

Proposed Substitute HB 1126 (H-1165.4/11)

By Representative Ross

EFFECT: The proposed substitute makes the following changes:

- **Grants:** Establishes a statewide grant program and requires that applications identify a significant gang problem in the jurisdiction, propose offering services to prevent gang expansion or support gang intervention, and propose providing services to a targeted population. Establishes a review committee with representatives from the Department of Social and Health Services, the Washington State Partnership Council on Juvenile Justice, the Office of the Attorney General (AG), the Washington Association of Sheriffs and Police Chiefs, and local government and non-governmental organizations.
- **Grant Program Account:** Creates the Gang Violence Prevention and Intervention Grant Program Account. Directs to the account recoveries by the AG under the Consumer Protection Act in the form of settlements, civil penalties, and recoveries where a court order requires the money to be deposited in the General Fund. Permits the deposit of gifts. Limits expenditures to those made to support the grant program.
- **Offenses:** Creates a single Criminal Gang Intimidation offense that does not require that either the defendant or victim be a student.
- **Sentencing Enhancement:** Deletes sentencing enhancements.
- **Special Allegation:** Replaces procedures in current law regarding firearm offenses by criminal street gang members with new procedures.
- **Definitions:** Adds Promoting Commercial Sexual Abuse of a Minor to the definition of "criminal street gang-related offense." Restores current law defining "pattern of criminal street gang activity."
- **Nuisance**
 - Limits injunctions to the offending unit in a multiunit building. Exempts property used for social services and charitable assistance. Immunizes government entities and nonprofits conducting prevention and education if done with ordinary care and skill.
 - Removes requirement that hearing be held within three business days. Provides that action does not take precedence over child dependency hearings. Requires that the complaint and notice of time and place of hearing be served six business days prior to hearing.
 - Requires service to be personal, or by leaving a copy with a person of suitable age and discretion residing at the property, or by posting and mailing. Requires that copy be sent to the owner. Permits the legal owner to remove personal property. Limits temporary order to 15 days, unless continued. Removes contempt of court provision for temporary orders.
 - Defines "reasonable efforts" as attempting to terminate or place restrictions on a lease, adopting feasible measures to prevent the nuisance, cooperating with law enforcement, and any other relevant efforts. Allows inventory of premises upon entry of abatement order. Creates lien to extent of owner's interest that must be filed, recorded, and enforced as a judgment summary.
 - Requires law enforcement to notify the landlord in writing when there is probable cause to believe that a rental unit occupant has committed a criminal street gang-related offense. The notice must contain the names of the tenant and anyone involved, the date of the incident and unit where it occurred, law enforcement's response, a statement regarding authority to commence and unlawful detainer action, and penalties for failure to abate a nuisance.
- **Protection Order**
 - Requires that in a specific and delineated area: (1) members of a criminal street gang have been convicted of two or more offenses from the definition of "pattern of criminal street gang activity"; (2) at least one of the offenses occurred after July 1, 2008; (3) the most recent offense occurred within three years of a prior offense; and (4) the offenses occurred on separate occasions or were committed by two or more persons. Requires that the respondent be a member of that gang.
 - Removes contempt of court as a penalty for violation.
 - Exempts gang protection orders from entry into the Judicial Information System.
- Makes technical changes.

AN ACT Relating to criminal street gangs; amending RCW 13.40.127, 9A.46.120, 9A.48.105, 9.94A.829, 9.94A.702, 59.18.075, 26.50.160, and 70.41.440; reenacting and amending RCW 9.94A.030; adding new sections to chapter 43.20A RCW; adding a new chapter to Title 7 RCW; adding a new chapter to Title 10 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** The legislature finds that gang violence is an increasingly serious problem that threatens the long-term economic, social, and public safety interests of the state, counties, and cities. The scourge of gangs plaguing our streets is a clear and present danger to our communities. Those who live where gang membership and activity is on the rise find themselves living with the daily threat of intimidation and harassment. Gangs terrorize neighborhoods and adversely impact our quality of life by engaging in violence, drugs, and associated criminal activities. Individual gang members, gang cliques, or entire gang organizations traffic in drugs

and gun running and commit assault, rape, robbery, burglary, extortion, auto theft, shootings, murder, and other felonies. Gang members are coming to Washington from other states and foreign countries with many supported by the sale of crack cocaine, heroin, and other illegal drugs. In many neighborhoods, children are born into or must contend with second and third-generation street gangs. The loss of life, property, happiness, security, and a positive opportunity for growth caused by gang violence has reached intolerable levels. Increased gang activity has seriously strained the budgets of many local jurisdictions, as well as threatened the ability of the educational system to educate our youth. The destruction and fear generated by gangs in many communities have greatly elevated the critical importance of enacting effective measures to combat gang-related crime. Communities overwhelmed by violent gang activity must have relief from the blight of gang crime before revitalization, initiatives to strengthen families, school improvements, and other desired interventions can succeed. Local communities, law enforcement agencies, and prosecutors require assistance to combat this clear and present danger to the law-abiding residents of Washington. They must have the tools they need to aggressively combat gang-related crime and build strong cases that remove violent gang members from the streets. They need additional prevention and intervention measures, civil remedies, and criminal sanctions to ensure that our young are helped to avoid gang membership and activities and that those who do commit gang-related crimes are held fully accountable for the harm and suffering they inflict on society. It is the intent of this act to provide the criminal justice community and local communities with the effective tools they need to better protect the citizens of Washington from gang-related crime.

NEW SECTION. **Sec. 2.** A new section is added to chapter 43.20A RCW to read as follows:

Grants authorized.

(1) In general. The office of juvenile justice, in consultation with the Washington state partnership council on juvenile justice,

shall award grants to carry out local projects focused on criminal street gang prevention and intervention programs. The following members shall serve on the grant application review committee: (a) The secretary or the secretary's designee; (b) the chair of the Washington state partnership council on juvenile justice or the chair's designee; (c) the executive director of the Washington association of sheriffs and police chiefs or the executive director's designee; (d) the attorney general or the attorney general's designee; and (e) representatives of local government and nongovernmental organizations, appointed by the secretary. Each entity or organization has a vote when determining awards.

(2) Eligible entities. The following entities are eligible to apply for grants under this section:

(a) Nonprofit, nongovernmental organizations, or coalitions that have a documented history of creating and administering effective projects or that work in partnership with an organization that has a documented history of creating and administering effective projects; and

(b) Governmental entities that demonstrate a partnership with an organization described in (a) of this subsection.

(3) Applications. (a) An eligible entity desiring a grant under this section shall submit an application to the office of juvenile justice at such time, in such form, and in such manner as the secretary may prescribe. Applications, at a minimum, must demonstrate that:

(i) A significant gang problem exists in the jurisdiction or jurisdictions that would receive the grant;

(ii) The funds will be used to offer services to prevent the expansion of criminal street gang membership or support criminal street gang membership intervention;

(iii) The funds will be used to provide services to a targeted population; and

(iv) The costs of administration will not exceed four percent of appropriated funding.

(b) Priority must be given to grant applications that:

(i) Demonstrate that gang violence is an increasing problem in the applicant's jurisdiction;

(ii) Demonstrate that addressing the impact of criminal street gangs is a high priority in the local community; and

(iii) Propose to implement a prevention or intervention program using either proven evidence-based or innovative and culturally relevant practices or propose to conduct a community gang assessment using proven evidence-based practices, such as the office of juvenile justice and office of delinquency programs comprehensive gang model.

(4) Term. Grant funds awarded under this section are limited to a period of twelve calendar months.

(5) No supplanting. Grant funds awarded under this section must be used to supplement, not supplant, other moneys that are available for prevention and intervention programs.

(6) Reports. Each eligible entity that receives a grant under this section shall submit a report describing the activities carried out with the grant funds to the secretary within one month of the one-year anniversary of receiving the award. The secretary shall report to the appropriate committees of the legislature regarding the status of the grant program established by this section by January 9, 2012.

NEW SECTION. **Sec. 3.** A new section is added to chapter 43.20A RCW to read as follows:

(1) The gang violence prevention and intervention grant program account is created in the state treasury. All receipts from the following must be deposited into the account:

(a) Gifts, grants, bequests, devises, or other funds from public or private sources to support the gang violence prevention and intervention grant program established in section 2 of this act; and

(b) Recoveries from suits brought by the attorney general under RCW 19.86.080 for violations of RCW 19.86.020 in the form of: (i) Settlements; (ii) civil penalties under RCW 19.86.140; and (iii) recoveries under RCW 19.86.140 that a court orders placed in the general fund. Deposits under this subsection (1)(b) shall not exceed one million dollars per fiscal year.

(2) Moneys in the account may be spent only after appropriation. Only the secretary or the secretary's designee may authorize expenditures from the account. Expenditures from the account may be made only for establishing, administering, funding, and maintaining the gang violence prevention and intervention grant program established in section 2 of this act.

Sec. 4. RCW 13.40.127 and 2009 c 236 s 1 are each amended to read as follows:

(1) A juvenile is eligible for deferred disposition unless he or she:

(a) Is charged with a sex or violent offense;

(b) Has a criminal history which includes any felony;

(c) Has a prior deferred disposition or deferred adjudication;
(~~or~~)

(d) Has two or more adjudications; or

(e) Is charged with a firearm offense under chapter 9.41 RCW and the crime is alleged to be a criminal street gang-related offense as defined in RCW 9.94A.030.

(2) The juvenile court may, upon motion at least fourteen days before commencement of trial and, after consulting the juvenile's custodial parent or parents or guardian and with the consent of the juvenile, continue the case for disposition for a period not to exceed one year from the date the juvenile is found guilty. The court shall consider whether the offender and the community will benefit from a deferred disposition before deferring the disposition.

(3) Any juvenile who agrees to a deferral of disposition shall:

(a) Stipulate to the admissibility of the facts contained in the written police report;

(b) Acknowledge that the report will be entered and used to support a finding of guilt and to impose a disposition if the juvenile fails to comply with terms of supervision; and

(c) Waive the following rights to: (i) A speedy disposition; and (ii) call and confront witnesses.

The adjudicatory hearing shall be limited to a reading of the court's record.

(4) Following the stipulation, acknowledgment, waiver, and entry of a finding or plea of guilt, the court shall defer entry of an order of disposition of the juvenile.

(5) Any juvenile granted a deferral of disposition under this section shall be placed under community supervision. The court may impose any conditions of supervision that it deems appropriate including posting a probation bond. Payment of restitution under RCW 13.40.190 shall be a condition of community supervision under this section.

The court may require a juvenile offender convicted of animal cruelty in the first degree to submit to a mental health evaluation to determine if the offender would benefit from treatment and such intervention would promote the safety of the community. After consideration of the results of the evaluation, as a condition of community supervision, the court may order the offender to attend treatment to address issues pertinent to the offense.

(6) A parent who signed for a probation bond has the right to notify the counselor if the juvenile fails to comply with the bond or conditions of supervision. The counselor shall notify the court and surety of any failure to comply. A surety shall notify the court of the juvenile's failure to comply with the probation bond. The state shall bear the burden to prove, by a preponderance of the evidence, that the juvenile has failed to comply with the terms of community supervision.

(7) A juvenile's lack of compliance shall be determined by the judge upon written motion by the prosecutor or the juvenile's juvenile court community supervision counselor. If a juvenile fails to comply with terms of supervision, the court shall enter an order of disposition.

(8) At any time following deferral of disposition the court may, following a hearing, continue the case for an additional one-year period for good cause.

(9) At the conclusion of the period set forth in the order of deferral and upon a finding by the court of full compliance with conditions of supervision and payment of full restitution, the respondent's conviction shall be vacated and the court shall dismiss the case with prejudice, except that a conviction under RCW 16.52.205 shall not be vacated.

(10)(a) Records of deferred disposition cases vacated under subsection (9) of this section shall be sealed no later than thirty days after the juvenile's eighteenth birthday provided that the juvenile does not have any charges pending at that time. If a juvenile has already reached his or her eighteenth birthday before July 26, 2009, and does not have any charges pending, he or she may request that the court issue an order sealing the records of his or her deferred disposition cases vacated under subsection (9) of this section, and this request shall be granted. Nothing in this subsection shall preclude a juvenile from petitioning the court to have the records of his or her deferred dispositions sealed under RCW 13.50.050 (11) and (12).

(b) Records sealed under this provision shall have the same legal status as records sealed under RCW 13.50.050.

Sec. 5. RCW 9A.46.120 and 1997 c 266 s 3 are each amended to read as follows:

(1) A person commits the offense of criminal gang intimidation if the person threatens another person with bodily injury because the other person refuses to join or has attempted to withdraw from a criminal street gang, as defined in RCW ((28A.600.455, if the person who threatens the victim or the victim attends or is registered in a public or alternative school)) 9.94A.030.

(2) Criminal gang intimidation is a class C felony.

Sec. 6. RCW 9A.48.105 and 2008 c 276 s 306 are each amended to read as follows:

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

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

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

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

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

(3) In addition to any other penalty imposed for a violation of this section, the court may impose as a condition of the sentence that the person perform up to one hundred hours of community service.

Sec. 7. RCW 9.94A.829 and 2009 c 28 s 16 are each amended to read as follows:

~~((In a criminal case in which the defendant has been convicted of unlawful possession of a firearm under RCW 9.41.040, and there has been a special allegation pleaded and proven by a preponderance of the evidence that the accused is a criminal street gang member or associate as defined in RCW 9.94A.030, the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the accused was a criminal street gang member or associate during the commission of the crime.))~~ (1) Where the prosecuting attorney charges a person with a felony offense, the prosecuting attorney may file a special allegation charging that the offense is a criminal street gang-related offense as defined in RCW 9.94A.030.

(2) The facts supporting the criminal street gang-related offense allegation must be proved to a jury beyond a reasonable doubt. The jury's verdict on the allegation must be unanimous, and by special interrogatory. If a jury is waived, proof must be to the court beyond

a reasonable doubt, unless the defendant stipulates to the special allegation.

(3) Evidence regarding the criminal street gang-related offense special allegation must be presented to the jury during the trial of the alleged crime if:

(a) The facts supporting the allegation are part of the res gestae of the crime or are otherwise admissible; and

(b) The probative value of the evidence to the criminal street gang-related offense special allegation is not substantially outweighed by its prejudicial effect on the jury's ability to determine guilt or innocence for the underlying crime.

(4) If the evidence regarding the criminal street gang-related offense special allegation is not presented to the jury during the trial of the alleged crime, the court shall conduct a separate proceeding to determine the existence of this special allegation. The proceeding must immediately follow the trial on the underlying conviction, if possible. If any person who served on the jury is unable to continue, the court shall substitute an alternate juror.

Sec. 8. RCW 9.94A.702 and 2010 c 267 s 12 are each amended to read as follows:

(1) If an offender is sentenced to a term of confinement for one year or less for one of the following offenses, the court may impose up to one year of community custody:

(a) A sex offense;

(b) A violent offense;

(c) A crime against a person under RCW 9.94A.411;

(d) A felony violation of chapter 69.50 or 69.52 RCW, or an attempt, conspiracy, or solicitation to commit such a crime; ~~((or))~~

(e) A felony violation of RCW 9A.44.132(1) (failure to register);
or

(f) A felony that is a criminal street gang-related offense under RCW 9.94A.030.

(2) If an offender is sentenced to a first-time offender waiver, the court may impose community custody as provided in RCW 9.94A.650.

Sec. 9. RCW 9.94A.030 and 2010 c 274 s 401, 2010 c 267 s 9, 2010 c 227 s 11, and 2010 c 224 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 as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department.

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

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

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

(9) "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "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.

(11) "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.

(12) "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. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the

activities of labor and bona fide nonprofit organizations or their members or agents.

(13) "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.

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

- (a) To gain admission, prestige, or promotion within 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); ~~(($\oplus$))~~ promoting pornography (chapter 9.68 RCW); commercial sexual abuse of a minor (RCW 9.68A.100); or promoting commercial sexual abuse of a minor (RCW 9.68A.101).

(15) "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) "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) "Department" means the department of corrections.

(18) "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 custody, 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.

(19) "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.

(20) "Domestic violence" has the same meaning as defined in RCW 10.99.020 and 26.50.010.

(21) "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.

(22) "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.

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

(24) "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.

(25) "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.

(26) "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.

(27) "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.

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

(29) "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.

(30) "Minor child" means a biological or adopted child of the offender who is under age eighteen at the time of the offender's current offense.

(31) "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.825;

(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;

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under Title 9 or 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

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

(33) "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. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer convicted of an offense included in RCW 9.94A.501(1) and ordered by a superior court to probation under the supervision of the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(34) "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 or home detention has been ordered by the department as part of the parenting program, 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.

(35) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior 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 this section, 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 this section, 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) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a 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 were committed by two or more persons.

(36) "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 (36) (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.

(37) "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; (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; or (iv) a teacher, counselor, volunteer, or other person in authority providing home-based instruction and the victim was a student receiving home-based instruction while under his or her authority or supervision. For purposes of this subsection: (A) "Home-based instruction" has the same meaning as defined in RCW 28A.225.010; and (B) "teacher, counselor, volunteer, or other person in authority" does not include the parent or legal guardian of the victim.

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

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

(40) "Repetitive domestic violence offense" means any:

(a)(i) Domestic violence assault that is not a felony offense under RCW 9A.36.041;

(ii) Domestic violence violation of a no-contact order under chapter 10.99 RCW that is not a felony offense;

(iii) Domestic violence violation of a protection order under chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony offense;

(iv) Domestic violence harassment offense under RCW 9A.46.020 that is not a felony offense; or

(v) Domestic violence stalking offense under RCW 9A.46.110 that is not a felony offense; or

(b) Any federal, out-of-state, tribal court, military, county, or municipal conviction for an offense that under the laws of this state would be classified as a repetitive domestic violence offense under (a) of this subsection.

(41) "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.

(42) "Risk assessment" means the application of the risk instrument recommended to the department by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

(43) "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.

(44) "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.

(45) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.132;

(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;

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

(v) A felony violation of RCW 9A.44.132(1) (failure to register) if the person has been convicted of violating RCW 9A.44.132(1) (failure to register) on at least one prior occasion;

(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.

(46) "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.

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

(48) "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.

(49) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

(50) "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.

(51) "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.

(52) "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.

(53) "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.

(54) "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.

(55) "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.

(56) "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.

NEW SECTION. **Sec. 10.** (1) Every piece of real property, building, or unit within a building upon or within which three or more unrelated criminal street gang-related offenses, as defined in RCW 9.94A.030, have occurred in the prior year is a nuisance that may be enjoined, abated, and prevented, whether it is a public or private nuisance. In a multiunit building, only the offending unit may be declared a nuisance, and only the offending unit may be enjoined, abated, and prevented. Nothing in this chapter applies to property used for the purpose of, or actively involved in, providing health services, food and financial assistance, treatment, counseling, training, religious services, education, civic involvement, or any social service or charitable assistance.

(2) As used in this chapter:

(a) "Building" includes, but is not limited to, any structure or any separate part or portion thereof, whether permanent or not, or the ground itself.

(b) "Unrelated" means offenses that are temporally separate and distinct from one another and not part of the same criminal incident. It does not require that different perpetrators commit the offenses. Offenses that occur in retaliation for or in response to prior crimes are unrelated to those prior crimes for purposes of this chapter.

NEW SECTION. **Sec. 11.** (1) The action provided for in this chapter may be brought by a county or municipal government entity in the superior court in the county in which the property is located. The action is commenced by the filing of a complaint alleging the facts constituting the nuisance.

(2) Any complaint filed under this chapter must be verified or accompanied by affidavit. For purposes of showing that the owner of the property or his or her agent has had an opportunity to abate the nuisance, the affidavit must contain a description of all attempts by the plaintiff to notify and locate the owner of the property or the owner's agent.

(3) In addition, the affidavit must describe in detail the adverse impact associated with the property on the surrounding neighborhood.

"Adverse impact" includes, but is not limited to, the following: Any search warrants served on the property; investigative purchases of controlled substances on or near the property by law enforcement or their agents; arrests of persons who frequent the property for criminal street gang-related offenses; the number of complaints made to law enforcement of criminal street gang-related activity associated with the property; and the existence of criminal street gang-related graffiti within a one-eighth mile distance from the property.

(4) This chapter does not prevent county and municipal governments from instituting similar abatement actions pursuant to local ordinances.

NEW SECTION. **Sec. 12.** (1) Upon application for a temporary restraining order or preliminary injunction, the court may, upon a showing of good cause, issue an ex parte restraining order or preliminary injunction, preventing the defendant and all other persons, other than the legal owner, from removing or in any manner interfering with the personal property and contents of the place where the nuisance is alleged to exist. The court may grant such preliminary equitable relief as is necessary to prevent the continuance or recurrence of the nuisance pending final resolution of the matter on the merits. Such ex parte restraining order or preliminary injunction may remain in effect no more than fifteen days from the date of issuance, except as provided in section 14 of this act.

(2) The restraining order or preliminary injunction must be served on the defendant personally, or by leaving a copy with any person of suitable age and discretion who is in charge of the property or who is residing at the property. Where the defendant cannot with reasonable diligence be served as described, the restraining order or preliminary injunction may be served by posting a copy in a conspicuous place on the property and thereafter mailing a copy by registered mail to the defendant to be served at his or her usual mailing address. Additionally, a copy of the restraining order or preliminary

injunction must be sent by registered mail to the owner of the real property, building, or unit within a building.

NEW SECTION. **Sec. 13.** An action under this chapter has precedence over all other actions, except prior matters of the same character, criminal proceedings, child dependency hearings, election contests, hearings on temporary restraining orders and injunctions, and actions to forfeit vehicles used in violation of the uniform controlled substances act.

NEW SECTION. **Sec. 14.** A copy of the complaint, together with a notice of the time and place of the hearing of the action, must be served upon the defendant at least six business days before the hearing and as provided for in section 12 of this act. If the hearing is then continued at the request of any defendant, all temporary orders and injunctions must be extended as a matter of course.

NEW SECTION. **Sec. 15.** (1) Except as provided in subsection (2) of this section, if the existence of the nuisance is established in the action, an order of abatement must be entered as part of the final judgment in the case. The plaintiff's costs in the action, including those of abatement, are a lien upon the real property, building, or unit within a building to the extent of the owner's interest. The lien must be filed as a judgment summary stating the name of the owner and the legal description of the real property. The lien must be recorded and enforced as a judgment summary.

(2) If the court finds and concludes that the owner of the real property, building, or unit within a building: (a) Had no knowledge of the existence of the nuisance or has been making reasonable efforts to abate the nuisance; (b) has not been guilty of any contempt of court in the proceedings; and (c) will immediately abate any such nuisance that may exist at the real property, building, or unit within a building and prevent it from being a nuisance within a period of one year thereafter, the court shall, if satisfied of the owner's good faith, order the real property, building, or unit within a building to

be delivered to the owner, and no order of abatement may be entered. If an order of abatement has been entered and the owner subsequently meets the requirements of this subsection, the order of abatement must be canceled.

(3) For the purposes of determining whether the owner of the real property, building, or unit within a building made reasonable efforts to abate the nuisance, the court shall consider such factors as whether the owner: (a) Terminated or attempted to terminate the tenancy or lease of a tenant or leaseholder where the nuisance is occurring, if the tenant or leaseholder is involved in the criminal street gang activity; (b) placed restrictions on the rental agreement or lease; (c) adopted feasible measures on the property to try to prevent the criminal street gang activity; (d) cooperated with law enforcement to attempt to stop the criminal street gang activity; or (e) made other efforts the court finds relevant.

NEW SECTION. **Sec. 16.** Any final order of abatement issued under this chapter may:

(1) If the building or unit is not subject to the interests of innocent legal owners, provide for the immediate closure of the real property, building, or unit within a building against its use for any purpose, and for keeping it closed for a period of one year unless released sooner as provided in this chapter;

(2) State that while the order of abatement remains in effect the building or unit within a building must remain in the custody of the court;

(3) Authorize a law enforcement officer to enter the real property, building, or unit within a building to create an inventory of the personal property and contents located on or in the real property, building, or unit within a building for submission to the court; and

(4) Provide for any other relief necessary and proper under the circumstances.

NEW SECTION. **Sec. 17.** An intentional violation of a restraining order, preliminary injunction, or order of abatement under this chapter is contempt of court as provided in chapter 7.21 RCW.

NEW SECTION. **Sec. 18.** Whenever the owner of the real property, building, or unit within a building upon which the act or acts constituting the nuisance have been committed has been found in contempt of court and fined in any proceedings under this chapter, the fine is a lien upon the real property, building, or unit within a building to the extent of the owner's interest. The lien must be filed as a judgment summary stating the name of the owner and the legal description of the real property. The lien must be recorded and enforced as a judgment summary.

NEW SECTION. **Sec. 19.** An action may not be brought pursuant to this section against any governmental entity or any charitable or nonprofit organization that is conducting, with ordinary care and skill, activities relating to prevention or education concerning criminal street gangs.

NEW SECTION. **Sec. 20.** The abatement of a nuisance under this chapter does not prejudice the right of any person to recover damages for its past existence.

Sec. 21. RCW 59.18.075 and 1992 c 38 s 4 are each amended to read as follows:

(1) Any law enforcement agency which seizes a legend drug pursuant to a violation of chapter 69.41 RCW, a controlled substance pursuant to a violation of chapter 69.50 RCW, or an imitation controlled substance pursuant to a violation of chapter 69.52 RCW, shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency, of the seizure and the location of the seizure of the illegal drugs or substances.

(2) Any law enforcement agency which arrests a tenant for threatening another tenant with a firearm or other deadly weapon, or for some other unlawful use of a firearm or other deadly weapon on the rental premises, or for physically assaulting another person on the rental premises, shall make a reasonable attempt to discover the identity of the landlord and notify the landlord about the arrest in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency.

(3)(a) A law enforcement agency that has probable cause to believe that a tenant or other occupant of a rental unit has committed a criminal street gang-related offense, as defined in RCW 9.94A.030, shall make a reasonable attempt to discover the identity of the landlord and notify the landlord in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency, of the criminal street gang-related offense on the rental premises.

(b) For the purposes of this subsection (3), the law enforcement agency shall include the following information with the notice:

(i) The name of the tenant and the individual or individuals who were involved in the criminal street gang-related offense;

(ii) The rental unit where the incident occurred;

(iii) The date of the incident;

(iv) Actions taken by the law enforcement agency in response to the incident;

(v) A statement outlining the authority of a landlord under chapter 59.12 RCW to commence an unlawful detainer action against a tenant who has committed or permitted gang-related activity at the premises; and

(vi) Penalties the landlord may face for failure to abate a nuisance.

NEW SECTION. **Sec. 22.** The legislature finds that the presence of criminal street gangs and the gang-related crimes they commit is increasing in Washington. In communities where criminal street gangs have become established, the gangs' criminal activities have become a

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blight on the community, endangering the physical safety of the citizens living there, negatively affecting the communities' economic vitality, and reducing the citizens' right to fully enjoy their liberty and property rights. The legislature further finds that the government has a compelling interest in protecting the physical safety and the property and liberty interests of its citizens. Finally, the legislature finds that these compelling interests will be served by permitting a local or municipal government to apply for a protection order that is narrowly tailored to a specific area where a gang and its individual members have become a blight on the community in order to break the gang's hold over that area.

NEW SECTION. **Sec. 23.** (1) "Criminal street gang" has the same meaning as in RCW 9.94A.030.

(2) "Criminal street gang associate or member" has the same meaning as in RCW 9.94A.030. However, in determining whether a person is a criminal street gang associate or member, the court may also consider all other relevant evidence including, but not limited to, admissions by a person that he or she is an associate or member of a criminal street gang.

(3) "Protection zone" means a specific geographic area within which the provisions of the injunctive relief sought and ordered by the court are operable and enforceable.

NEW SECTION. **Sec. 24.** An action seeking a protection order against a criminal street gang and associates or members thereof may be brought by the county prosecuting attorney or municipal attorney in any county or municipality where the protection zone sought pursuant to the action is located.

NEW SECTION. **Sec. 25.** (1) A party seeking a protection order under this chapter may file a petition seeking such relief in superior court in the county in which the protection zone sought pursuant to the action is located.

(2) The petition must:

(a) Be supported with an affidavit providing the factual bases supporting the issuance of a protection order including, but not limited to, the factual bases of support for the issuance of the order as to each respondent whose activities and behavior the petition seeks to enjoin;

(b) Contain a specific description of the protection zone within which the petitioner seeks to have the protection order operate; and

(c) Contain a specific list of the activities in the protection zone sought to be enjoined.

(3) The court shall order a hearing on the petition, which must be held not later than fourteen days after the petition is filed.

(4) All respondents must be personally served with a copy of the petition, notice of the date and time of the hearing, and notice that they are entitled to appear in person and respond to the allegations contained in the petition not less than five court days before the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. If the court permits service by publication, the court shall set the hearing date not later than twenty-four days from the date the court enters the order permitting service by publication.

(5) At the hearing, the county prosecuting attorney or municipal attorney must prove, and the court must find, that the evidence presented establishes by clear and convincing evidence:

(a) That in a specific and delineated geographic area, there exists the following:

(i) A criminal street gang;

(ii) Whose associates or members individually or collectively have been convicted or adjudicated of committing, attempting, or conspiring to commit, or soliciting the commitment of, two or more of the offenses listed in RCW 9.94A.030(35); and

(iii) That at least one of the offenses listed in RCW 9.94A.030(35) occurred after July 1, 2008;

(iv) That the most recent committed offense listed in RCW 9.94A.030(35) occurred within three years of a prior offense listed in RCW 9.94A.030(35); and

(v) The offenses in RCW 9.94A.030(35) that were committed occurred on separate occasions or were committed by two or more persons;

(b) A substantial amount of the criminal street gang's activities have occurred in the specified geographic area; and

(c) The named respondent is a criminal street gang associate or member of the criminal street gang established in (a) of this subsection.

NEW SECTION. **Sec. 26.** If the court finds the petitioner has satisfied the burden under section 25(5) of this act, the court shall enter an order:

(1) Specifically describing the geographic boundaries within which the protection order will apply;

(2) Providing for all relief necessary and proper under the circumstances, including an order that any respondent who the court has found to be a criminal street gang associate or member may not engage in certain conduct, including but not limited to the following:

(a) Associating or communicating directly or indirectly with any other person found by the court to be a criminal street gang associate or member;

(b) Engaging in any intimidation of any person;

(c) Possessing firearms, imitation firearms, or dangerous weapons;

(d) Possessing or consuming drugs or alcohol;

(e) Trespassing;

(f) Engaging in gang-related graffiti or possessing graffiti tools;

(g) Forcibly recruiting any person into the criminal street gang or preventing any criminal street gang associate or member from leaving the criminal street gang;

(h) Violating any law;

(i) Violating any curfew set by the court;

(j) Going on the grounds of any named public and private schools, not including home-based instruction, as defined in RCW 28A.225.010;

(k) Going to any other designated locations;

(l) Directly or indirectly contacting minors going to and from schools;

(m) Wearing gang clothing in public; and

(n) Directly or indirectly contacting specified individuals such as persons on probation or parole;

(3) Providing the expiration date of the order, which must be one year from the date the order is entered;

(4) Providing that a respondent who knows of the order who willfully violates the order may be criminally prosecuted pursuant to section 28 of this act and, if convicted, may be punished by a fine of not more than five thousand dollars, imprisonment for not more than one year, or both;

(5) With respect to any condition imposed pursuant to subsection (2)(a), (j), (k), (l), and (n) of this section, the condition may not apply to enjoin a person from:

(a) Communicating with another criminal street gang associate or member who:

(i) Resides with the person if they are related by blood or marriage or have a dating relationship;

(ii) Is married to the person;

(iii) Has a child with the person, regardless of whether they have been married; or

(iv) Has a biological or legal parent-child, grandparent-child, or sibling relationship with the person;

(b) Communicating with a minor or another criminal street gang associate or member on school grounds where the communication is necessary for legitimate educational purposes;

(c) Communicating with another criminal street gang associate or member on the grounds of a church, synagogue, mosque, or similar property where the communication is necessary for religious purposes;

(d) Going on the grounds of any public or private school, not including home-based instruction, where the visit is for legitimate educational purposes; or

(e) Going on the grounds of any church, synagogue, mosque, or similar property where the visit is for religious purposes.

NEW SECTION. **Sec. 27.** (1) If the court issues a protection order under this chapter, all respondents who are subject to the court's order must be personally served with a copy of the order. However, if the order issued by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary.

(2) If personal service cannot be made, the petitioner may apply to the court for permission to serve a copy of the order on the respondent by publication consistent with the procedures found in RCW 10.14.085.

NEW SECTION. **Sec. 28.** (1) Any respondent who willfully violates any protection order issued pursuant to this chapter is guilty of a gross misdemeanor punishable by a fine of not more than five thousand dollars, imprisonment for not more than one year, or both.

(2) However, the sentence imposed for any willful violation of such an order must include at least seven days in jail for an adult or seven days in detention for a juvenile if the violation occurs:

(a) In a school;

(b) On a school bus;

(c) Within three hundred feet of a school bus route stop designated by the school district;

(d) Within one thousand feet of the perimeter of school grounds;
or

(e) In a public park.

NEW SECTION. **Sec. 29.** (1) An order issued pursuant to this chapter is effective for one year.

(2) The petitioner may reapply for a continuation of the order by filing a new petition no more than thirty days prior to the expiration of the current order. The petition must comply in all respects with the procedures governing the issuance of the initial order found in section 25 of this act.

NEW SECTION. **Sec. 30.** (1) Any respondent to whom an order issued pursuant to this chapter applies may petition the court to modify the terms and conditions of the order. The court may only consider such a motion where the petitioner is provided notice consistent with the provisions of this chapter. Where the requested modification is to exempt from the provisions of the order a particular respondent, notice of the motion and the contents thereof need not be served on other respondents but only the petitioner and the respondent who seeks exemption from the order.

(2) The petitioner may petition the court to modify the terms and conditions of the order. The court may only consider such a motion where any respondents to whom the modification would apply are provided notice consistent with the provisions of this chapter.

(3) The court may grant any requested modifications of the terms and conditions of the order that it deems necessary and proper under the circumstances considering the evidence presented at the hearing at which the order was issued, as well as the evidence presented at the modification hearing.

NEW SECTION. **Sec. 31.** Nothing in this chapter precludes a petitioner's right to utilize other existing civil remedies.

Sec. 32. RCW 26.50.160 and 2006 c 138 s 26 are each amended to read as follows:

To prevent the issuance of competing protection orders in different courts and to give courts needed information for issuance of orders, the judicial information system shall be available in each district, municipal, and superior court by July 1, 1997, and shall include a database containing the following information:

(1) The names of the parties and the cause number for every order of protection issued under this title, every sexual assault protection order issued under chapter 7.90 RCW, every criminal no-contact order issued under chapters 9A.46 and 10.99 RCW, every antiharassment order issued under chapter 10.14 RCW, every dissolution action under chapter 26.09 RCW, every third-party custody action under chapter 26.10 RCW, every parentage action under chapter 26.26 RCW, every restraining order issued on behalf of an abused child or adult dependent person under chapter 26.44 RCW, every foreign protection order filed under chapter 26.52 RCW, and every order for protection of a vulnerable adult under chapter 74.34 RCW. When a guardian or the department of social and health services has petitioned for relief on behalf of an abused child, adult dependent person, or vulnerable adult, the name of the person on whose behalf relief was sought shall be included in the database as a party rather than the guardian or department. The names of the parties and the cause number for a protection order issued under section 26 of this act need not be entered in the judicial information system;

(2) A criminal history of the parties; and

(3) Other relevant information necessary to assist courts in issuing orders under this chapter as determined by the judicial information system committee.

Sec. 33. RCW 70.41.440 and 2009 c 359 s 2 are each amended to read as follows:

(1) A hospital shall report to a local law enforcement authority as soon as reasonably possible, taking into consideration a patient's emergency care needs, when the hospital provides treatment for a bullet wound, gunshot wound, or stab wound to a patient (~~who is unconscious~~). A hospital shall establish a written policy to identify the person or persons responsible for making the report.

(2) The report required under subsection (1) of this section must include the following information, if known:

(a) The name, residence, sex, and age of the patient;

(b) Whether the patient has received a bullet wound, gunshot wound, or stab wound; and

(c) The name of the health care provider providing treatment for the bullet wound, gunshot wound, or stab wound.

(3) Nothing in this section shall limit a person's duty to report under RCW 26.44.030 or 74.34.035.

(4) Any bullets, clothing, or other foreign objects that are removed from a patient for whom a hospital is required to make a report pursuant to subsection (1) of this section shall be preserved and kept in custody in such a way that the identity and integrity thereof are reasonably maintained until the bullets, clothing, or other foreign objects are taken into possession by a law enforcement authority or the hospital's normal period for retention of such items expires, whichever occurs first.

(5) Any hospital or person who in good faith, and without gross negligence or willful or wanton misconduct, makes a report required by this section, cooperates in an investigation or criminal or judicial proceeding related to such report, or maintains bullets, clothing, or other foreign objects, or provides such items to a law enforcement authority as described in subsection (4) of this section, is immune from civil or criminal liability or professional licensure action arising out of or related to the report and its contents or the absence of information in the report, cooperation in an investigation or criminal or judicial proceeding, and the maintenance or provision to a law enforcement authority of bullets, clothing, or other foreign objects under subsection (4) of this section.

(6) The physician-patient privilege described in RCW 5.60.060(4), the registered nurse-patient privilege described in RCW 5.62.020, and any other health care provider-patient privilege created or recognized by law are not a basis for excluding as evidence in any criminal proceeding any report, or information contained in a report made under this section.

(7) All reporting, preservation, or other requirements of this section are secondary to patient care needs and may be delayed or

compromised without penalty to the hospital or person required to fulfill the requirements of this section.

NEW SECTION. **Sec. 34.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 35.** Sections 10 through 20 of this act constitute a new chapter in Title 7 RCW.

NEW SECTION. **Sec. 36.** Sections 22 through 31 of this act constitute a new chapter in Title 10 RCW.