagging Abatement Grant

NEW SECTION.  Sec. 202. A new section is added to chapter 36.28A RCW to read as follows:

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

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

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

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

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

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

(3) The cost of administering the grants shall not exceed twenty-five thousand dollars.

NEW SECTION.  Sec. 203. The sum of two million dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 2008, from the public safety and education account to the Washington association of sheriffs and police chiefs for the purposes of section 201 of this act.

NEW SECTION.  Sec. 204. The sum of one million dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 2008, from the general fund to the Washington association of sheriffs and police chiefs for the purposes of section 202 of this act.
NEW SECTION. Sec. 301. A new section is added to chapter 43.43 RCW to read as follows:

When funded, the Washington state patrol shall, or contract with a vendor to, create, administer, and maintain a statewide gang database for assessing and addressing the problems associated with criminal street gangs.

(1) Information in the gang database shall be available to all local, state, and federal law enforcement and criminal justice agencies solely for gang enforcement and for tracking gangs, gang members, and gang incidents. Information in the database shall not be available for public use.

(2) The database shall provide an internet-based multiagency, multilocation, information-sharing application that operates in a network fashion.

(3) Access to the database shall be determined by the chief executive officer of each participating agency. Information about specific individuals in the database shall be automatically expunged every five years if: (a) The individual's file in the database has been inactive for a minimum of five years; (b) no new or updated information has been entered into the database within the previous five years; (c) there are no pending criminal charges against such person in any court in this state or another state or in any federal court; (d) the person has not been convicted of a new crime in this state, another state, or federal court; and (e) it has been five years since the person completed his or her sentence, including all legal financial obligations and community supervision requirements.

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

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

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

(c) Ensure that any information being entered into the database

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about a criminal street gang associate or gang member, as defined in RCW 9.94A.030, is twelve years old or older;

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

(5) The statewide gang database and all contents in the database are confidential and exempt from public disclosure under chapter 42.56 RCW.

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

PART IV
CIVIL INJUNCTIONS

NEW SECTION. Sec. 401. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

NEW SECTION. Sec. 402. (1) Equitable relief is authorized to enjoin, abate, and prevent criminal street gang activity, whether it is a private or public nuisance. Relief is also authorized to enjoin gang-related criminal acts described in RCW 9.94A.030(36) and associated noncriminal acts or acts which are known precursors to gang-related criminal acts as specified in subsection (2) of this section, upon a showing of the following elements by a preponderance of the evidence:

(a) A gang is named as a defendant and contains at least five
members, at least two of whom possess active leadership roles at the
time of application, and that any person sought to be enjoined is an
active or current member of the gang;
(b) The gang is a cohesive organization with a historical
relationship to the described geographical area for the past five years
or more immediately prior to the filing, and with known leadership,
membership, and criminal practices;
(c) The defendants and other gang members have committed, during
the five years immediately prior to the filing of the petition, a
pattern of criminal street gang activity within the described
geographical area. It is insufficient to show merely an increase in
crime within the area;
(d) As a result of the criminal activity of the gang or members, a
significant number of nongang members residing within the described
geographical area are in reasonable fear of their physical security or
that of their family members, or of significant damage to their
property to such an extent that they are intimidated or terrorized, and
are effectively prevented from living normal lives; and
(e) The plaintiffs have engaged in prevention and intervention
planning to serve a reasonable number of the gang's total membership
with prevention and intervention services to divert them from gang
activity.
(2) The complaint for equitable relief shall contain a statement of
specific relief requested and activities sought to be enjoined, which
may include:
(a) Associating with other gang members;
(b) Confronting, intimidating, annoying, harassing, threatening,
challenging, provoking, or assaulting any person;
(c) Confronting, intimidating, annoying, harassing, threatening,
challenging, provoking, or assaulting any person known to be a victim
or witness to gang activity;
(d) Possessing or knowingly remaining in the presence of anyone who
is in possession of any firearm, ammunition, or deadly weapon in a
public place;
(e) Possessing or knowingly remaining in the presence of anyone who
is in possession of any controlled substance or drug paraphernalia;
(f) Consuming alcohol in public;
(g) Being present on any private property without the written consent of the owner;

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

(i) Violating any court defined curfew;

(j) Using hand or other gestures associated with the gang;

(k) Wearing colors or symbols associated with the gang; or

(l) Any other activity or behavior contributing to an atmosphere that has in the past caused the intimidation of nongang members within the described geographical area.

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

(4) A court of competent jurisdiction shall conduct an evidentiary hearing on the complaint for equitable relief filed under this act. The plaintiff must prove by a preponderance of the evidence: (a) The elements set forth in subsection (1) of this section; and (b) the specific remedies requested are reasonable and necessary. The hearing may be conducted ex parte. However, the injunction is not effective as to any person unless that person has been personally served with a copy of the summons.

(5) A person served in the representative capacity of the gang, if indigent, may request that an attorney be appointed to represent him or her at public expense. If the court grants the request, the plaintiff shall pay the cost of representation. The person shall receive notice of this right to request counsel in the summons. The person need not testify, but may testify and cross-examine witnesses and present testimony and other evidence on his or her own behalf.

(6) The final order of injunction shall contain an opt out provision, by which an alleged member previously included in the order may petition at any time for removal from the injunction after a period of five years in which no act by the alleged member has resulted in either a contempt finding or a conviction of crime, and further that there is no criminal charge pending at the time of the hearing. In the petition, the alleged member may request a court hearing on the matter.
(7) All actions to punish any violation of the injunction shall be by prosecution of the crime of contempt of court. If the person did not contest the finding that he or she was a gang member when originally served with notice of the injunction, then it is an affirmative defense that he or she was no longer an active or current member of the gang.

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

PART V
ADDITIONAL MEASURES TO COMBAT GANG-RELATED CRIME

Increase In Sentences For Adults Who Recruit Juveniles

Sec. 501. RCW 9.94A.533 and 2007 c 368 s 9 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

(a) Two years for any felony defined under any law as a class A
felony or with a statutory maximum sentence of at least twenty years,
or both, and not covered under (f) of this subsection;
(b) One year for any felony defined under any law as a class B
felony or with a statutory maximum sentence of ten years, or both, and
not covered under (f) of this subsection;
(c) Six months for any felony defined under any law as a class C
felony or with a statutory maximum sentence of five years, or both, and
not covered under (f) of this subsection;
(d) If the offender is being sentenced under (a), (b), and/or (c)
of this subsection for any deadly weapon enhancements and the offender
has previously been sentenced for any deadly weapon enhancements after
July 23, 1995, under (a), (b), and/or (c) of this subsection or
subsection (3) (a), (b), and/or (c) of this section, or both, all deadly
weapon enhancements under this subsection shall be twice the amount of
the enhancement listed;
(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) This subsection does not apply to any felony for which 
involving a minor in the commission of the felony is an element of the 
offense.

Expansion Of The List Of Aggravating Factors

Sec. 502. RCW 9.94A.535 and 2007 c 377 s 10 are each amended to 
read as follows:

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

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

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

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

(1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) The defendant used his or her position of trust, confidence,
or fiduciary responsibility to facilitate the commission of the current
offense.
(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

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

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

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

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

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

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

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

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

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

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

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

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

(i) The offense resulted in the pregnancy of a child victim of rape.
(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

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

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

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

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

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

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

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

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

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

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

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

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

(w) The defendant committed the offense against a victim who was acting as a good samaritan.
(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

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

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

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

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

Requiring Community Custody For Unlawful Possession Of A Firearm

Sec. 503. RCW 9.94A.545 and 2006 c 128 s 4 are each amended to read as follows:

(1) Except as provided in RCW 9.94A.650 and in subsection (2) of this section, on all sentences of confinement for one year or less, in which the offender is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy, or solicitation to commit such a crime, the court may impose up to one year of community custody, subject to conditions and sanctions as authorized in RCW 9.94A.715 and 9.94A.720. An offender shall be on community custody as of the date of sentencing. However, during the time for which the offender is in total or partial confinement pursuant to the sentence or a violation of the sentence, the period of community custody shall toll.
(2) If the offender is guilty of failure to register under RCW 9A.44.130((10)) (11)(a), the court shall impose a term of community custody under RCW 9.94A.715.

(3) If the offender is found guilty of unlawful possession of a firearm under RCW 9.41.040, the court shall impose a term of community custody under RCW 9.94A.715.

Sec. 504. RCW 9.94A.715 and 2006 c 130 s 2 and 2006 c 128 s 5 are each reenacted and amended to read as follows:

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

(2)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to subsection (6) of this section.
(b) As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.720. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. In addition, the department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws. The department may impose electronic monitoring as a condition of community custody for an offender sentenced to a term of community custody under this section pursuant to a conviction for a sex offense. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring imposed under this section using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology.

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

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

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

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

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

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

Requiring Courts To Notify Department Of Corrections And Jails That An Offender Is A Gang Member

NEW SECTION. Sec. 505. A new section is added to chapter 9.94A RCW to read as follows:

In any felony trial, if the court finds by a preponderance of the evidence that the defendant is a criminal street gang associate or member as defined in RCW 9.94A.030 or is convicted of a criminal street gang-related offense as defined in RCW 9.94A.030, the court shall notify the department of the defendant's gang membership and the defendant's crime of conviction.
Making Subsequent Convictions Of Malicious Mischief 3 A Gross Misdemeanor Offense

Sec. 506. RCW 9A.48.090 and 2003 c 53 s 71 are each amended to read as follows:

(1) A person is guilty of malicious mischief in the third degree if he or she:

(a) Knowingly and maliciously causes physical damage to the property of another, under circumstances not amounting to malicious mischief in the first or second degree; or

(b) Writes, paints, or draws any inscription, figure, or mark of any type on any public or private building or other structure or any real or personal property owned by any other person unless the person has obtained the express permission of the owner or operator of the property, under circumstances not amounting to malicious mischief in the first or second degree.

(2)(a) Malicious mischief in the third degree under subsection (1)(a) of this section is a gross misdemeanor if the damage to the property is in an amount exceeding fifty dollars.

(b) Malicious mischief in the third degree under subsection (1)(a) of this section is a misdemeanor if the damage to the property is fifty dollars or less.

(c) Malicious mischief in the third degree under subsection (1)(a) of this section is a gross misdemeanor if the damage to the property is fifty dollars or less and the person has multiple current convictions for malicious mischief offenses under subsection (1)(a) of this section.

(d) Malicious mischief in the third degree under subsection (1)(a) of this section is a gross misdemeanor if the damage to the property is fifty dollars or less and the person has previously been convicted under subsection (1)(a) of this section.

(e) Malicious mischief in the third degree under subsection (1)(b) of this section is a gross misdemeanor.

Civil Cause Of Action For Graffiti And Tagging

NEW SECTION. Sec. 507. A new section is added to chapter 4.24 RCW to read as follows:

(1) An adult or emancipated minor who commits malicious mischief
under chapter 9A.48 RCW by causing physical damage to the property of
another is liable in addition to actual damages, for a penalty to the
owner in the amount of the value of the damaged property not to exceed
one thousand dollars, plus an additional penalty of not less than one
hundred dollars nor more than two hundred dollars, plus all reasonable
attorneys' fees and court costs expended by the owner.

(2)(a) The parent or legal guardian having the custody of an
unemancipated minor who commits malicious mischief under chapter 9A.48
RCW by causing physical damage to the property of another is liable for
a penalty to the owner for the value of the damaged property not to
exceed five hundred dollars plus an additional penalty of not less than
one hundred dollars nor more than two hundred dollars, plus all
reasonable attorneys' fees and court costs expended by the owner. For
the purposes of this subsection, liability shall not be imposed upon
any governmental entity, private agency, or foster parent assigned
responsibility for the minor child under a court order or action of the
department of social and health services.

(b) The fine or penalty to the owner may be suspended on the
condition: (i) The parent or legal guardian having custody of the
unemancipated minor shows he or she is unaware of the criminal
violation by the unemployed minor in custody; (ii) the parent or legal
guardian having custody of the unemancipated minor shows he or she has
a financial hardship and has done everything possible to make
restitution to the owner of the damaged property; or (iii) it is an
affirmative defense to the charge, the parent or legal guardian proves
by a preponderance of the evidence, that he or she has done everything
possible, with reasonable diligence, to provide restitution to the
property owner.

(3) A conviction for violation of chapter 9A.48 RCW is not a
condition precedent to maintenance of a civil action authorized by this
section.

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

Sec. 508. RCW 10.22.010 and 1999 c 143 s 45 are each amended to
read as follows:

When a defendant is prosecuted in a criminal action for a
misdemeanor, for which the person injured by the act constituting the
offense has a remedy by a civil action, the offense may be compromised
as provided in RCW 10.22.020, except when it was committed:

(1) By or upon an officer while in the execution of the duties of
his office.
(2) Riotously;
(3) With an intent to commit a felony; ((or))
(4) By committing malicious mischief in the third degree under RCW
9A.48.090 by causing physical damage to the property of another; or
(5) By one family or household member against another as defined in
RCW 10.99.020 and was a crime of domestic violence as defined in RCW
10.99.020.

**Criminal Street Gang Definition**

Sec. 509. RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006
c 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and
amended to read as follows:

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

(1) "Board" means the indeterminate sentence review board created
under chapter 9.95 RCW.
(2) "Collect," or any derivative thereof, "collect and remit," or
"collect and deliver," when used with reference to the department,
means that the department, either directly or through a collection
agreement authorized by RCW 9.94A.760, is responsible for monitoring
and enforcing the offender's sentence with regard to the legal
financial obligation, receiving payment thereof from the offender, and,
consistent with current law, delivering daily the entire payment to the
superior court clerk without depositing it in a departmental account.
(3) "Commission" means the sentencing guidelines commission.
(4) "Community corrections officer" means an employee of the
department who is responsible for carrying out specific duties in
supervision of sentenced offenders and monitoring of sentence
conditions.
(5) "Community custody" means that portion of an offender's
sentence of confinement in lieu of earned release time or imposed
pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

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

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

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

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

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

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

(12) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.
(13) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

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

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

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

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

(15) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity.

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

(17) "Criminal street gang-related offense" means the conviction of any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for one or more of the following reasons:
(a) For the benefit of, at the direction of, or in association with any criminal street gang, with the intent to gain admission or promotion within the gang or with the intent to promote, further, or assist in any criminal act by the gang;

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

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

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

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

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

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

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

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

((18)) (21) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.
"Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

"Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

"Drug offense" means:
(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);
(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or
(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

"Earned release" means earned release from confinement as provided in RCW 9.94A.728.

"Escape" means:
(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or
(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.
"Felony traffic offense" means:

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

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

"Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

"First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

"Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

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

"Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;
(b) Assault in the second degree;
(c) Assault of a child in the second degree;
(d) Child molestation in the second degree;
(e) Controlled substance homicide;
(f) Extortion in the first degree;
(g) Incest when committed against a child under age fourteen;
(h) Indecent liberties;
(i) Kidnapping in the second degree;
(j) Leading organized crime;
(k) Manslaughter in the first degree;
(l) Manslaughter in the second degree;
(m) Promoting prostitution in the first degree;
(n) Rape in the third degree;
(o) Robbery in the second degree;
(p) Sexual exploitation;
(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;
(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;
(s) Any other class B felony offense with a finding of sexual motivation;
(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;
(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;
(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

("Nonviolent offense" means an offense which is not a violent offense.

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

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

"Pattern of criminal street gang activity" means:
(a) An attempt to, commission to, solicitation of, conspiracy to commit, or juvenile adjudication of, or adult conviction of, two or more of the following criminal street gang-related offenses:
   (i) Any "serious violent" felony offense as defined in RCW 9.94A.030, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);
   (ii) Any "violent" offense as defined by RCW 9.94A.030, excluding Assault of a Child 2 (RCW 9A.36.130);
   (iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);
   (iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);
(v) Theft of a Firearm (RCW 9A.56.300);
(vi) Possession of a Stolen Firearm (RCW 9A.56.310);
(vii) Malicious Harassment (RCW 9A.36.080);
(viii) Harassment where a subsequent violation or deadly threat is
made (RCW 9A.46.020(2)(b));
(ix) Criminal Gang Intimidation (RCW 9A.46.120);
(x) Criminal Gang Recruiting;
(xi) Involving a Juvenile in a Criminal Offense;
(xii) Residential Burglary (RCW 9A.52.025);
(xiii) Burglary 2 (RCW 9A.52.030);
(xiv) Malicious Mischief 1 (RCW 9A.48.070);
(xv) Malicious Mischief 2 (RCW 9A.48.080);
(xvi) Theft of a Motor Vehicle (RCW 9A.56.065);
(xvii) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
(xviii) Taking a Motor Vehicle Without Permission 1 (RCW
9A.56.070);
(xix) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);
(xx) Extortion 1 (RCW 9A.56.120);
(xxi) Extortion 2 (RCW 9A.56.130);
(xxii) Intimidating a Witness (RCW 9A.72.110);
(xxiii) Tampering with a Witness (RCW 9A.72.120);
(xxiv) Reckless Endangerment (RCW 9A.36.050);
(xxv) Coercion (RCW 9A.36.070);
(xxvi) Harassment (RCW 9A.46.020); or
(xxvii) Malicious Mischief 3 (RCW 9A.48.090);
(b) That the conviction for at least one of the offenses listed in
(a) of this subsection shall have occurred after July 1, 2008;
(c) That the offender's current conviction for the most recent
committed offense listed in (a) of this subsection occurred within
three years of his or her prior offense listed in (a) of this
subsection; and
(d) Of the offenses that were committed in (a) of this subsection,
the offenses occurred on separate occasions or by two or more persons.

(37) "Persistent offender" is an offender who:
(a)(i) Has been convicted in this state of any felony considered a
most serious offense; and
(ii) Has, before the commission of the offense under (a) of this
subsection, been convicted as an offender on at least two separate
occasions, whether in this state or elsewhere, of felonies that under
the laws of this state would be considered most serious offenses and
would be included in the offender score under RCW 9.94A.525; provided
that of the two or more previous convictions, at least one conviction
must have occurred before the commission of any of the other most
serious offenses for which the offender was previously convicted; or
(b)(i) Has been convicted of: (A) Rape in the first degree, rape
of a child in the first degree, child molestation in the first degree,
rape in the second degree, rape of a child in the second degree, or
indecent liberties by forcible compulsion; (B) any of the following
offenses with a finding of sexual motivation: Murder in the first
degree, murder in the second degree, homicide by abuse, kidnapping in
the first degree, kidnapping in the second degree, assault in the first
degree, assault in the second degree, assault of a child in the first
degree, assault of a child in the second degree, or burglary in the
first degree; or (C) an attempt to commit any crime listed in this
subsection ((33)) (37)(b)(i); and
(ii) Has, before the commission of the offense under (b)(i) of this
subsection, been convicted as an offender on at least one occasion,
whether in this state or elsewhere, of an offense listed in (b)(i) of
this subsection or any federal or out-of-state offense or offense under
prior Washington law that is comparable to the offenses listed in
(b)(i) of this subsection. A conviction for rape of a child in the
first degree constitutes a conviction under (b)(i) of this subsection
only when the offender was sixteen years of age or older when the
offender committed the offense. A conviction for rape of a child in
the second degree constitutes a conviction under (b)(i) of this
subsection only when the offender was eighteen years of age or older
when the offender committed the offense.
((34)) (38) "Postrelease supervision" is that portion of an
offender's community placement that is not community custody.
((35)) (39) "Predatory" means: (a) The perpetrator of the crime
was a stranger to the victim, as defined in this section; (b) the
perpetrator established or promoted a relationship with the victim
prior to the offense and the victimization of the victim was a
significant reason the perpetrator established or promoted the
relationship; or (c) the perpetrator was: (i) A teacher, counselor,
volunteer, or other person in authority in any public or private school
and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; or (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority.

"Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

"Public school" has the same meaning as in RCW 28A.150.010.

"Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

"Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

"Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

"Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;
(iii) Murder in the second degree;
(iv) Manslaughter in the first degree;
(v) Assault in the first degree;
(vi) Kidnapping in the first degree;
(vii) Rape in the first degree;
(viii) Assault of a child in the first degree; or
(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or
(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(46). "Sex offense" means:
(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130((11)) (12);
(ii) A violation of RCW 9A.64.020;
(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080; or
(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;
(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;
(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or
(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

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

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

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

(50) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.
"Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

"Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

"Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

"Violent offense" means:
(a) Any of the following felonies:
   (i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;
   (ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;
   (iii) Manslaughter in the first degree;
   (iv) Manslaughter in the second degree;
   (v) Indecent liberties if committed by forcible compulsion;
   (vi) Kidnapping in the second degree;
   (vii) Arson in the second degree;
   (viii) Assault in the second degree;
   (ix) Assault of a child in the second degree;
   (x) Extortion in the first degree;
   (xi) Robbery in the second degree;
   (xii) Drive-by shooting;
   (xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and
   (xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;
(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

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

"Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

"Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

"Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

PART VI
TEMPORARY WITNESS RELOCATION PROGRAM

NEW SECTION. Sec. 601. A new section is added to chapter 43.31 RCW to read as follows:

The office of crime victims advocacy within the department of community, trade, and economic development shall, within available funds, establish a gang relocation assistance program. As part of the relocation program, the office of crime victims advocacy shall work in collaboration with each local prosecuting agency to determine how funding and assistance shall be distributed to assist witnesses of felony gang-related offenses with temporary relocation and shelter.

PART VII
STUDY ON BEST PRACTICES TO REDUCE GANG INVOLVEMENT WHILE INCARCERATED

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

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

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

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

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

PART VIII
MISCELLANEOUS

NEW SECTION. Sec. 801. Part headings and subheadings used in this act are not any part of the law.

NEW SECTION. Sec. 802. Sections 401 and 402 of this act constitute a new chapter in Title 7 RCW.

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