

CHAPTER 271

[Second Substitute House Bill No. 1793]

OMNIBUS ALCOHOL AND CONTROLLED SUBSTANCES ACT

AN ACT Relating to alcohol and controlled substances abuse; amending RCW 9.94A-.310, 69.50.401, 9A.36.050, 9A.82.100, 28A.120.040, 13.40.265, 46.20.265, 66.44.365, 69.41-.065, 69.50.420, 69.52.070, 9.73.090, 9.73.120, 9.73.080, 69.50.505, 5.62.020, 18.83.110, 70.96A.010, 70.96A.020, 70.96A.120, 70.96A.140, 70.96.150, 66.24.210, 66.24.290, 82.08.150, and 82.24.020; reenacting and amending RCW 9.94A.320, 9.94A.360, and 5.60.060; adding new sections to chapter 9.73 RCW; adding a new section to chapter 9A.36 RCW; adding a new section to chapter 9A.82 RCW; adding a new chapter to Title 10 RCW; adding a new section to chapter 13.40 RCW; adding new sections to chapter 28A.67 RCW; adding new sections to chapter 28A.120 RCW; adding a new chapter to Title 35 RCW; adding new sections to chapter 36.27 RCW; adding a new chapter to Title 43 RCW; adding a new section to chapter 44.28 RCW; adding new sections to chapter 66.28 RCW; adding new sections to chapter 69.50 RCW; adding a new section to chapter 70.96A RCW; adding a new chapter to Title 82 RCW; creating new sections; prescribing penalties; making appropriations; providing an expiration date; providing effective dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

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PART I
CRIMINAL PENALTIES

SUBPART A
CRIMES AND PENALTIES

Sec. 101. Section 2, chapter 115, Laws of 1983 as last amended by section 1, chapter 218, Laws of 1988 and RCW 9.94A.310 are each amended to read as follows:

(1) TABLE 1
Sentencing Grid

SERIOUSNESS SCORE		OFFENDER SCORE								
		0	1	2	3	4	5	6	7	8 or more
XIV Life Sentence without Parole/Death Penalty										
XIII	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
	240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
	320	333	347	361	374	388	416	450	493	548
XII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
	123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
	164	178	192	205	219	233	260	288	342	397
XI	6y	6y9m	7y6m	8y3m	9y	9y9m	12y6m	13y6m	15y6m	17y6m
	62-	69-	77-	85-	93-	100-	129-	139-	159-	180-
	82	92	102	113	123	133	171	185	212	240
X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
	51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
	68	75	82	89	96	102	130	144	171	198
IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
	31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
	41	48	54	61	68	75	102	116	144	171
VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
	21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
	27	34	41	48	54	61	89	102	116	144

SERIOUSNESS
SCORE

OFFENDER SCORE

	0	1	2	3	4	5	6	7	8	9 or more
VII	18m 15- 20	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y 41- 54	5y6m 57- 75	6y6m 67- 89	7y6m 77- 102	8y6m 87- 116
VI	13m 12+- 14	18m 15- 20	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y6m 46- 61	5y6m 57- 75	6y6m 67- 89	7y6m 77- 102
V	9m 6- 12	13m 12+- 14	15m 13- 17	18m 15- 20	2y2m 22- 29	3y2m 33- 43	4y 41- 54	5y 51- 68	6y 62- 82	7y 72- 96
IV	6m 3- 9	9m 6- 12	13m 12+- 14	15m 13- 17	18m 15- 20	2y2m 22- 29	3y2m 33- 43	4y2m 43- 57	5y2m 53- 70	6y2m 63- 84
III	2m 1- 3	5m 3- 8	8m 4- 12	11m 9- 12	14m 12+- 16	20m 17- 22	2y2m 22- 29	3y2m 33- 43	4y2m 43- 57	5y 51- 68
II		4m 0-90 Days	6m 2- 9	8m 4- 12	13m 12+- 14	16m 14- 18	20m 17- 22	2y2m 22- 29	3y2m 33- 43	4y2m 43- 57
I			3m 0-60 Days	4m 2- 6	5m 3- 8	8m 4- 12	13m 12+- 14	16m 14- 18	20m 17- 22	2y2m 22- 29

NOTE: Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent presumptive sentencing ranges in months, or in days if so designated. 12+ equals one year and one day.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence 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 75 percent.

(3) The following additional times shall be added to the presumptive sentence if the offender or an accomplice was armed with a deadly weapon

as defined in this chapter and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice was armed with a deadly weapon 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 times shall be added to the presumptive range determined under subsection (2) of this section:

- (a) 24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW 9A.56.200), or Kidnapping 1 (RCW 9A.40.020)
- (b) 18 months for Burglary 1 (RCW 9A.52.020)
- (c) 12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Escape 1 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2 of a building other than a dwelling (RCW 9A.52.030), Theft of Livestock 1 or 2 (RCW 9A.56.080), or any drug offense.

(4) An additional twenty-four months shall be added to the presumptive sentence for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of section 112 of this 1989 act.

Sec. 102. Section 2, chapter 62, Laws of 1988, section 12, chapter 145, Laws of 1988, section 2, chapter 218, Laws of 1988 and RCW 9.94A.320 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XIV	Aggravated Murder 1 (RCW 10.95.020)
XIII	Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055)
XII	Murder 2 (RCW 9A.32.050)
XI	Assault 1 (RCW 9A.36.011)
X	Kidnapping 1 (RCW 9A.40.020) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1)) Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 (and 3 years junior) (RCW 69.50.406) Leading Organized Crime (RCW 9A.82.060(1)(a))
IX	Robbery 1 (RCW 9A.56.200) Manslaughter 1 (RCW 9A.32.060) Explosive devices prohibited (RCW 70.74.180) Endangering life and property by explosives with threat to human being (RCW 70.74.270)

Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)

Sexual Exploitation, Under 16 (RCW 9.68A.040(2)(a))

Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))

VIII Arson 1 (RCW 9A.48.020)

Rape 2 (RCW 9A.44.050)

Rape of a Child 2 (RCW 9A.44.076)

Child Molestation 1 (RCW 9A.44.083)

Promoting Prostitution 1 (RCW 9A.88.070)

Selling heroin for profit (RCW 69.50.410)

Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))

Manufacture, deliver, or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))

VII Burglary 1 (RCW 9A.52.020)

Vehicular Homicide (RCW 46.61.520)

Introducing Contraband 1 (RCW 9A.76.140)

Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))

Sexual Exploitation, Under 18 (RCW 9.68A.040(2)(b))

Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)

Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)

VI Bribery (RCW 9A.68.010)

Manslaughter 2 (RCW 9A.32.070)

Child Molestation 2 (RCW 9A.44.086)

Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)

Damaging building, etc., by explosion with no threat to human being (RCW 70.74.280(2))

Endangering life and property by explosives with no threat to human being (RCW 70.74.270)

Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b))

Incest 1 (RCW 9A.64.020(1))

Selling for profit (controlled or counterfeit) any controlled substance (except heroin) (RCW 69.50.410)

Manufacture, deliver, or possess with intent to deliver ((heroin or)) narcotics from Schedule I or II (except heroin or cocaine) (RCW 69.50.401(a)(1)(i))

Intimidating a Judge (RCW 9A.72.160)

- V Criminal Mistreatment 1 (RCW 9A.42.020)
 - Rape 3 (RCW 9A.44.060)
 - Kidnapping 2 (RCW 9A.40.030)
 - Extortion 1 (RCW 9A.56.120)
 - Incest 2 (RCW 9A.64.020(2))
 - Perjury 1 (RCW 9A.72.020)
 - Extortionate Extension of Credit (RCW 9A.82.020)
 - Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
 - Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
 - Rendering Criminal Assistance 1 (RCW 9A.76.070)
- IV Theft of Livestock 1 (RCW 9A.56.080)
 - Robbery 2 (RCW 9A.56.210)
 - Assault 2 (RCW 9A.36.021)
 - Escape 1 (RCW 9A.76.110)
 - Arson 2 (RCW 9A.48.030)
 - Rape of a Child 3 (RCW 9A.44.079)
 - Bribing a Witness/Bribe Received by Witness (RCW 9A.72-.090, 9A.72.100)
 - Malicious Harassment (RCW 9A.36.080)
 - Willful Failure to Return from Furlough (RCW 72.66.060)
 - Hit and Run — Injury Accident (RCW 46.52.020(4))
 - Vehicular Assault (RCW 46.61.522)
 - Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I–V (except marijuana or methamphetamines) (RCW 69.50.401(a)(1)(ii) through (iv))
 - Influencing Outcome of Sporting Event (RCW 9A.82.070)
 - Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
 - Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- III Criminal mistreatment 2 (RCW 9A.42.030)
 - Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
 - Child Molestation 3 (RCW 9A.44.089)
 - Extortion 2 (RCW 9A.56.130)
 - Unlawful Imprisonment (RCW 9A.40.040)
 - Assault 3 (RCW 9A.36.031)
 - Unlawful possession of firearm or pistol by felon (RCW 9.41.040)
 - Harassment (RCW 9A.46.020)
 - Promoting Prostitution 2 (RCW 9A.88.080)

- Willful Failure to Return from Work Release (RCW 72.65.070)
- Introducing Contraband 2 (RCW 9A.76.150)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Escape 2 (RCW 9A.76.120)
- Perjury 2 (RCW 9A.72.030)
- Intimidating a Public Servant (RCW 9A.76.180)
- Tampering with a Witness (RCW 9A.72.120)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(ii))
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Theft of livestock 1 (RCW 9A.56.080)
- II
 - Malicious Mischief 1 (RCW 9A.48.070)
 - Possession of Stolen Property 1 (RCW 9A.56.150)
 - Theft 1 (RCW 9A.56.030)
 - Burglary 2 (RCW 9A.52.030)
 - Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))
 - Possession of phencyclidine (PCP) (RCW 69.50.401(d))
 - Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
 - Computer Trespass 1 (RCW 9A.52.110)
 - Reckless Endangerment 1 (RCW 9A.36.— (section 109 of this 1989 act))
- I
 - Theft 2 (RCW 9A.56.040)
 - Possession of Stolen Property 2 (RCW 9A.56.160)
 - Forgery (RCW 9A.60.020)
 - Taking Motor Vehicle Without Permission (RCW 9A.56.070)
 - Vehicle Prowl 1 (RCW 9A.52.095)
 - Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
 - Malicious Mischief 2 (RCW 9A.48.080)
 - Reckless Burning 1 (RCW 9A.48.040)
 - Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
 - Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
 - False Verification for Welfare (RCW 74.08.055)
 - Forged Prescription (RCW 69.41.020)
 - Forged Prescription for a Controlled Substance (RCW 69.50.403)

Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine) (RCW 69.50.401(d))

Sec. 103. Section 7, chapter 115, Laws of 1983 as last amended by section 12, chapter 153, Laws of 1988 and by section 3, chapter 157, Laws of 1988 and RCW 9.94A.360 are each reenacted and amended to read as follows:

The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.400.

(2) Except as provided in subsection (4) of this section, class A prior felony convictions shall always be included in the offender score. Class B prior felony convictions shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without being convicted of any felonies. Class C prior felony convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without being convicted of any felonies. Serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without being convicted of any serious traffic or felony traffic offenses. This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law.

(4) Include class A juvenile felonies only if the offender was 15 or older at the time the juvenile offense was committed. Include class B and C juvenile felony convictions only if the offender was 15 or older at the time the juvenile offense was committed and the offender was less than 23 at the time the offense for which he or she is being sentenced was committed.

(5) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(6) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(a) Prior adult offenses which were found, under RCW 9.94A.400(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently whether those offenses shall be counted as one offense or as separate offenses, and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used;

(b) Juvenile prior convictions entered or sentenced on the same date shall count as one offense, the offense that yields the highest offender score; and

(c) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(7) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense.

(8) If the present conviction is for a nonviolent offense and not covered by subsection (12) or (13) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(9) If the present conviction is for a violent offense and not covered in subsection (10), (11), (12), or (13) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Murder 1 or 2, Assault 1, Kidnaping 1, Homicide by Abuse, or Rape 1, count three points for prior adult and juvenile convictions for crimes in these categories, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(11) If the present conviction is for Burglary 1, count prior convictions as in subsection (9) of this section; however count two points for each prior adult Burglary 2 conviction, and one point for each prior juvenile Burglary 2 conviction.

(12) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or

Vehicular Assault; for each felony offense or serious traffic offense, count one point for each adult and 1/2 point for each juvenile prior conviction.

(13) If the present conviction is for a drug offense count ~~((two))~~ three points for each adult prior felony drug offense conviction and ~~((one))~~ two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (9) of this section if the current drug offense is violent, or as in subsection (8) of this section if the current drug offense is nonviolent.

(14) If the present conviction is for Willful Failure to Return from Furlough, RCW 72.66.060, or Willful Failure to Return from Work Release, RCW 72.65.070, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(15) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(16) If the present conviction is for Burglary 2, count priors as in subsection (8) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 conviction, and one point for each juvenile prior Burglary 2 conviction.

(17) If the present conviction is for an offense committed while the offender was under community placement, add one point.

Sec. 104. Section 69.50.401, chapter 308, Laws of 1971 ex. sess. as last amended by section 4, chapter 458, Laws of 1987 and RCW 69.50.401 are each amended to read as follows:

(a) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:

(i) a controlled substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, or (A) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (B) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(ii) any other controlled substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iii) a substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(i) a counterfeit substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(ii) any other counterfeit substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iii) a counterfeit substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(c) It is unlawful, except as authorized in this chapter and chapter 69-.41 RCW, for any person to offer, arrange, or negotiate for the sale, gift, delivery, dispensing, distribution, or administration of a controlled substance to any person and then sell, give, deliver, dispense, distribute, or administer to that person any other liquid, substance, or material in lieu of such controlled substance. Any person who violates this subsection is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(d) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a crime, and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both, except as provided for in subsection (e) of this section.

(e) Except as provided for in subsection (a)(1)(ii) of this section any person found guilty of possession of forty grams or less of marihuana shall be guilty of a misdemeanor.

(f) It is unlawful to compensate, threaten, solicit, or in any other manner involve a person under the age of eighteen years in a transaction unlawfully to manufacture, sell, or deliver a controlled substance. A violation of this subsection shall be punished as a class C felony punishable in accordance with RCW 9A.20.021.

This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.410.

NEW SECTION. Sec. 105. A new section is added to chapter 69.50 RCW to read as follows:

A person who is convicted of a misdemeanor violation of any provision of this chapter shall be punished by imprisonment for not less than twenty-four consecutive hours, and by a fine of not less than two hundred fifty dollars. On a second or subsequent conviction, the fine shall not be less than five hundred dollars. These fines shall be in addition to any other fine or penalty imposed. Unless the court finds that the imposition of the minimum imprisonment will pose a substantial risk to the defendant's physical or mental well-being or that local jail facilities are in an overcrowded condition, the minimum term of imprisonment shall not be suspended or deferred. If the court finds such risk or overcrowding exists, it shall sentence the defendant to a minimum of forty hours of community service. If a minimum term of imprisonment is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. Unless the court finds the person to be indigent, the minimum fine shall not be suspended or deferred.

NEW SECTION. Sec. 106. A new section is added to chapter 69.50 RCW to read as follows:

(1) Every person convicted of a felony violation of RCW 69.50.401, 69.50.402, 69.50.403, 69.50.406, 69.50.407, 69.50.410, or 69.50.415 shall be fined one thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court.

(2) On a second or subsequent conviction for violation of any of the laws listed in subsection (1) of this section, the person shall be fined two thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court.

***NEW SECTION. Sec. 107.** A new section is added to chapter 69.50 RCW to read as follows:

It is unlawful for any person to deliver, or possess with intent to deliver, hypodermic syringes, needles, or other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body, knowing or under circumstances where the person reasonably should know that such syringes, needles, or other objects will be used or are intended to be used to unlawfully introduce a controlled substance into the human body. Any person who violates this section is guilty of a misdemeanor. The department of social and health services shall conduct a study of needle exchange programs that are operating in other states and countries. The study shall examine the documented effectiveness of such programs, the estimated

number of drug addicts participating in such programs, the estimated number of drug addicts who have participated in a testing, counseling, and education program as a result of the needle exchange program, the extent to which participation in a drug treatment program is a voluntary or mandated component of the needle exchange programs, the number of participants who have tested HIV positive, who administers such needle exchange programs, and the costs to administer and operate the program. The department of social and health services shall report back to the legislature by December 1, 1989.

*Sec. 107 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 108. The legislature finds that increased trafficking in illegal drugs has increased the likelihood of "drive-by shootings." It is the intent of the legislature in sections 102, 109, and 110 of this act to categorize such reckless and criminal activity into a separate crime and to provide for an appropriate punishment.

NEW SECTION. Sec. 109. A new section is added to chapter 9A.36 RCW to read as follows:

(1) A person is guilty of reckless endangerment in the first degree when he or she recklessly discharges a firearm in a manner which creates a substantial risk of death or serious physical injury to another person and the discharge is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge.

(2) A person who unlawfully discharges a firearm from a moving motor vehicle may be inferred to have engaged in reckless conduct, unless the discharge is shown by evidence satisfactory to the trier of fact to have been made without such recklessness.

(3) Reckless endangerment in the first degree is a class C felony.

Sec. 110. Section 9A.36.050, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.36.050 are each amended to read as follows:

(1) A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct not amounting to reckless endangerment in the first degree but which creates a substantial risk of death or serious physical injury to another person.

(2) Reckless endangerment in the second degree is a gross misdemeanor.

Sec. 111. Section 10, chapter 270, Laws of 1984 as amended by section 11, chapter 455, Laws of 1985 and RCW 9A.82.100 are each amended to read as follows:

(1) (a) A person who sustains injury to his or her person, business, or property by an act of criminal profiteering that is part of a pattern of criminal profiteering activity or by a violation of RCW 9A.82.060 or 9A.82.080

may file an action in superior court for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(b) The attorney general or county prosecuting attorney may file an action: (i) On behalf of those persons injured or, respectively, on behalf of the state or county if the entity has sustained damages, or (ii) to prevent, restrain, or remedy a pattern of criminal profiteering activity or a violation of RCW 9A.82.060 or 9A.82.080.

(c) An action for damages filed by or on behalf of an injured person, the state, or the county shall be for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(d) In an action filed to prevent, restrain, or remedy a pattern of criminal profiteering activity or a violation of RCW 9A.82.060 or 9A.82.080, the court, upon proof of the violation, may impose a civil penalty not exceeding two hundred fifty thousand dollars, in addition to awarding the cost of the suit, including reasonable investigative and attorney's fees.

(2) The superior court has jurisdiction to prevent, restrain, and remedy a pattern of criminal profiteering or a violation of RCW 9A.82.060 or 9A.82.080 after making provision for the rights of all innocent persons affected by the violation and after hearing or trial, as appropriate, by issuing appropriate orders.

(3) Prior to a determination of liability, orders issued under subsection (2) of this section may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture, or other restraints pursuant to this section as the court deems proper. The orders may also include attachment, receivership, or injunctive relief in regard to personal or real property pursuant to Title 7 RCW. In shaping the reach or scope of receivership, attachment, or injunctive relief, the superior court shall provide for the protection of bona fide interests in property, including community property, of persons who were not involved in the violation of this chapter, except to the extent that such interests or property were acquired or used in such a way as to be subject to forfeiture under RCW 9A.82.100(4)(f).

(4) Following a determination of liability, orders may include, but are not limited to:

(a) Ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise.

(b) Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the Constitutions of the United States and this state permit.

(c) Ordering dissolution or reorganization of any enterprise.

(d) Ordering the payment of actual damages sustained to those persons injured by a violation of RCW 9A.82.060 or 9A.82.080 or an act of criminal profiteering that is part of a pattern of criminal profiteering, and in the court's discretion, increasing the payment to an amount not exceeding three times the actual damages sustained.

(e) Ordering the payment of all costs and expenses of the prosecution and investigation of a pattern of criminal profiteering activity or a violation of RCW 9A.82.060 or 9A.82.080, civil and criminal, incurred by the state or county, including any costs of defense provided at public expense, as appropriate to the state general fund or the antiprofitteering revolving fund of the county.

(f) Ordering forfeiture first as restitution to any person damaged by an act of criminal profiteering that is part of a pattern of criminal profiteering then to the state general fund or antiprofitteering revolving fund of the county, as appropriate, to the extent not already ordered to be paid in other damages, of the following:

(i) Any property or other interest acquired or maintained in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds, and any appreciation or income attributable to the investment, from a violation of RCW 9A.82.060 or 9A.82.080.

(ii) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.

(iii) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense.

(g) Ordering payment to the state general fund or antiprofitteering revolving fund of the county, as appropriate, of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of criminal profiteering.

(5) In addition to or in lieu of an action under this section, the attorney general or county prosecuting attorney may file an action for forfeiture to the state general fund or antiprofitteering revolving fund of the county, as appropriate, to the extent not already ordered paid pursuant to this section, of the following:

(a) Any interest acquired or maintained by a person in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any appreciation or income attributable to the investment.

(b) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled,

conducted, or participated in the conduct of, in violation of RCW 9A.82-.060 or 9A.82.080.

(c) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate the commission of the offense.

(6) A defendant convicted in any criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial in which the defendant was convicted. For the purposes of this subsection, a conviction shall be deemed to have occurred upon a verdict, finding, or plea of guilty, notwithstanding the fact that appellate review of the conviction and sentence has been or may be sought. If a subsequent reversal of the conviction occurs, any judgment that was based upon that conviction may be reopened upon motion of the defendant.

(7) The initiation of civil proceedings under this section shall be commenced within three years after discovery of the pattern of criminal profiteering activity or after the pattern should reasonably have been discovered.

(8) The attorney general or county prosecuting attorney may, in a civil action brought pursuant to this section, file with the clerk of the superior court a certificate stating that the case is of special public importance. A copy of that certificate shall be furnished immediately by the clerk to the presiding chief judge of the superior court in which the action is pending and, upon receipt of the copy, the judge shall immediately designate a judge to hear and determine the action. The judge so designated shall promptly assign the action for hearing, participate in the hearings and determination, and cause the action to be expedited.

(9) The standard of proof in actions brought pursuant to this section is the preponderance of the evidence test.

(10) A person other than the attorney general or county prosecuting attorney who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court. The notice shall identify the action, the person, and the person's attorney. Service of the notice does not limit or otherwise affect the right of the state to maintain an action under this section or intervene in a pending action nor does it authorize the person to name the state or the attorney general as a party to the action.

(11) Except in cases filed by a county prosecuting attorney, the attorney general may, upon timely application, intervene in any civil action or proceeding brought under this section if the attorney general certifies that in the attorney general's opinion the action is of special public importance. Upon intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general had instituted a separate action.

(12) In addition to the attorney general's right to intervene as a party in any action under this section, the attorney general may appear as amicus curiae in any proceeding in which a claim under this section has been asserted or in which a court is interpreting RCW 9A.82.010, 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

(13) A private civil action under this section does not limit any other civil or criminal action under this chapter or any other provision. Private civil remedies provided under this section are supplemental and not mutually exclusive.

(14) Upon motion by the defendant, the court may authorize the sale or transfer of assets subject to an order or lien authorized by this chapter for the purpose of paying actual attorney's fees and costs of defense. The motion shall specify the assets for which sale or transfer is sought and shall be accompanied by the defendant's sworn statement that the defendant has no other assets available for such purposes. No order authorizing such sale or transfer may be entered unless the court finds that the assets involved are not subject to possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of the motion, the court shall notify the state of the assets sought to be sold or transferred and shall hear argument on the issue of whether the assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a motion may be made from time to time and shall be heard by the court on an expedited basis.

(15) In an action brought under subsection (1) (a) and (b)(i) of this section, either party has the right to a jury trial.

NEW SECTION. Sec. 112. A new section is added to chapter 69.50 RCW to read as follows:

(a) Any person who violates RCW 69.50.401(a) by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under that subsection to a person in a school or on a school bus or within one thousand feet of a school bus route stop designated by the school district or within one thousand feet of the perimeter of the school grounds is punishable by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment.

(b) It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school or school bus or within one thousand feet of the school or school bus route stop.

(c) It is not a defense to a prosecution for a violation of this section or any other prosecution under this chapter that persons under the age of

eighteen were not present in the school, the school bus, or at the school bus route stop at the time of the offense or that school was not in session.

(d) It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under eighteen years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve delivering, manufacturing, selling, or possessing with the intent to manufacture, sell, or deliver any controlled substance in RCW 69.50.401(a) for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. This section shall not be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

(e) In a prosecution under this section, a map produced or reproduced by any municipal, school district, or county engineer for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school or school bus route stop, or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the governing body of the municipality, school district, or county has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the school or school bus route stop. Any map approved under this section or a true copy of the map shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram other than the one which has been approved by the governing body of a municipality, school district, or county if the map or diagram is otherwise admissible under court rule.

(f) As used in this section the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "School" has the meaning under RCW 28A.01.055 or 28A.01.060. The term "school" also includes a private school approved under RCW 28A.02.201;

(2) "School bus" means a school bus as defined by the superintendent of public instruction by rule which is owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The term does not include buses operated by common carriers in the urban transportation of students such as transportation of students through a municipal transportation system; and

(3) "School bus route stop" means a school bus stop as designated on maps submitted by school districts to the office of the superintendent of public instruction.

Sec. 113. Section 210, chapter 518, Laws of 1987 and RCW 28A.120-.040 are each amended to read as follows:

The superintendent of public instruction, through the state clearing-house for education information, shall collect and disseminate to all school districts and other interested parties information about effective substance abuse programs and the penalties for manufacturing, selling, delivering, or possessing controlled substances on or within one thousand feet of a school or school bus route stop under section 112 of this 1989 act and distributing a controlled substance to a person under the age of eighteen under RCW 69.50.406.

NEW SECTION. Sec. 114. Sections 101 through 111 of this act apply to crimes committed on or after July 1, 1989.

SUBPART B JUVENILE OFFENDERS STRUCTURED RESIDENTIAL PROGRAM

NEW SECTION. Sec. 115. A new section is added to chapter 13.40 RCW to read as follows:

(1) It is the intent of the legislature to establish a program that will benefit both the community and juvenile offenders by promoting the offenders' personal development and self-discipline, thereby making them more effective participants in society.

(2) Within available funds, the department of social and health services shall develop a juvenile offenders structured residential program for selected juvenile offenders. The program shall provide intensive training and rehabilitative programs for juvenile offenders. The department shall adopt rules for the operation, access, and successful completion of such programs.

(3) In order to serve significant portions of the sixty percent of juvenile justice clients in need of treatment for substance abuse, the department of social and health services shall, within available funds, provide enhancements to the eighteen county detention facilities in the state. The enhancement shall be used to develop an intensive, inpatient treatment component within the structure of county detention programs, to be modeled after the exodus program currently operated by the department's division of juvenile rehabilitation.

(4) In order to serve youth returning from institutional treatment programs who seek help for substance abuse, the department of social and health services shall, within available funds, enhance substance abuse services and coordination for each of six service regions to ensure effective use of existing and new services created by this act, including direct service and consultation.

(5) No juvenile who suffers from any mental or physical problem which could endanger his or her health or drastically affect his or her performance in the program shall be admitted to or retained in the program.

(6) The department shall complete a study of the effectiveness of programs of the type created in this section by December 31, 1992.

(7) This section shall expire on July 1, 1993.

SUBPART C

JUVENILE DRIVER'S LICENSE REVOCATION

Sec. 116. Section 2, chapter 148, Laws of 1988 and RCW 13.40.265 are each amended to read as follows:

(1) (a) If a juvenile (~~((under eighteen years of age, but))~~) thirteen years of age or ((over;)) older is found by juvenile court to have committed an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(b) Except as otherwise provided in (c) of this subsection, (~~((a court;))~~) upon petition of a juvenile who has been found by the court to have committed an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court may at any time the court deems appropriate notify the department of licensing that the juvenile's driving privileges should be reinstated.

(c) (~~((The court shall not notify the department that the juvenile's driving privileges should be reinstated for a period of ninety days after the entry of the judgment if it is the first order issued with respect to the juvenile under RCW 46.20.265, or for a period of one year after the issuance of the order if it is the second or subsequent such order issued with respect to the juvenile))~~) If the offense is the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered, whichever is later. If the offense is the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the date the juvenile turns seventeen or one year after the date judgment was entered, whichever is later.

(2) (a) If a juvenile enters into a diversion agreement with a diversion unit pursuant to RCW 13.40.080 concerning an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the diversion unit shall notify the department of licensing within twenty-four hours after the diversion agreement is signed.

(b) If a diversion unit has notified the department pursuant to (a) of this subsection, the diversion unit shall notify the department of licensing when the juvenile has completed the agreement.

Sec. 117. Section 7, chapter 148, Laws of 1988 and RCW 46.20.265 are each amended to read as follows:

(1) In addition to any other authority to revoke driving privileges under this chapter, the department shall revoke all driving privileges of a juvenile when the department receives notice from a court pursuant to RCW 13.40.265, 66.44.365, 69.41.065, 69.50.420, or 69.52.070 or from a diversion unit pursuant to RCW 13.40.265. The revocation shall be imposed without hearing.

(2) The driving privileges of the juvenile revoked under subsection (1) of this section shall be revoked in the following manner:

(a) Upon receipt of the first notice, the department shall impose a revocation for one year, or until the juvenile reaches seventeen years of age, whichever is longer.

(b) Upon receipt of a second or subsequent notice, the department shall impose a revocation for ~~((one))~~ two years or until the juvenile reaches eighteen years of age, whichever is longer.

(3) If the department receives notice from a court that the juvenile's privilege to drive should be reinstated, the department shall immediately reinstate any driving privileges that have been revoked under this section.

~~(4)(a) If the department receives notice pursuant to RCW 13.40.265(2)(b) from a diversion unit that a juvenile has completed a diversion agreement for which the juvenile's driving privileges were revoked, the department shall reinstate any driving privileges revoked under this section as provided in (b) of this subsection. ((The department shall not reinstate driving privileges earlier than ninety days after the date the juvenile entered into a diversion agreement for the first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW and not earlier than one year after the date the juvenile entered into a diversion agreement for a second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.))~~

(b) If the diversion agreement was for the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of ninety days after the date the juvenile turns sixteen or ninety days after the juvenile entered into a diversion agreement for the offense. If the diversion agreement was for the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of the date the juvenile turns seventeen or one year after the juvenile entered into the second or subsequent diversion agreement.

Sec. 118. Section 3, chapter 148, Laws of 1988 and RCW 66.44.365 are each amended to read as follows:

(1) If a juvenile (~~((under eighteen years of age, but thirteen or over,))~~) thirteen years of age or older and under the age of eighteen is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, (~~((the court,))~~) upon petition of a juvenile (~~((who has been found by the court to have committed an offense that is a violation of this chapter,))~~) whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may notify the department of licensing that the juvenile's privilege to drive should be reinstated.

(3) (~~((The court shall not notify the department that the juvenile's driving privileges should be reinstated for a period of ninety days after the entry of the judgment if it is the first revocation with respect to the juvenile under this section or RCW 46.20.265, or for a period of one year after the issuance of the order if it is the second or subsequent such revocation issued with respect to the juvenile))~~) If the conviction is for the juvenile's first violation of this chapter or chapter 69.41, 69.50, or 69.52 RCW, a juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered.

Sec. 119. Section 4, chapter 148, Laws of 1988 and RCW 69.41.065 are each amended to read as follows:

(1) If a juvenile (~~((under eighteen years of age, but thirteen or over,))~~) thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, (~~((the court,))~~) upon petition of a juvenile (~~((who has been found by the court to have committed an offense that is a violation of this chapter,))~~) whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may notify the department of licensing that the juvenile's privilege to drive should be reinstated.

(3) (~~((The court shall not notify the department that the juvenile's driving privileges should be reinstated for a period of ninety days after the entry of the judgment if it is the first revocation with respect to the juvenile under this section or RCW 46.20.265, or for a period of one year after the issuance of the order if it is the second or subsequent such revocation issued~~

with respect to the juvenile)) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered.

Sec. 120. Section 5, chapter 148, Laws of 1988 and RCW 69.50.420 are each amended to read as follows:

(1) ~~If a juvenile ((under eighteen years of age, but thirteen or over;)) thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.~~

(2) ~~Except as otherwise provided in subsection (3) of this section, ((the court;)) upon petition of a juvenile ((who has been found by the court to have committed an offense that is a violation of this chapter;)) whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may at any time the court deems appropriate notify the department of licensing to reinstate the juvenile's privilege to drive.~~

(3) ~~((The court shall not notify the department that the juvenile's privilege to drive should be reinstated for a period of ninety days after the entry of the judgment if it is the first revocation issued with respect to the juvenile under this section or RCW 46.20.265, or for a period of one year after the entry of the judgment if it is the second or subsequent such revocation issued with respect to the juvenile))~~ If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.41, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.41, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered.

Sec. 121. Section 6, chapter 148, Laws of 1988 and RCW 69.52.070 are each amended to read as follows:

(1) ~~If a juvenile ((under eighteen years of age, but thirteen or over;)) thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the~~

court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, ~~((the court,))~~ upon petition of a juvenile ~~((who has been found by the court to have committed an offense that is a violation of this chapter,))~~ whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may at any time the court deems appropriate notify the department of licensing to reinstate the juvenile's privilege to drive.

(3) ~~((The court shall not notify the department that the juvenile's privilege to drive should be reinstated for a period of ninety days after the entry of the judgment if it is the first revocation issued with respect to the juvenile under this section or RCW 46.20.265, or for a period of one year after the entry of the judgment if it is the second or subsequent such revocation issued with respect to the juvenile))~~ If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.41, or 69.50 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.41, or 69.50 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered.

PART II

PREVENTION, INVESTIGATION, AND PROCEDURE

SUBPART A

ONE-PARTY CONSENT

NEW SECTION. Sec. 201. A new section is added to chapter 9.73 RCW to read as follows:

The legislature finds that the unlawful manufacturing, selling, and distributing of controlled substances is becoming increasingly prevalent and violent. Attempts by law enforcement officers to prevent the manufacture, sale, and distribution of drugs is resulting in numerous life-threatening situations since drug dealers are using sophisticated weapons and modern technological devices to deter the efforts of law enforcement officials to enforce the controlled substance statutes. Dealers of unlawful drugs are employing a wide variety of violent methods to realize the enormous profits of the drug trade.

Therefore, the legislature finds that conversations regarding illegal drug operations should be intercepted, transmitted, and recorded in certain circumstances without prior judicial approval in order to protect the life and safety of law enforcement personnel and to enhance prosecution of drug

offenses, and that that interception and transmission can be done without violating the constitutional guarantees of privacy.

NEW SECTION. Sec. 202. A new section is added to chapter 9.73 RCW to read as follows:

(1) If a police commander or officer above the rank of first line supervisor has reasonable suspicion that the safety of the consenting party is in danger, law enforcement personnel may, for the sole purpose of protecting the safety of the consenting party, intercept, transmit, or record a private conversation or communication concerning the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW.

(2) Before any interception, transmission, or recording of a private conversation or communication pursuant to this section, the police commander or officer making the determination required by subsection (1) of this section shall complete a written authorization which shall include (a) the date and time the authorization is given; (b) the persons, including the consenting party, expected to participate in the conversation or communication, to the extent known; (c) the expected date, location, and approximate time of the conversation or communication; and (d) the reasons for believing the consenting party's safety will be in danger.

(3) A monthly report shall be filed by the law enforcement agency with the administrator for the courts indicating the number of authorizations made under this section, the date and time of each authorization, and whether an interception, transmission, or recording was made with respect to each authorization.

(4) Any information obtained pursuant to this section is inadmissible in any civil or criminal case in all courts of general or limited jurisdiction in this state, except:

(a) With the permission of the person whose communication or conversation was intercepted, transmitted, or recorded without his or her knowledge;

(b) In a civil action for personal injury or wrongful death arising out of the same incident, where the cause of action is based upon an act of physical violence against the consenting party; or

(c) In a criminal prosecution, arising out of the same incident for a serious violent offense as defined in RCW 9.94A.030 in which a party who consented to the interception, transmission, or recording was a victim of the offense.

(5) Nothing in this section bars the admission of testimony of a participant in the communication or conversation unaided by information obtained pursuant to this section.

(6) The authorizing agency shall immediately destroy any written, transcribed, or recorded information obtained from an interception, transmission, or recording authorized under this section unless the agency determines there has been a personal injury or death or a serious violent offense which may give rise to a civil action or criminal prosecution in which the information may be admissible under subsection (4) (b) or (c) of this section.

(7) Nothing in this section authorizes the interception, recording, or transmission of a telephonic communication or conversation.

NEW SECTION. Sec. 203. A new section is added to chapter 9.73 RCW to read as follows:

In each superior court judicial district in class AA and A counties there shall be available twenty-four hours a day at least one superior court or district court judge or magistrate designated to receive telephonic requests for authorizations that may be issued pursuant to this chapter. The presiding judge of each such superior court in conjunction with the district court judges in that superior court judicial district shall establish a coordinated schedule of rotation for all of the superior and district court judges and magistrates in the superior court judicial district for purposes of ensuring the availability of at least one judge or magistrate at all times. During the period that each judge or magistrate is designated, he or she shall be equipped with an electronic paging device when not present at his or her usual telephone. It shall be the designated judge's or magistrate's responsibility to ensure that all attempts to reach him or her for purposes of requesting authorization pursuant to this chapter are forwarded to the electronic page number when the judge or magistrate leaves the place where he or she would normally receive such calls.

NEW SECTION. Sec. 204. A new section is added to chapter 9.73 RCW to read as follows:

(1) As part of a bona fide criminal investigation, the chief law enforcement officer of a law enforcement agency or his or her designee above the rank of first line supervisor may authorize the interception, transmission, or recording of a conversation or communication by officers under the following circumstances:

(a) At least one party to the conversation or communication has consented to the interception, transmission, or recording;

(b) Probable cause exists to believe that the conversation or communication involves the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW; and

(c) A written report has been completed as required by subsection (2) of this section.

(2) The agency's chief officer or designee authorizing an interception, transmission, or recording under subsection (1) of this section, shall prepare and sign a written report at the time of authorization indicating:

(a) The circumstances that meet the requirements of subsection (1) of this section;

(b) The names of the authorizing and consenting parties, except that in those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged;

(c) The names of the officers authorized to intercept, transmit, and record the conversation or communication;

(d) The identity of the particular person or persons, if known, who may have committed or may commit the offense;

(e) The details of the particular offense or offenses that may have been or may be committed and the expected date, location, and approximate time of the conversation or communication; and

(f) Whether there was an attempt to obtain authorization pursuant to RCW 9.73.090(2) and, if there was such an attempt, the outcome of the attempt.

(3) An authorization under this section is valid in all jurisdictions within Washington state and for the interception of communications from additional persons if the persons are brought into the conversation or transaction by the nonconsenting party or if the nonconsenting party or such additional persons cause or invite the consenting party to enter another jurisdiction.

(4) The recording of any conversation or communication under this section shall be done in such a manner that protects the recording from editing or other alterations.

(5) An authorization made under this section is valid for no more than twenty-four hours from the time it is signed by the authorizing officer, and each authorization shall independently meet all of the requirements of this section. The authorizing officer shall sign the written report required under subsection (2) of this section, certifying the exact date and time of his or her signature. An authorization under this section may be extended not more than twice for an additional consecutive twenty-four hour period based upon the same probable cause regarding the same suspected transaction. Each such extension shall be signed by the authorizing officer.

(6) Within fifteen days after the signing of an authorization that results in any interception, transmission, or recording of a conversation or communication pursuant to this section, the law enforcement agency which made the interception, transmission, or recording shall submit a report including the original authorization under subsection (2) of this section to a judge of a court having jurisdiction which report shall identify (a) the persons, including the consenting party, who participated in the conversation, and (b) the date, location, and approximate time of the conversation.

In those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged.

A monthly report shall be filed by the law enforcement agency with the administrator for the courts indicating the number of authorizations granted, the date and time of each authorization, interceptions made, arrests resulting from an interception, and subsequent invalidations.

(7)(a) Within two judicial days of receipt of a report under subsection (6) of this section, the court shall make an ex parte review of the authorization, but not of the evidence, and shall make a determination whether the requirements of subsection (1) of this section were met. If the court determines that any of the requirements of subsection (1) of this section were not met, the court shall order that any recording and any copies or transcriptions of the conversation or communication be destroyed. Destruction of recordings, copies, or transcriptions shall be stayed pending any appeal of a finding that the requirements of subsection (1) of this section were not met.

(b) Absent a continuation under (c) of this subsection, six months following a determination under (a) of this subsection that probable cause did not exist, the court shall cause a notice to be mailed to the last known address of any nonconsenting party to the conversation or communication that was the subject of the authorization. The notice shall indicate the date, time, and place of any interception, transmission, or recording made pursuant to the authorization. The notice shall also identify the agency that sought the authorization and shall indicate that a review under (a) of this subsection resulted in a determination that the authorization was made in violation of this section.

(c) An authorizing agency may obtain six-month extensions to the notice requirement of (b) of this subsection in cases of active, ongoing criminal investigations that might be jeopardized by sending the notice.

(8) In any subsequent judicial proceeding, evidence obtained through the interception or recording of a conversation or communication pursuant to this section shall be admissible only if:

(a) The court finds that the requirements of subsection (1) of this section were met and the evidence is used in prosecuting an offense listed in subsection (1)(b) of this section; or

(b) The evidence is admitted with the permission of the person whose communication or conversation was intercepted, transmitted, or recorded; or

(c) The evidence is admitted in a prosecution for a "serious violent offense" as defined in RCW 9.94A.030 in which a party who consented to the interception, transmission, or recording was a victim of the offense; or

(d) The evidence is admitted in a civil suit for personal injury or wrongful death arising out of the same incident, in which a party who consented to the interception, transmission, or recording was a victim of a serious violent offense as defined in RCW 9.94A.030.

Nothing in this subsection bars the admission of testimony of a party or eyewitness to the intercepted, transmitted, or recorded conversation or communication when that testimony is unaided by information obtained solely by violation of RCW 9.73.030.

(9) Any determination of invalidity of an authorization under this section shall be reported by the court to the office of the administrator for the courts.

(10) Any person who intentionally intercepts, transmits, or records or who intentionally authorizes the interception, transmission, or recording of a conversation or communication in violation of this section, is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(11) An authorizing agency is liable for twenty-five thousand dollars in exemplary damages, in addition to any other damages authorized by this chapter or by other law, to a person whose conversation or communication was intercepted, transmitted, or recorded pursuant to an authorization under this section if:

(a) In a review under subsection (7) of this section, or in a suppression of evidence proceeding, it has been determined that the authorization was made without the probable cause required by subsection (1)(b) of this section; and

(b) The authorization was also made without a reasonable suspicion that the conversation or communication would involve the unlawful acts identified in subsection (1)(b) of this section.

Sec. 205. Section 1, chapter 48, Laws of 1970 ex. sess. as last amended by section 2, chapter 38, Laws of 1986 and RCW 9.73.090 are each amended to read as follows:

(1) The provisions of RCW 9.73.030 through 9.73.080 shall not apply to police, fire, emergency medical service, emergency communication center, and poison center personnel in the following instances:

(a) Recording incoming telephone calls to police and fire stations, licensed emergency medical service providers, emergency communication centers, and poison centers;

(b) Video and/or sound recordings may be made of arrested persons by police officers responsible for making arrests or holding persons in custody before their first appearance in court. Such video and/or sound recordings shall conform strictly to the following:

(i) The arrested person shall be informed that such recording is being made and the statement so informing him shall be included in the recording;

(ii) The recording shall commence with an indication of the time of the beginning thereof and terminate with an indication of the time thereof;

(iii) At the commencement of the recording the arrested person shall be fully informed of his constitutional rights, and such statements informing him shall be included in the recording;

(iv) The recordings shall only be used for valid police or court activities.

(2) It shall not be unlawful for a law enforcement officer acting in the performance of the officer's official duties to intercept, record, or disclose an oral communication or conversation where the officer is a party to the communication or conversation or one of the parties to the communication or conversation has given prior consent to the interception, recording, or disclosure: **PROVIDED**, That prior to the interception, transmission, or recording the officer shall obtain written or telephonic authorization from a judge or magistrate, who shall approve the interception, recording, or disclosure of communications or conversations with a nonconsenting party for a reasonable and specified period of time, if there is probable cause to believe that the nonconsenting party has committed, is engaged in, or is about to commit a felony: **PROVIDED HOWEVER**, That if such authorization is given by telephone the authorization and officer's statement justifying such authorization must be electronically recorded by the judge or magistrate on a recording device in the custody of the judge or magistrate at the time transmitted and the recording shall be retained in the court records and reduced to writing as soon as possible thereafter.

Any recording or interception of a communication or conversation incident to a lawfully recorded or intercepted communication or conversation pursuant to this subsection shall be lawful and may be divulged.

All recordings of communications or conversations made pursuant to this subsection shall be retained for as long as any crime may be charged based on the events or communications or conversations recorded.

(3) Communications or conversations authorized to be intercepted, recorded, or disclosed by this section shall not be inadmissible under RCW 9.73.050.

(4) Authorizations issued under subsection (2) of this section shall be effective for not more than seven days, after which period the issuing authority may ~~((upon application of the officer who secured the original authorization))~~ renew or continue the authorization for ~~((an))~~ additional periods not to exceed seven days.

(5) If the judge or magistrate determines that there is probable cause to believe that the communication or conversation concerns the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW, the judge or magistrate may authorize the interception, transmission, recording, or disclosure of communications or conversations under subsection (2) of this section even though the true name of the nonconsenting party, or the particular time and place for the interception, transmission, recording, or disclosure, is not known at the time of the request, if the authorization describes the nonconsenting

party and subject matter of the communication or conversation with reasonable certainty under the circumstances. Any such communication or conversation may be intercepted, transmitted, recorded, or disclosed as authorized notwithstanding a change in the time or location of the communication or conversation after the authorization has been obtained or the presence of or participation in the communication or conversation by any additional party not named in the authorization.

Authorizations issued under this subsection shall be effective for not more than fourteen days, after which period the issuing authority may renew or continue the authorization for an additional period not to exceed fourteen days.

NEW SECTION. Sec. 206. A new section is added to chapter 9.73 RCW to read as follows:

(1) The attorney general shall have concurrent authority and power with the prosecuting attorneys to investigate violations of sections 201 through 204 of this act or RCW 9.73.090 and initiate and conduct prosecutions of any violations upon request of any of the following:

(a) The person who was the nonconsenting party to the intercepted, transmitted, or recorded conversation or communication; or

(b) The county prosecuting attorney of the jurisdiction in which the offense has occurred.

(2) The request shall be communicated in writing to the attorney general.

Sec. 207. Section 5, chapter 363, Laws of 1977 ex. sess. and RCW 9.73.120 are each amended to read as follows:

(1) Within thirty days after the expiration of an authorization or an extension or renewal thereof issued pursuant to RCW 9.73.090(2) as now or hereafter amended, the issuing or denying judge shall make a report to the administrator for the courts stating that:

(a) An authorization, extension or renewal was applied for;

(b) The kind of authorization applied for;

(c) The authorization was granted as applied for, was modified, or was denied;

(d) The period of recording authorized by the authorization and the number and duration of any extensions or renewals of the authorization;

(e) The offense specified in the authorization or extension or renewal of authorization;

(f) The identity of the person authorizing the application and of the investigative or law enforcement officer and agency for whom it was made; ((and))

(g) Whether an arrest resulted from the communication which was the subject of the authorization; and

(h) The character of the facilities from which or the place where the communications were to be recorded.

(2) In addition to reports required to be made by applicants pursuant to federal law, all judges of the superior court authorized to issue authority pursuant to this chapter shall make annual reports on the operation of this chapter to the administrator for the courts. The reports by the judges shall contain (a) the number of applications made; (b) the number of authorizations issued; (c) the respective periods of such authorizations; (d) the number and duration of any renewals thereof; (e) the crimes in connection with which the conversations were sought; (f) the names of the applicants; and (g) such other and further particulars as the administrator for the courts may require.

The chief justice of the supreme court shall annually report to the governor and the legislature on such aspects of the operation of this chapter as he deems appropriate including any recommendations he may care to make as to legislative changes or improvements to effectuate the purposes of this chapter and to assure and protect individual rights.

NEW SECTION. Sec. 208. A new section is added to chapter 9.73 RCW to read as follows:

The administrator for the courts shall not later than January 2, 1991, report to the house of representatives judiciary committee and the senate law and justice committee on the number of authorizations made under sections 202 and 204 of this act and RCW 9.73.090, categorized according to whether the authorization was judicial or nonjudicial. The report shall also show the number of authorizations denied, the number of arrests resulting from the authorizations, the offenses charged, and the number of convictions resulting from the arrests. The administrator for the courts shall use the reports submitted pursuant to sections 202 and 204 of this act and RCW 9.73.090 together with inquiries to the appropriate law enforcement agencies and courts to prepare the report.

Sec. 209. Section 6, chapter 93, Laws of 1967 ex. sess. and RCW 9.73.080 are each amended to read as follows:

Except as otherwise provided in this chapter, any person who ((shall)) violates RCW 9.73.030 ((shall be)) is guilty of a gross misdemeanor.

SUBPART B

MONITORING OF INMATE TELEPHONE CALLS

NEW SECTION. Sec. 210. A new section is added to chapter 9.73 RCW to read as follows:

(1) RCW 9.73.030 through 9.73.080 shall not apply to employees of the department of corrections in the following instances: Intercepting, recording, or divulging any telephone calls from an inmate or resident of a state correctional facility. For the purposes of this section, "state correctional facility" means a facility that is under the control and authority of the department of corrections, and used for the incarceration, treatment, or rehabilitation of convicted felons.

(2) All personal calls made by inmates shall be collect calls only. The calls will be "operator announcement" type calls. The operator shall notify the receiver of the call that the call is coming from a prison inmate, and that it will be recorded and may be monitored.

(3) The department of corrections shall adhere to the following procedures and restrictions when intercepting, recording, or divulging any telephone calls from an inmate or resident of a state correctional facility as provided for by this section:

(a) Before the implementation of this section, all inmates or residents of a state correctional facility shall be notified in writing that, as of the effective date of this section, their telephone conversations may be intercepted, recorded, and/or divulged.

(b) Unless otherwise provided for in this section, after intercepting or recording a telephone conversation, only the superintendent and his or her designee shall have access to that recording.

(c) The contents of an intercepted and recorded telephone conversation shall be divulged only as is necessary to safeguard the orderly operation of the correctional facility, in response to a court order, or in the prosecution or investigation of any crime.

(d) All telephone conversations that are recorded under this section, unless being used in the ongoing investigation or prosecution of a crime, or as is necessary to assure the orderly operation of the correctional facility, shall be destroyed one year after the intercepting and recording.

(4) So as to safeguard the sanctity of the attorney-client privilege, the department of corrections shall not intercept, record, or divulge any conversation between an inmate or resident and an attorney. The department shall develop policies and procedures to implement this section.

SUBPART C PROPERTY FORFEITURE

NEW SECTION. Sec. 211. The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a

result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest.

Sec. 212. Section 15, chapter 2, Laws of 1983 as last amended by section 2, chapter 282, Laws of 1988 and RCW 69.50.505 are each amended to read as follows:

(a) The following are subject to seizure and forfeiture and no property right exists in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, ~~((or))~~ acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW;

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(3) All property which is used, or intended for use, as a container for property described in paragraphs (1) or (2);

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale of property described in paragraphs (1) or (2), ~~((but))~~ except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without ~~((his))~~ the owner's knowledge or consent;

(iii) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(iv) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(6) All drug paraphernalia; ~~((and))~~

(7) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property,

proceeds, or assets acquired in whole or in part with proceeds traceable to ((such)) an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW: PROVIDED, That a forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission: PROVIDED FURTHER, That no personal property may be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(8) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property: PROVIDED, That:

(i) No property may be forfeited pursuant to this subsection, to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at

the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(b) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b), proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(d) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(4) ~~((or)), (a)(7), or (a)(8)~~ of this section within forty-five

days of the seizure in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(e) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(2), (a)(3), (a)(4) ((or)), (a)(5), (a)(6), (a)(7), or (a)(8) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than five hundred dollars. The court to which the matter is to be removed shall be the district court when such aggregate value is ten thousand dollars or less of personal property. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. In cases involving personal property, the burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of ((items specified in subsection (a)(4) or (a)(7) of this section)) the property. In cases involving real property, the burden of producing evidence shall be upon the law enforcement agency. The burden of proof that the seized real property is subject to forfeiture shall be upon the law enforcement agency. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (a)(2), (a)(3), (a)(4) ((or)), (a)(5), (a)(6), (a)(7), or (a)(8) of this section.

(f) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(1) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(2) (i) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and all moneys forfeited under

this title shall be used for payment of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual costs of the prosecuting or city attorney, and court costs. Money remaining after the payment of all expenses shall be distributed as follows:

(A) ~~((Seventy-five))~~ Twenty-five percent of the money derived from the forfeiture of real property and seventy-five percent of the money derived from the forfeiture of personal property shall be deposited in the general fund of the state, county, and/or city of the seizing law enforcement agency and shall be used exclusively for the expansion or improvement of law enforcement services. These services may include the creation of reward funds for the purpose of rewarding informants who supply information leading to the arrest, prosecution and conviction of persons who violate laws relating to controlled substances. Such moneys shall not supplant preexisting funding sources; ~~((and))~~

(B) Twenty-five percent of money derived from the forfeiture of real property and twenty-five percent of money derived from the forfeiture of personal property shall be remitted to the state treasurer for deposit in the public safety and education account established in RCW 43.08.250;

(C) Until July 1, 1995, fifty percent of money derived from the forfeiture of real property shall be remitted to the state treasurer for deposit in the drug enforcement and education account under section 401 of this 1989 act, on and after July 1, 1995, the fifty percent of the money shall be remitted in the same manner as the twenty-five percent of the money remitted under (2)(i)(A) of this subsection; and

(D) If an investigation involves a seizure of moneys and proceeds having an aggregate value of less than five thousand dollars, the moneys and proceeds may be deposited in total in the general fund of the governmental unit of the seizing law enforcement agency and shall be appropriated exclusively for the expansion of narcotics enforcement services. Such moneys shall not supplant preexisting funding sources.

(ii) Money deposited according to this section must be deposited within ninety days of the date of final disposition of either the administrative seizure or the judicial seizure;

(3) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(4) Forward it to the drug enforcement administration for disposition.

(g) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are

seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(h) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(i) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(j) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

SUBPART D OFF-LIMITS ORDERS

NEW SECTION. Sec. 213. The legislature finds that drug abuse is escalating at an alarming rate. New protections need to be established to address this drug crisis which is threatening every stratum of our society. Prohibiting known drug traffickers from frequenting areas for continuous drug activity is one means of addressing this pervasive problem.

NEW SECTION. Sec. 214. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Applicant" means any person who owns, occupies, or has a substantial interest in property, or who is a neighbor to property which is adversely affected by drug trafficking, including:

(a) A "family or household member" as defined by RCW 10.99.020(1), who has a possessory interest in a residence as an owner or tenant, at least as great as a known drug trafficker's interest;

(b) An owner or lessor;

(c) An owner, tenant, or resident who lives or works in a designated PADT area; or

(d) A city or prosecuting attorney for any jurisdiction in this state where drug trafficking is occurring.

(2) "Drug" or "drugs" means a controlled substance as defined in chapter 69.50 RCW or an "imitation controlled substance" as defined in RCW 69.52.020.

(3) "Known drug trafficker" means any person who has been convicted of a drug offense in this state, another state, or federal court who subsequently has been arrested for a drug offense in this state. For purposes of

this definition, "drug offense" means a felony violation of chapter 69.50 or 69.52 RCW or equivalent law in another jurisdiction that involves the manufacture, distribution, or possession with intent to manufacture or distribute, of a controlled substance or imitation controlled substance.

(4) "Off-limits orders" means an order issued by a superior or district court in the state of Washington that enjoins known drug traffickers from entering or remaining in a designated PADT area.

(5) "Protected against drug trafficking area" or "PADT area" means any specifically described area, public or private, contained in an off-limits order. The perimeters of a PADT area shall be defined using street names and numbers and shall include all real property contained therein, where drug sales, possession of drugs, pedestrian or vehicular traffic attendant to drug activity, or other activity associated with drug offenses confirms a pattern associated with drug trafficking. The area may include the full width of streets, alleys and sidewalks on the perimeter, common areas, planting strips, parks and parking areas within the area described using the streets as boundaries.

NEW SECTION. Sec. 215. A court may enter an off-limits order enjoining a known drug trafficker who has been associated with drug trafficking in an area that the court finds to be a PADT area, from entering or remaining in a designated PADT area for up to one year. This relief may be ordered pursuant to applications for injunctive relief or as part of a criminal proceeding as follows:

- (1) In a civil action, including an action brought under this chapter;
- (2) In a nuisance abatement action pursuant to chapter 7.43 RCW;
- (3) In an eviction action to exclude known drug traffickers or tenants who were evicted for allowing drug trafficking to occur on the premises which were the subject of the eviction action;
- (4) As a condition of pretrial release of a known drug trafficker awaiting trial on drug charges. The order shall be in effect until the time of sentencing or dismissal of the criminal charges; or
- (5) As a condition of sentencing of any known drug trafficker convicted of a drug offense. The order may include all periods of community placement or community supervision.

NEW SECTION. Sec. 216. Upon the filing of an application for an off-limits order under section 215 (1), (2), or (3) of this act, the court shall set a hearing fourteen days from the filing of the application, or as soon thereafter as the hearing can be scheduled. If the respondent has not already been served with a summons, the application shall be served on the respondent not less than five court days before the hearing. If timely service cannot be made, the court may set a new hearing date.

NEW SECTION. Sec. 217. Upon filing an application for an off-limits order under this chapter, an applicant may obtain an ex parte temporary off-limits order, with or without notice, only upon a showing that serious or irreparable harm will result to the applicant if the temporary off-limits order is not granted. An ex parte temporary off-limits order shall be effective for a fixed period not to exceed fourteen days, but the court may reissue the order upon a showing of good cause. A hearing on a one-year off-limits order, as provided in this chapter, shall be set for fourteen days from the issuance of the temporary order. The respondent shall be personally served with a copy of the temporary off-limits order along with a copy of the application and notice of the date set for the full hearing. At the hearing, if the court finds that respondent is a known drug trafficker who has engaged in drug trafficking in a particular area, and that the area is associated with a pattern of drug activities, the court shall issue a one-year off-limits order prohibiting the respondent from having any contact with the PADT area. At any time within three months before the expiration of the order, the applicant may apply for a renewal of the order by filing a new petition under this chapter.

NEW SECTION. Sec. 218. In granting a temporary off-limits order or a one-year off-limits order, the court shall have discretion to grant additional relief as the court considers proper to achieve the purposes of this chapter. The PADT area defined in any off-limits order must be reasonably related to the area or areas impacted by the unlawful drug activity as described by the applicant in any civil action under section 215 (1), (2), or (3) of this act. The court in its discretion may allow a respondent, who is the subject of any order issued under section 214 of this act as part of a civil or criminal proceeding, to enter an off-limits area or areas for health or employment reasons, subject to conditions prescribed by the court. Upon request, a certified copy of the order shall be provided to the applicant by the clerk of the court.

NEW SECTION. Sec. 219. A temporary off-limits order or a one-year off-limits order may not issue under this chapter except upon the giving of a bond or security by the applicant. The court shall set the bond or security in the amount the court deems proper, but not less than one thousand dollars, for the payment of costs and damages that may be incurred by any party who is found to have been wrongfully restrained or enjoined. A bond or security shall not be required of the state of Washington, municipal corporations, or political subdivisions of the state of Washington.

NEW SECTION. Sec. 220. Nothing in this chapter shall preclude a party from appearing in person or by counsel.

NEW SECTION. Sec. 221. A copy of an off-limits order granted under this chapter shall be forwarded by the court to the local law enforcement agency with jurisdiction over the PADT area specified in the order on

or before the next judicial day following issuance of the order. Upon receipt of the order, the law enforcement agency shall promptly enter it into an appropriate law enforcement information system.

NEW SECTION. Sec. 222. Any person who willfully disobeys an off-limits order issued under this chapter shall be subject to criminal penalties as provided in this chapter and may also be found in contempt of court and subject to penalties under chapter 7.20 RCW.

NEW SECTION. Sec. 223. (1) Any person who willfully disobeys an off-limits order issued under this chapter shall be guilty of a gross misdemeanor.

(2) Any person who willfully disobeys an off-limits order in violation of the terms of the order and who also either:

(a) Enters or remains in a PADT area that is within one thousand feet of any school; or

(b) Is convicted of a second or subsequent violation of this chapter, is guilty of a class C felony.

NEW SECTION. Sec. 224. The superior courts shall have jurisdiction of all civil actions and all felony criminal proceedings brought under this chapter. Courts of limited jurisdiction shall have jurisdiction of all misdemeanor and gross misdemeanor criminal actions brought under this chapter.

NEW SECTION. Sec. 225. For the purposes of this chapter, an action may be brought in any county in which any element of the alleged drug trafficking activities occurred.

NEW SECTION. Sec. 226. Upon application, notice to all parties, and a hearing, the court may modify the terms of an off-limits order. When an order is terminated, modified, or amended before its expiration date, the clerk of the court shall forward, on or before the next judicial day, a true copy of the amended order to the law enforcement agency specified in the order. Upon receipt of an order, the law enforcement agency shall promptly enter it into an appropriate law enforcement information system.

NEW SECTION. Sec. 227. Sections 213 through 226 of this act shall constitute a new chapter in Title 10 RCW.

SUBPART E DRUG SITE CLEANUP

NEW SECTION. Sec. 228. A new section is added to chapter 69.50 RCW to read as follows:

Law enforcement agencies who during the official investigation or enforcement of any illegal drug manufacturing facility come in contact with or are aware of any substances suspected of being hazardous as defined in section 2(5), chapter 2, Laws of 1989 (Initiative Measure No. 97), shall notify the department of ecology for the purpose of securing a contractor to identify, clean-up, store, and dispose of suspected hazardous substances,

except for those random and representative samples obtained for evidentiary purposes. The department of ecology shall make every effort to recover costs from the parties responsible for the suspected hazardous substance. All recoveries shall be deposited in the account or fund from which contractor payments are made.

The department of ecology may adopt rules to carry out its responsibilities under this section. The department of ecology shall consult with law enforcement agencies prior to adopting any rule or policy relating to this section.

SUBPART F KEG REGISTRATION

NEW SECTION. Sec. 229. Only licensees holding a class A or B license in combination with a class E license may sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. Any person who sells or offers for sale the contents of kegs or other containers containing four gallons or more of malt liquor, or leases kegs or other containers that will hold four gallons of malt liquor, to consumers who are not licensed under chapter 66.24 RCW shall do the following for any transaction involving the container:

(1) Require the purchaser of the malt liquor to sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in section 231 of this act;

(2) Require the purchaser to provide one piece of identification pursuant to RCW 66.16.040;

(3) Require the purchaser to sign a sworn statement, under penalty of perjury, that:

(a) The purchaser is of legal age to purchase, possess, or use malt liquor;

(b) The purchaser will not allow any person under the age of twenty-one years to consume the beverage except as provided by RCW 66.44.270;

(c) The purchaser will not remove, obliterate, or allow to be removed or obliterated, the identification required under section 231 of this act to be affixed to the container;

(4) Require the purchaser to state the particular address where the malt liquor will be consumed, or the particular address where the keg or other container will be physically located; and

(5) Require the purchaser to maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

NEW SECTION. Sec. 230. Any person who purchases the contents of kegs or other containers containing four gallons or more of malt liquor, or purchases or leases the container shall:

- (1) Sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in section 231 of this act;
- (2) Provide one piece of identification pursuant to RCW 66.16.040;
- (3) Be of legal age to purchase, possess, or use malt liquor;
- (4) Not allow any person under the age of twenty-one to consume the beverage except as provided by RCW 66.44.270;
- (5) Not remove, obliterate, or allow to be removed or obliterated, the identification required under rules adopted by the board;
- (6) Not move, keep, or store the keg or its contents, except for transporting to and from the distributor, at any place other than that particular address declared on the receipt and declaration; and
- (7) Maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

NEW SECTION. Sec. 231. The board shall adopt rules requiring retail licensees to affix appropriate identification on all containers of four gallons or more of malt liquor for the purpose of tracing the purchasers of such containers. The rules may provide for identification to be done on a state-wide basis or on the basis of smaller geographical areas.

The board shall develop and make available forms for the declaration and receipt required by section 229 of this act.

It is unlawful for any person to sell or offer for sale kegs or other containers containing four gallons or more of malt liquor to consumers who are not licensed under chapter 66.24 RCW if the kegs or containers are not identified in compliance with rules adopted by the board.

NEW SECTION. Sec. 232. (1) Except as provided in subsection (2) of this section, the violation of any provisions of sections 229 through 231 of this act is punishable by a fine of not more than five hundred dollars.

(2) Except as provided in RCW 66.44.270, a person who intentionally furnishes a keg or other container containing four or more gallons of malt liquor to a minor is liable, on conviction, for a first offense for a penalty of not more than five hundred dollars, or for imprisonment for not more than two months, or both; for a second offense for a penalty of not more than five hundred dollars or imprisonment for not more than six months, or both; and for a third or subsequent offense for a penalty of not more than five hundred dollars or imprisonment for more than one year, or both.

NEW SECTION. Sec. 233. The state of Washington fully occupies and preempts the entire field of keg registration. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to

keg registration that are consistent with this chapter. Such local ordinances shall have the same or lesser penalties as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality.

NEW SECTION. Sec. 234. Sections 229 through 233 of this act are each added to chapter 66.28 RCW.

SUBPART G SPECIAL NARCOTICS ENFORCEMENT UNIT

NEW SECTION. Sec. 235. A new section is added to chapter 9A.82 RCW to read as follows:

A special narcotics enforcement unit is established within the Washington state patrol drug control assistance unit. The unit shall be coordinated between the Washington state patrol, the attorney general, and the Washington association of sheriffs and police chiefs. The initial unit shall consist of attorneys, investigators, and the necessary accountants and support staff. It is the responsibility of the unit to: (1) Conduct criminal narcotic profiteering investigations and assist with prosecutions, (2) train local undercover narcotic agents, and (3) coordinate federal, state, and local interjurisdictional narcotic investigations.

SUBPART H STATE-WIDE DRUG PROSECUTION ASSISTANCE PROGRAM

NEW SECTION. Sec. 236. A new section is added to chapter 36.27 RCW to read as follows:

The legislature recognizes that, due to the magnitude or volume of offenses in a given area of the state, there is a recurring need for supplemental assistance in the prosecuting of drug and drug-related offenses that can be directed to the area of the state with the greatest need for short-term assistance. A state-wide drug prosecution assistance program is created within the department of community development to assist county prosecuting attorneys in the prosecution of drug and drug-related offenses.

NEW SECTION. Sec. 237. A new section is added to chapter 36.27 RCW to read as follows:

There is established a state-wide advisory committee comprised of the attorney general, the chief of the Washington state patrol, both United States attorneys whose offices are located in Washington state, and three county prosecuting attorneys appointed by the Washington association of prosecuting attorneys, who will also act as supervising attorneys. The state-wide advisory committee shall select one of the supervising attorneys to act as project director of the drug prosecution assistance program.

NEW SECTION. Sec. 238. A new section is added to chapter 36.27 RCW to read as follows:

The project director of the drug prosecution assistance program shall employ up to five attorneys to act as special deputy prosecuting attorneys. A county or counties may request the assistance of one or more of the special deputy prosecuting attorneys. The project director after consultation with the advisory committee shall determine the assignment of the special deputy prosecutors. Within funds appropriated for this purpose, the project director may also employ necessary support staff and purchase necessary supplies and equipment.

The advisory committee shall regularly review the assignment of the special deputy prosecuting attorneys to ensure that the program's impact on the drug abuse problem is maximized.

During the time a special deputy prosecuting attorney is assigned to a county, the special deputy is under the direct supervision of the county prosecuting attorney for that county. The advisory committee may reassign a special deputy at any time: PROVIDED, That adequate notice must be given to the county prosecuting attorney if the special deputy is involved in a case scheduled for trial.

SUBPART I NEIGHBORHOOD BLIGHT

NEW SECTION. Sec. 239. Every county, city, and town may acquire by condemnation, in accordance with the notice requirements and other procedures for condemnation provided in Title 8 RCW, any property, dwelling, building, or structure which constitutes a blight on the surrounding neighborhood. A "blight on the surrounding neighborhood" is any property, dwelling, building, or structure that has not been lawfully occupied for a period of one year or more, constitutes a threat to the public health, safety, or welfare as determined by the county health department in the applicable county and that is or has been associated with illegal drug activity during the previous twelve months. Prior to such condemnation, the local governing body shall adopt a resolution declaring that the acquisition of the real property described therein is necessary to eliminate neighborhood blight. Condemnation of property, dwellings, buildings, and structures for the purposes described in this chapter is declared to be for a public use.

NEW SECTION. Sec. 240. Counties, cities, and towns may sell, lease, or otherwise transfer real property acquired pursuant to this chapter for residential, recreational, commercial, industrial, or other uses or for public use, subject to such covenants, conditions, and restrictions, including covenants running with the land, as the county, city, or town deems to be necessary or desirable to rehabilitate and preserve the dwelling, building, or

structure in a habitable condition. The purchasers or lessees and their successors and assigns shall be obligated to comply with such other requirements as the county, city, or town may determine to be in the public interest, including the obligation to begin, within a reasonable time, any improvements on such property required to make the dwelling, building, or structure habitable. Such real property or interest shall be sold, leased, or otherwise transferred, at not less than its fair market value. In determining the fair market value of real property for uses in accordance with this section, a municipality shall take into account and give consideration to, the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee.

NEW SECTION. Sec. 241. A county, city, or town may dispose of real property acquired pursuant to this section to private persons only under such reasonable, competitive procedures as it shall prescribe. The county, city, or town may accept such proposals as it deems to be in the public interest and in furtherance of the purposes of this chapter. Thereafter, the county, city, or town may execute and deliver contracts, deeds, leases, and other instruments of transfer.

NEW SECTION. Sec. 242. Every county, city, or town may, in addition to any other authority granted by this chapter: (1) Enter upon any building or property found to constitute a blight on the surrounding neighborhood in order to make surveys and appraisals, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; and (2) borrow money, apply for, and accept, advances, loans, grants, contributions, and any other form of financial assistance from the federal government, the state, a county, or other public body, or from any sources, public or private, for the purposes of this chapter, and enter into and carry out contracts in connection herewith.

NEW SECTION. Sec. 243. Sections 239 through 242 of this act shall constitute a new chapter in Title 35 RCW.

SUBPART J

SCHOOL OFFICIAL SEARCHES OF STUDENT LOCKERS

NEW SECTION. Sec. 244. A new section is added to chapter 28A.67 RCW to read as follows:

The legislature finds that illegal drug activity and weapons in schools threaten the safety and welfare of school children and pose a severe threat to the state educational system. School officials need authority to maintain order and discipline in schools and to protect students from exposure to illegal drugs, weapons, and contraband. Searches of school-issued lockers and the contents of those lockers is a reasonable and necessary tool to protect the interests of the students of the state as a whole.

NEW SECTION. Sec. 245. A new section is added to chapter 28A.67 RCW to read as follows:

No right nor expectation of privacy exists for any student as to the use of any locker issued or assigned to a student by a school and the locker shall be subject to search for illegal drugs, weapons, and contraband as provided in sections 244 through 247 of this act.

NEW SECTION. Sec. 246. A new section is added to chapter 28A.67 RCW to read as follows:

(1) A school principal, vice principal, or principal's designee may search a student, the student's possessions, and the student's locker, if the principal, vice principal, or principal's designee has reasonable grounds to suspect that the search will yield evidence of the student's violation of the law or school rules.

(2) Except as provided in subsection (3) of this section, the scope of the search is proper if the search is conducted as follows:

(a) The methods used are reasonably related to the objectives of the search; and

(b) Is not excessively intrusive in light of the age and sex of the student and the nature of the suspected infraction.

(3) A principal or vice principal or anyone acting under their direction may not subject a student to a strip search or body cavity search as those terms are defined in RCW 10.79.070.

NEW SECTION. Sec. 247. A new section is added to chapter 28A.67 RCW to read as follows:

(1) In addition to the provisions in section 246 of this act, the school principal, vice principal, or principal's designee may search all student lockers at any time without prior notice and without a reasonable suspicion that the search will yield evidence of any particular student's violation of the law or school rule.

(2) If the school principal, vice principal, or principal's designee, as a result of the search, develops a reasonable suspicion that a certain container or containers in any student locker contain evidence of a student's violation of the law or school rule, the principal, vice principal, or principal's designee may search the container or containers according to the provisions of section 246(2) of this act.

PART III SOCIAL PROGRAMS AND EDUCATION

SUBPART A INVOLUNTARY TREATMENT

Sec. 301. Section 294, page 187, Laws of 1854 as last amended by section 1501, chapter 212, Laws of 1987, section 11, chapter 439, Laws of 1987, and by section 1, chapter ____ (SSB 5034), Laws of 1989 and RCW 5.60.060 are each reenacted and amended to read as follows:

(1) A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse if the marriage occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian, nor to a proceeding under chapter 70.96A or 71.05 RCW: PROVIDED, That the spouse of a person sought to be detained under chapter 70.96A or 71.05 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(3) A member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 70.96A.140 or 71.05.250, a physician or surgeon or osteopathic physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

Sec. 302. Section 2, chapter 447, Laws of 1985 as amended by section 1, chapter 212, Laws of 1986 and RCW 5.62.020 are each amended to read as follows:

No registered nurse providing primary care or practicing under protocols, whether or not the physical presence or direct supervision of a physician is required, may be examined in a civil or criminal action as to any information acquired in attending a patient in the registered nurse's professional capacity, if the information was necessary to enable the registered nurse to act in that capacity for the patient, unless:

(1) The patient consents to disclosure or, in the event of death or disability of the patient, his or her personal representative, heir, beneficiary, or devisee consents to disclosure; or

(2) The information relates to the contemplation or execution of a crime in the future, or relates to the neglect or the sexual or physical abuse of a child, or of a vulnerable adult as defined in RCW 74.34.020, or to a person subject to proceedings under chapter 70.96A, 71.05, or 71.34 RCW.

Sec. 303. Section 11, chapter 305, Laws of 1955 as last amended by section 12, chapter 439, Laws of 1987 and RCW 18.83.110 are each amended to read as follows:

Confidential communications between a client and a psychologist shall be privileged against compulsory disclosure to the same extent and subject to the same conditions as confidential communications between attorney and client, but this exception is subject to the limitations under RCW 70.96A-.140 and 71.05.250.

Sec. 304. Section 1, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.010 are each amended to read as follows:

It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages but rather should, within available funds, be afforded a continuum of treatment in order that they may lead normal lives as productive members of society. Within available funds, treatment should also be provided for drug addicts.

Sec. 305. Section 2, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.020 are each amended to read as follows:

For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Alcoholic" means a person who ~~((habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted))~~ suffers from the disease of alcoholism, characterized by a physiological dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological and/or psychological withdrawal if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning;

(2) "Drug addict" means a person who uses drugs other than alcohol in a chronic, compulsive, or uncontrollable manner, to the extent that it is seriously interfering with the individual's health, economic, or social functioning. Drug addiction is characterized by a compulsive desire for one or more drugs, loss of control when exposed to one or more drugs, and continued use in spite of adverse consequences;

(3) "Approved treatment facility" means a treatment agency operating under the direction and control of the department of social and health services or providing treatment under this chapter through a contract with the department under RCW 70.96A.080(6) and meeting the standards prescribed in RCW 70.96A.090(1) and approved under RCW 70.96A.090(3) or meeting the standards prescribed in and approved under RCW 69.54.030;

~~((3))~~ (4) "Secretary" means the secretary of the department of social and health services;

~~((4))~~ (5) "Department" means the department of social and health services;

~~((5))~~ "Director" means the director of the division of alcoholism;

(6) "Emergency service patrol" means a patrol established under RCW 70.96A.170;

(7) "Incapacitated by alcohol or other drugs" means that a person, as a result of the use of alcohol or other drugs, has his or her judgment so impaired that he or she is incapable of realizing and making a rational decision with respect to ((his)) the need for treatment or care and constitutes a danger to himself or herself, to any other person, or to property;

(8) "Gravely disabled by alcohol or other drugs" means that a person, as a result of the use of alcohol or other drugs: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by a repeated and escalating loss of cognition or volitional control over his or her actions and is not receiving care as essential for his or her health or safety;

(9) "Incompetent person" means a person who has been adjudged incompetent by the superior court;

~~((9))~~ (10) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other drugs;

~~((10))~~ (11) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient and emergency services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics, drug addicts, persons incapacitated by alcohol or other drugs, and intoxicated persons;

(12) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(13) "Licensed physician" means a person licensed to practice medicine or osteopathy in the state of Washington.

Sec. 306. Section 12, chapter 122, Laws of 1972 ex. sess. as last amended by section 13, chapter 439, Laws of 1987 and RCW 70.96A.120 are each amended to read as follows:

(1) An intoxicated person may come voluntarily to an approved treatment facility for treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he or she consents to the proffered help, may be assisted to his or her home, an approved treatment facility or other health facility.

(2) Except for a person who may be apprehended for possible violation of laws not relating to alcoholism, drug addiction, or intoxication and except for a person who may be apprehended for possible violation of laws relating to driving or being in physical control of a vehicle while intoxicated and except for a person who may wish to avail himself or herself of the provisions of RCW 46.20.308, a person who appears to be incapacitated or gravely disabled by alcohol or other drugs and who is in a public place or who has threatened, attempted, or inflicted physical harm on himself, herself, or another, shall be taken into protective custody by ~~((the police or the emergency service patrol))~~ a peace officer or staff designated by the county and as soon as practicable, but in no event beyond eight hours brought to an approved treatment facility for treatment. If no approved treatment facility is readily available he or she shall be taken to an emergency medical service customarily used for incapacitated persons. The ~~((police or the emergency service patrol))~~ peace officer or staff designated by the county, in detaining the person and in taking him or her to an approved treatment facility, is taking him or her into protective custody and shall make every reasonable effort to protect his or her health and safety. In taking the person into protective custody, the detaining peace officer or ~~((member of an emergency patrol))~~ staff designated by the county may take reasonable steps including reasonable force if necessary to protect himself or herself or effect the custody. A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved treatment facility shall be examined by a qualified person. He or she may then be admitted as a patient or referred to another health facility, which provides emergency medical treatment, where it appears that such treatment may be necessary. The referring approved treatment facility shall arrange for his or her transportation.

(4) A person who is found to be incapacitated or gravely disabled by alcohol or other drugs at the time of his or her admission or to have become incapacitated or gravely disabled at any time after his or her admission, may not be detained at the facility for more than seventy-two hours after admission as a patient, unless a petition is filed under RCW 70.96A.140, as now or hereafter amended: PROVIDED, That the treatment personnel at ~~((the))~~ an approved treatment facility are authorized to use such reasonable physical restraint as may be necessary to retain an incapacitated or gravely disabled person ~~((incapacitated by alcohol at such facility))~~ for up to seventy-two hours from the time of admission. The seventy-two hour periods specified in this section shall be computed by excluding Saturdays, Sundays, and holidays. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved treatment facility, is not referred to another health facility, and has no funds, may be taken to his or her home, if any. If he or she has no home, the approved treatment facility shall ~~((assist))~~ provide him or her ~~((in obtaining shelter))~~ with information and assistance to access available community shelter resources.

(6) If a patient is admitted to an approved treatment facility, his or her family or next of kin shall be notified as promptly as possible by the treatment facility. If an adult patient who is not incapacitated requests that there be no notification, his or her request shall be respected.

(7) The ~~((police, members of the emergency service))~~ peace officer, staff designated by the county, or treatment facility personnel, who ((in good faith)) act in compliance with this chapter and are performing in the course of their official duty ~~((and))~~ are not criminally or civilly liable therefor.

(8) If the person in charge of the approved treatment facility determines ~~((it is for the patient's benefit))~~ that appropriate treatment is available, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment.

Sec. 307. Section 14, chapter 122, Laws of 1972 ex. sess. as last amended by section 14, chapter 439, Laws of 1987 and RCW 70.96A.140 are each amended to read as follows:

(1) When the person in charge of a treatment facility, or his or her designee, receives information alleging that a person is incapacitated as a result of alcoholism, the person in charge, or his or her designee, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the information, may file a petition for commitment of such person with the superior court or district court. If the person in charge, or his or her designee, finds that the initial needs of such person would be better served by placement within the mental health system, the person shall be referred to an evaluation and treatment facility as defined in RCW 71.05.020. If placement in an alcohol treatment facility is available and

deemed appropriate, the petition shall allege that: The person is an alcoholic who is incapacitated by alcohol, or that the person has twice before in the preceding twelve months been admitted for ((the voluntary)) detoxification or treatment for alcoholism pursuant to RCW 70.96A.110 and is in need of a more sustained treatment program, or that the person is an alcoholic who has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed. A refusal to undergo treatment, by itself, does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within ((two)) five days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the licensed physician's findings in support of the allegations of the petition. A physician employed by the petitioning facility or the department is ((not)) eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no less than ((three)) two and no more than seven days after the date the petition was filed unless the person petitioned against is presently being detained ((by the)) in a facility, pursuant to RCW 70.96A.120 or 71.05.210, as now or hereafter amended, in which case the hearing shall be held within seventy-two hours of the filing of the petition: PROVIDED, HOWEVER, That the above specified seventy-two hours shall be computed by excluding Saturdays, Sundays, and holidays: PROVIDED FURTHER, That, the court may, upon motion of the person whose commitment is sought, or upon motion of petitioner with written permission of the person whose commitment is sought, or his or her counsel and, upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served by the treatment facility on the person whose commitment is sought, his or her next of kin, a parent or his or her legal guardian if he or she is a minor, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony, which may be telephonic, of at least one licensed physician who has examined the person whose commitment is sought. Communications otherwise deemed privileged under the laws of this state are deemed to be waived in proceedings under this chapter when a court of competent jurisdiction in its discretion determines that the waiver is necessary to protect either the detained person or the public. The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person, or on its own motion, the

court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical, nursing, or psychological records of detained persons so long as the requirements of RCW 5.45.020 are met, except that portions of the record that contain opinions as to whether the detained person is an alcoholic must be deleted from the records unless the person offering the opinions is available for cross-examination. The person shall be present unless the court believes that his or her presence is likely to be injurious to him or her; in this event the court may deem it appropriate to appoint a guardian ad litem to represent him or her throughout the proceeding. If deemed advisable, the court may examine the person out of courtroom. If the person has refused to be examined by a licensed physician, he or she shall be given an opportunity to be examined by a court appointed licensed physician. If he or she refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him or her to the department for a period of not more than five days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that grounds for involuntary commitment have been established by clear, cogent, and convincing proof, it shall make an order of commitment to an approved treatment facility. It shall not order commitment of a person unless it determines that an approved treatment facility is available and able to provide adequate and appropriate treatment for him or her ~~((and the treatment is likely to be beneficial))~~.

(5) A person committed under this section shall remain in the facility for treatment for a period of ~~((thirty))~~ sixty days unless sooner discharged. At the end of the ~~((thirty))~~ sixty-day period, he or she shall be discharged automatically unless the facility, before expiration of the period, files a petition for his or her recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety days unless sooner discharged. If a person has been committed because he or she is an alcoholic likely to inflict physical harm on another, the facility shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) ~~((A person recommitted under subsection (5) of this section who has not been discharged by the facility before the end of the ninety day period shall be discharged at the expiration of that period unless the facility, before expiration of the period, obtains a court order on the grounds set forth in subsection (1) of this section for recommitment for a further period not to exceed ninety days. If a person has been committed because he or she is an alcoholic likely to inflict physical harm on another, the facility shall~~

apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) of this section are permitted.

~~((7))~~ Upon the filing of a petition for recommitment under subsection~~((s))~~ (5) ~~((or (6)))~~ of this section, the court shall fix a date for hearing no less than ~~((three))~~ two and no more than seven days after the date the petition was filed: PROVIDED, That, the court may, upon motion of the person whose commitment is sought and upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served by the treatment facility on the person whose commitment is sought, his or her next of kin, the original petitioner under subsection (1) of this section if different from the petitioner for recommitment, one of his or her parents or his or her legal guardian if he or she is a minor, and his or her attorney and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3) of this section.

~~((8))~~ (7) The approved treatment facility shall provide for adequate and appropriate treatment of a person committed to its custody. A person committed under this section may be transferred from one approved public treatment facility to another if transfer is medically advisable.

~~((9))~~ (8) A person committed to the custody of a facility for treatment shall be discharged at any time before the end of the period for which he or she has been committed and he or she shall be discharged by order of the court if either of the following conditions are met:

(a) In case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon himself, herself, or another, ~~((that he or she is no longer an alcoholic or))~~ the likelihood no longer exists; or further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(b) In case of an alcoholic committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists.

~~((10))~~ (9) The court shall inform the person whose commitment or recommitment is sought of his or her right to contest the application, be represented by counsel at every stage of any proceedings relating to his or her commitment and recommitment, and have counsel appointed by the court or provided by the court, if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes. The person shall, if he or she is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment or recommitment is sought shall be informed of his or her right to be examined by a licensed physician of his or her choice. If the

person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

~~((+1+))~~ (10) A person committed under this chapter may at any time seek to be discharged from commitment by writ of habeas corpus in a court of competent jurisdiction.

~~((+2+))~~ (11) The venue for proceedings under this section is the county in which person to be committed resides or is present.

(12) When in the opinion of the professional person in charge of the facility providing involuntary treatment under this chapter, the committed patient can be appropriately served by less restrictive treatment before expiration of the period of commitment, then the less restrictive care may be required as a condition for early release for a period which, when added to the initial treatment period, does not exceed the period of commitment. If the facility designated to provide the less restrictive treatment is other than the facility providing the initial involuntary treatment, the facility so designated must agree in writing to assume such responsibility. A copy of the conditions for early release shall be given to the patient, the designated county alcoholism specialist, and the court of original commitment. The facility designated to provide less restrictive care may modify the conditions for continued release when the modifications are in the best interests of the patient. If the facility providing less restrictive care and the designated county alcoholism specialist determine that a conditionally released patient is failing to adhere to the terms and conditions of his or her release, or that substantial deterioration in the patient's functioning has occurred, then the designated county alcoholism specialist shall notify the court of original commitment and request a hearing to be held no less than two and no more than seven days after the date of the request to determine whether or not the person should be returned to more restrictive care. The designated alcoholism specialist shall file a petition with the court stating the facts substantiating the need for the hearing along with the treatment recommendations. The patient shall have the same rights with respect to notice, hearing, and counsel as for the original involuntary treatment proceedings. The issues to be determined at the hearing are whether the conditionally released patient did or did not adhere to the terms and conditions of his or her release to less restrictive care or that substantial deterioration of the patient's functioning has occurred and whether the conditions of release should be modified or the person should be returned to a more restrictive facility. The hearing may be waived by the patient and his or her counsel and his or her guardian or conservator, if any, but may not be waived unless all such persons agree to the waiver. Upon waiver, the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions.

Sec. 308. Section 15, chapter 85, Laws of 1959 and RCW 70.96.150 are each amended to read as follows:

The department shall not refuse admission for diagnosis, evaluation, guidance or treatment to any applicant because it is determined that the applicant is financially unable to contribute fully or in part to the cost of any services or facilities available under the program on alcoholism.

The department may limit admissions of such applicants or modify its programs in order to ensure that expenditures for services or programs do not exceed amounts appropriated by the legislature and are allocated by the department for such services or programs. The department may establish admission priorities in the event that the number of eligible applicants exceeds the limits set by the department.

NEW SECTION. Sec. 309. A new section is added to chapter 70.96A RCW to read as follows:

The department is authorized to allocate appropriated funds in the manner that it determines best meets the purposes of this chapter. Nothing in this chapter shall be construed to entitle any individual to services authorized in this chapter, or to require the department or its contractors to re-allocate funds in order to ensure that services are available to any eligible person upon demand.

SUBPART B

DRUG AND ALCOHOL ABUSE PREVENTION AND EARLY INTERVENTION IN SCHOOLS

NEW SECTION. Sec. 310. (1) The legislature finds that the provision of drug and alcohol counseling and related prevention and intervention services in schools will enhance the classroom environment for students and teachers, and better enable students to realize their academic and personal potentials.

(2) The legislature finds that it is essential that resources be made available to school districts to provide early drug and alcohol prevention and intervention services to students and their families; to assist in referrals to treatment providers; and to strengthen the transition back to school for students who have had problems of drug and alcohol abuse.

(3) New and existing substance abuse awareness programs funded pursuant to RCW 28A.120.030 through 28A.120.050 do not fall within the definition of basic education for purposes of Article IX of the state Constitution and the state's funding duty thereunder.

(4) The legislature intends to provide grants for drug and alcohol abuse prevention and intervention in schools, targeted to those schools with the highest concentrations of students at risk.

NEW SECTION. Sec. 311. (1) Grants provided under section 312 of this act may be used solely for services provided by a substance abuse intervention specialist or for dedicated staff time for counseling and intervention services provided by any school district certificated employee who has

been trained by and has access to consultation with a substance abuse intervention specialist. Services shall be directed at assisting students in kindergarten through twelfth grade in overcoming problems of drug and alcohol abuse, and in preventing abuse and addiction to such substances, including nicotine. The grants shall require local matching funds so that the grant amounts support a maximum of eighty percent of the costs of the services funded. The services of a substance abuse intervention specialist may be obtained by means of a contract with a state or community services agency or a drug treatment center. Services provided by a substance abuse intervention specialist may include:

- (a) Individual and family counseling, including preventive counseling;
- (b) Assessment and referral for treatment;
- (c) Referral to peer support groups;
- (d) Aftercare;
- (e) Development and supervision of student mentor programs;
- (f) Staff training, including training in the identification of high-risk children and effective interaction with those children in the classroom; and
- (g) Development and coordination of school drug and alcohol core teams, involving staff, students, parents, and community members.

(2) For the purposes of this section, "substance abuse intervention specialist" means any one of the following, except that diagnosis and assessment, counseling and aftercare specifically identified with treatment of chemical dependency shall be performed only by personnel who meet the same qualifications as are required of a qualified chemical dependency counselor employed by an alcoholism or drug treatment program approved by the department of social and health services.

(a) An educational staff associate employed by a school district or educational service district who holds certification as a school counselor, school psychologist, school nurse, or school social worker under state board of education rules adopted pursuant to RCW 28A.04.120;

(b) An individual who meets the definition of a qualified drug or alcohol counselor established by the bureau of alcohol and substance abuse;

(c) A counselor, social worker, or other qualified professional employed by the department of social and health services;

(d) A psychologist licensed under chapter 18.83 RCW; or

(e) A children's mental health specialist as defined in RCW 71.34.020.

NEW SECTION. Sec. 312. (1) The superintendent of public instruction shall select school districts and cooperatives of school districts to receive grants for drug and alcohol abuse prevention and intervention programs for students in kindergarten through twelfth grade, from funds appropriated by the legislature for this purpose. The minimum annual grant amount per district or cooperative of districts shall be twenty thousand dollars. Factors to be used in selecting proposals for funding and in determining grant awards shall be developed in consultation with the substance

abuse advisory committee appointed under RCW 28A.120.038, with the intent of targeting funding to districts with high-risk populations. These factors may include:

(a) Characteristics of the school attendance areas to be served, such as the number of students from low-income families, truancy rates, juvenile justice referrals, and social services caseloads;

(b) The total number of students who would have access to services; and

(c) Participation of community groups and law enforcement agencies in drug and alcohol abuse prevention and intervention activities.

(2) The application procedures for grants under this section shall be consistent with the application procedures for other grants for substance abuse awareness programs under RCW 28A.120.032, including provisions for comprehensive planning, establishment of a school and community substance abuse advisory committee, and documentation of the district's needs assessment. Planning and application for grants under this section may be integrated with the development of other substance abuse awareness programs by school districts, and other grants under RCW 28A.120.030 through 28A.120.036 shall not require a separate application. School districts shall, to the maximum extent feasible, coordinate the use of grants provided under this section with other funding available for substance abuse awareness programs. School districts should allocate resources giving emphasis to drug and alcohol abuse intervention services for students in grades five through nine. Grants may be used to provide services for students who are enrolled in approved private schools.

(3) School districts receiving grants under this section shall be required to establish a means of accessing formal assessment services for determining treatment needs of students with drug and alcohol problems. The grant applications submitted by districts shall identify the districts' plan for meeting this requirement.

(4) School districts receiving grants under this section shall be required to perform biennial evaluations of their drug and alcohol abuse prevention and intervention programs, and to report on the results of these evaluations to the superintendent of public instruction.

(5) The superintendent of public instruction may adopt rules to implement sections 311 through 313 of this act.

NEW SECTION. Sec. 313. (1) School districts are encouraged to promote parent and community involvement in drug and alcohol abuse prevention and intervention programs, through parent visits under RCW 28A.58.053 and through any school involvement program established by the district under RCW 28A.58.640 through 28A.58.648.

(2) Districts are further encouraged to review drug and alcohol prevention and intervention programs as part of the self-study procedures required under RCW 28A.58.085 and as part of any annual goal-setting process the district may have established under RCW 28A.58.094.

NEW SECTION. Sec. 314. Sections 311 through 313 of this act are each added to chapter 28A.120 RCW.

SUBPART C COMMUNITY MOBILIZATION

NEW SECTION. Sec. 315. The legislature recognizes that state-wide efforts aimed at reducing the incidence of substance abuse must be increased. The legislature further recognizes that the most effective strategy for reducing the impact of alcohol and other drug abuse is through the collaborative efforts of educators, law enforcement, local government officials, local treatment providers, and concerned community and citizens' groups.

The legislature intends to support the development and activities of community mobilization strategies against substance abuse through the following efforts:

(1) Provide funding support for prevention, treatment, and enforcement activities identified by communities that have brought together education, treatment, local government, law enforcement, and other key elements of the community;

(2) Provide technical assistance and support to help communities develop and carry out effective activities; and

(3) Provide communities with opportunities to share suggestions for state program operations and budget priorities.

NEW SECTION. Sec. 316. There is established in the office of the governor a grant program to provide incentive for and support for communities to develop targeted and coordinated strategies to reduce the incidence and impact of substance abuse.

Activities which may be funded through this grant program include those which:

(1) Prevent substance abuse through educational and self-esteem efforts, development of positive alternatives, intervention with high-risk groups, and other prevention strategies;

(2) Support effective treatment by increasing access to and availability of treatment opportunities, particularly for underserved or highly impacted populations, developing aftercare and support mechanisms, and other strategies to increase the availability and effectiveness of treatment;

(3) Provide meaningful consequences for participation in illegal activity and promote safe and healthy communities through support of law enforcement strategies;

(4) Create or build on efforts by existing community programs, coordinate their efforts, and develop cooperative efforts or other initiatives to

make most effective use of resources to carry out the community's strategy against substance abuse; and

(5) Other activities which demonstrate both feasibility and a rationale for how the activity will achieve measurable results in the strategy against substance abuse.

NEW SECTION. Sec. 317. Applications for funding under this chapter must:

(1) Demonstrate that the community has developed and is committed to carrying out a coordinated strategy of prevention, treatment, and law enforcement activities; and

(2) Contain evidence of active participation of the community and specific commitments to implementing the community-wide agenda by leadership from at least education, law enforcement, local government, tribal government, and treatment entities in the community, and the opportunity for meaningful involvement from others such as neighborhood and citizen groups, businesses, human service, health and job training organizations, and other key elements of the community, particularly those whose responsibilities in law enforcement, treatment, prevention, or other community efforts provide direct, ongoing contact with substance abusers.

NEW SECTION. Sec. 318. This grant program will be available to communities of any geographic size but will encourage and reward communities which develop coordinated or complimentary strategies within geographic areas such as county areas or groups of county areas which correspond to units of government with significant responsibilities in the area of substance abuse, existing coalitions, or other entities important to the success of a community's strategy against substance abuse.

NEW SECTION. Sec. 319. At a minimum, grant applications must include the following:

(1) Definition of geographic area;

(2) A description of the extent and impact of substance abuse in the community, including an explanation of those who are most severely impacted and those most at risk of substance abuse;

(3) An explanation of the community-wide strategy for prevention, treatment, and law enforcement activities related to substance abuse with particular attention to those who are most severely impacted and those most at risk of substance abuse;

(4) Explanation of who was involved in development of the strategy and what specific commitments have been made to carrying it out;

(5) Identification of existing prevention, treatment, and law enforcement resources committed by the community, including financial and other support, and an explanation of how the community's strategy involves and builds on the efforts of existing organizations or coalitions that have been carrying out community efforts against substance abuse;

(6) Identification of activities that address specific objectives in the strategy for which additional resources are needed;

(7) Identification of additional local resources, including public or private funds, donated goods or services, and other measurable commitments, that have been committed to the activities identified in subsection (6) of this section;

(8) Identification of activities which address specific objectives in the strategy for which funding is requested. Activities should be presented in priority order;

(9) Each activity for which funding is requested must be explained in sufficient detail to demonstrate:

(a) Feasibility through deliberative design, specific objectives, and realistic plan for implementation;

(b) A rationale for how this activity will achieve measurable results and how it will be evaluated;

(c) That funds requested are necessary and appropriate to effectively carry out the activity; and

(10) Identification of a fiscal agent meeting state requirements for each activity proposed for funding.

NEW SECTION. Sec. 320. The governor shall make awards, subject to funds appropriated by the legislature, under the following terms:

(1) In order to be eligible for consideration, applications must demonstrate, at a minimum:

(a) That proposals submitted for funding are based on and address specific objectives contained in a coordinated strategy of prevention, treatment, and law enforcement against substance abuse;

(b) Evidence of active participation in preparation of the proposal and specific commitments to implementing the community-wide agenda by leadership from at least education, law enforcement, local government, tribal government, and treatment entities in the community, and the opportunity for meaningful involvement from others such as neighborhood and citizen groups, businesses, human service, health and job training organizations, and other key elements of the community, particularly those whose responsibilities in law enforcement, treatment, prevention, or other community efforts provide direct, ongoing contact with substance abusers, or those at risk for substance abuse;

(c) That they have met the requirements listed in section 319 of this act;

(d) Evidence of additional local resources committed to its strategy totaling at least twenty-five percent of funds awarded under this section. These resources may consist of public or private funds, donated goods or services, and other measurable commitments, including in-kind contributions such as volunteer services, materials, supplies, physical facilities or a combination thereof; and

(e) That the funds applied for, if received, will not be used to replace funding for existing activities.

(2) In order to encourage and reward communities which develop coordinated or complementary strategies within geographic areas which correspond to units of government with significant responsibilities in the area of substance abuse, up to fifty percent of funds appropriated for the purposes of this chapter may be awarded on a per capita basis to eligible applications reflecting coordinated strategy from a county area or group of county areas. The governor may establish minimum allotments per eligible county areas up to fifteen thousand dollars; and

(3) No less than fifty percent of funds appropriated under this chapter shall be awarded on a competitive basis for activities by communities not participating in a county-wide strategy and activities identified by county-wide strategies but not funded through per capita grants. Eligible applications will be assessed and compared by a peer review committee whose members have experience in prevention, treatment, law enforcement, and other community efforts against substance abuse using the following criteria:

(a) The extent and impact of substance abuse;

(b) The extent to which key elements of the community are involved in and committed to the coordinated strategy;

(c) The extent of commitments of local resources to the coordinated strategy;

(d) The extent to which any activities in a community's strategy offer an innovative approach to a chronic, wide-spread problem.

The peer review committee will advise the governor on the extent to which each eligible applicant has met these criteria. The governor will distribute available funds based on this information.

(4) The governor shall distribute fifty percent of the initial appropriation for the purposes of this chapter no later than October 1, 1989, and the remainder no later than July 1, 1990.

(5) Activities funded under this section may be considered for funding in future years, but will be considered under the same terms and criteria of new activities. Funding under this section shall not constitute an obligation by the state of Washington to provide ongoing funding.

NEW SECTION. Sec. 321. The governor shall ask communities for suggestions on state practices, policies, and priorities that would help communities implement their strategies against substance abuse. The governor or appropriate agency officials shall review and respond to those suggestions making necessary changes where feasible, making recommendations to the legislature where appropriate, and providing an explanation as to why suggested changes cannot be accomplished, if the suggestions cannot be acted upon.

NEW SECTION. Sec. 322. The governor may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of sections 315 through 322 of this act and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

NEW SECTION. Sec. 323. Sections 315 through 322 of this act shall constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 324. The governor shall report to the legislature by January 1, 1991, regarding the operations of the grant program authorized in section 316 of this act. At a minimum, the report shall include the following:

- (1) Number of grants awarded and the amount of each grant;
- (2) Recipients of grants, including the communities in which they are based;
- (3) Purposes for which the grants were awarded;
- (4) Success of the projects in achieving their stated goals and objectives;
- (5) An assessment of the effect that the activities of this act had on encouraging and supporting coordinated community action against substance abuse;
- (6) Recommendations for further funding by the state; and
- (7) Recommendations regarding future operations of the program, including criteria for awarding grants.

PART IV APPROPRIATIONS

NEW SECTION. Sec. 401. **DRUG ENFORCEMENT AND EDUCATION ACCOUNT.** The drug enforcement and education account is created in the state treasury. All designated receipts from RCW 66.24.210(4), 66.24.290(3), 69.50.505(f)(2)(i)(C), 82.08.150(5), 82.24.020(2), and sections 420 and 506 of this act shall be deposited into the account. Expenditures from the account may be used only for funding services and programs under this act.

NEW SECTION. Sec. 402. **CRIMES AND PENALTIES.** The sum of twenty-one million three hundred five thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of corrections. Of this amount, eight million eight hundred thousand dollars is for operational costs associated with the additional prison population due to the new crimes and increased penalties established by sections 101 through 112 of this act. The remaining twelve million five hundred five thousand dollars is for the purpose of renovating or constructing additional facilities needed as a result of the new crimes and penalties.

NEW SECTION. Sec. 403. JUVENILE OFFENDERS STRUCTURED RESIDENTIAL PROGRAM. The sum of one million eight hundred thirty-five thousand dollars, or as much thereof as may be necessary, is appropriated from the drug enforcement and education account to the department of social and health services for the biennium ending June 30, 1991, for the juvenile offenders structured residential program.

NEW SECTION. Sec. 404. MONITORING INMATE TELEPHONE CALLS. The sum of one hundred seventy-five thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of corrections for the purpose of monitoring inmate telephone calls within state correctional facilities.

NEW SECTION. Sec. 405. SPECIAL NARCOTICS ENFORCEMENT UNIT. The sum of nine hundred forty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the Washington state patrol to be used solely for purposes of establishing the special narcotics enforcement unit within the state patrol drug control assistance unit.

NEW SECTION. Sec. 406. STATE-WIDE DRUG PROSECUTION ASSISTANCE UNIT. The sum of five hundred sixty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of community development for the state-wide drug prosecution assistance unit. None of this sum may be used by the department of community development for administrative expenses.

NEW SECTION. Sec. 407. INVOLUNTARY TREATMENT. The sum of four million nine hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of social and health services for the purposes of sections 301 through 309 of this act.

NEW SECTION. Sec. 408. PREVENTION AND EARLY INTERVENTION IN SCHOOLS. The sum of ten million dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the superintendent of public instruction to support school district substance abuse awareness programs provided under sections 310 through 313 of this act.

It is the intent of the legislature that one-time grants provided to school districts from appropriations under this section do not meet the criteria for levy reduction funds under RCW 84.52.0531 and shall not be deemed to be levy reduction funds.

NEW SECTION. Sec. 409. **ALCOHOL AND DRUG-ABUSING PREGNANT WOMEN.** The sum of five million five hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of social and health services for maternity care support services for alcohol and drug-abusing pregnant women. Support services shall include substance abuse treatment programs specifically designed to serve pregnant women and postpartum women and their infants and children. A continuum of treatment shall be provided, to include one or more of the following components:

(1) Inpatient treatment programs capable of serving pregnant women and postpartum women and infants;

(2) An ambulatory treatment facility serving women and their infants who test positive for the human immunodeficiency virus (HIV) or the acquired immunodeficiency syndrome (AIDS);

(3) Transition housing or safe living space for pregnant and postpartum women and infants;

(4) Outpatient or follow-up treatment which includes a provision for child care.

The department shall maximize federal participation for support services provided under this section to eligible persons under the medical assistance program, Title XIX of the federal social security act.

NEW SECTION. Sec. 410. **COMMUNITY MOBILIZATION.** The sum of three million six hundred forty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of community development for the purposes of funding community mobilization strategies. Of this amount, forty thousand dollars is to provide technical assistance to communities in meeting the conditions of grant applications.

NEW SECTION. Sec. 411. **SECURITY IN SCHOOLS.** The sum of three million dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the superintendent of public instruction for matching grants to enhance security in secondary schools. School districts which apply for such grants shall ensure that no more than seventy-five percent of the district's total expenditures for school security in any school year are supported by the grant amounts. The grants shall be expended solely for the costs of employing or contracting for building security monitors in secondary schools during school hours and school events. Of the amount appropriated in this section, a minimum of two million seven hundred fifty thousand dollars is provided for grants to districts that, during the 1988-89 school year, employed or contracted for security monitors in schools during school hours.

It is the intent of the legislature that grants provided to school districts from appropriations under this section do not meet the criteria for levy reduction funds under RCW 84.52.0531 and shall not be deemed to be levy reduction funds.

NEW SECTION. Sec. 412. **CRIME LAB ENHANCEMENT.** The sum of eight hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the Washington state patrol to be used solely for purposes of enhancing and expediting identification and analysis in drug cases.

NEW SECTION. Sec. 413. **JUVENILE REHABILITATION—SUBSTANCE ABUSE.** The sum of six hundred twenty-five thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of social and health services to be used solely for the purposes of enhancing detection and treatment of the use of illegal drugs in the juvenile rehabilitation institutions.

NEW SECTION. Sec. 414. **YOUTH ASSESSMENT AND TREATMENT.** The sum of twelve million two hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of social and health services to provide inpatient youth assessment and treatment programs to serve youth and their families. At least forty percent of new inpatient treatment slots provided under this section shall be located east of the Cascade mountains. Up to fifteen of the treatment slots created under this section shall be staff-secure. Inpatient treatment programs shall incorporate appropriate outpatient and aftercare programs. In addition, within appropriated funds, the department shall develop intensive outpatient treatment services for children and youth for whom inpatient treatment is inappropriate or unavailable.

NEW SECTION. Sec. 415. **ADULT CORRECTIONS—SUBSTANCE ABUSE PROGRAM.** The sum of five hundred sixty-five thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of corrections to develop and implement a model to deliver a continuum of care to substance-dependent offenders.

NEW SECTION. Sec. 416. **WORK RELEASE DRUG TREATMENT.** The sum of one hundred ten thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of corrections to develop substance abuse treatment programs at the Reynolds work release facility and the eastern Washington prerelease facility.

NEW SECTION. Sec. 417. INTENSIVE DRUG SURVEILLANCE.

The sum of one million one hundred twenty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of corrections for continued funding for the community corrections drug surveillance unit in King county and to initiate similar units in Pierce and Yakima counties.

NEW SECTION. Sec. 418. DRUG ABUSE RESISTANCE PROGRAM. The sum of two hundred thirty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the criminal justice training commission to support the drug abuse resistance education program.

NEW SECTION. Sec. 419. METHADONE TREATMENT. The sum of four hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of social and health services for distribution to counties for methadone treatment pursuant to chapter 69.54 RCW, subject to the following conditions and limitations: This sum is provided solely for the purpose of increasing the number of persons for whom methadone treatment is available, and the department shall distribute funds under this section to a county only for the establishment of new treatment centers and only if a county attempts to recover the cost of methadone treatment by charging user fees based on ability to pay.

NEW SECTION. Sec. 420. TREATMENT ALTERNATIVES TO STREET CRIME—DOMESTIC CASES. The sum of one million eight hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the office of the administrator for the courts for the treatment alternatives to street crime program. These funds shall be used for providing services in domestic cases under chapter 26.09, 26.10, or 26.50 RCW. These funds shall not be available for expenditure until January 1, 1990. The office of the administrator for the courts shall establish standards for the courts to recover the expenses of the program specified in this section from the participants, based upon the individual participant's ability to pay. All fees collected shall be remitted to the state treasurer for deposit in the drug enforcement and education account under section 401 of this act.

NEW SECTION. Sec. 421. ADULT CORRECTIONS—DRUG DETECTION AND TREATMENT. The sum of eight hundred seventy-five thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and

education account to the department of corrections for the purpose of enhancing detection and treatment of the use of illegal drugs in correctional facilities.

NEW SECTION. Sec. 422. ALCOHOL AND DRUG ABUSE TREATMENT AND SHELTER ACT. The sum of ten million dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the department of social and health services, for the alcohol and drug abuse treatment and shelter act program.

NEW SECTION. Sec. 423. COMMUNITY-POLICE PARTNERSHIP. (1) The criminal justice training commission in cooperation with the United States department of justice department of community relations (region x) shall conduct an assessment of successful community-police partnerships throughout the United States. The commission shall develop training for local law enforcement agencies targeted toward those communities where there has been a substantial increase in drug crimes. The purpose of the training is to facilitate cooperative community-police efforts and enhanced community protection to reduce drug abuse and related crimes. The training shall include but not be limited to conflict management, ethnic sensitivity, cultural awareness, and effective community policing. The commission shall report its findings and progress to the legislature by January 1990.

(2) Local law enforcement agencies are encouraged to form community-police partnerships in areas of substantial drug crimes. These partnerships are encouraged to organize citizen-police task forces which meet on a regular basis to promote greater citizen involvement in combatting drug abuse and to reduce tension between police and citizens. Partnerships that are formed are encouraged to report to the criminal justice training commission of their formation and progress.

(3) The sum of one hundred fifty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the criminal justice training commission for the purposes of subsection (1) of this section.

PART V REVENUE PROVISIONS

Sec. 501. Section 3, chapter 158, Laws of 1935 as last amended by section 11, chapter 452, Laws of 1987 and RCW 66.24.210 are each amended to read as follows:

(1) There is hereby imposed upon all wines sold to wine wholesalers and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter: **PROVIDED, HOWEVER,** That wine sold or shipped in bulk from one winery to another winery shall

not be subject to such tax. The tax provided for in this section may, if so prescribed by the board, be collected by means of stamps to be furnished by the board, or by direct payments based on wine purchased by wine wholesalers. Every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a month or fraction thereof. If this tax be collected by means of stamps, every such person shall procure from the board revenue stamps representing the tax in such form as the board shall prescribe and shall affix the same to the package or container in such manner and in such denomination as required by the board and shall cancel the same prior to the delivery of the package or container containing the wine to the purchaser. If the tax is not collected by means of stamps, the board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel the license until all taxes are paid.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. Such additional tax shall cease to be imposed on July 1, 1993. All revenues collected under this subsection (3) shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) Until July 1, 1995, an additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on wine containing alcohol in an amount equal to or more than fourteen percent by volume when bottled or packaged by the manufacturer and one cent per liter on all other wine. All revenues collected during any month from this additional tax shall be deposited in the drug enforcement and education account under section 401 of this 1989 act by the twenty-fifth day of the following month.

Sec. 502. Section 24, chapter 62, Laws of 1933 ex. sess. as last amended by section 11, chapter 3, Laws of 1983 2nd ex. sess. and RCW 66.24.290 are each amended to read as follows:

(1) Any brewer or beer wholesaler licensed under this title may sell and deliver beer to holders of authorized licenses direct, but to no other person, other than the board; and every such brewer or beer wholesaler shall report all sales to the board monthly, pursuant to the regulations, and shall pay to the board as an added tax for the privilege of manufacturing and selling the beer within the state a tax of two dollars and sixty cents per barrel of thirty-one gallons on sales to licensees within the state and on sales to licensees within the state of bottled and canned beer shall pay a tax computed in gallons at the rate of two dollars and sixty cents per barrel of thirty-one gallons. Any brewer or beer wholesaler whose applicable tax payment is not postmarked by the twentieth day following the month of sale will be assessed a penalty at the rate of two percent per month or fraction thereof. Each such brewer or wholesaler shall procure from the board revenue stamps representing such tax in form prescribed by the board and shall affix the same to the barrel or package in such manner and in such denominations as required by the board, and shall cancel the same prior to commencing delivery from his place of business or warehouse of such barrels or packages. Beer shall be sold by brewers and wholesalers in sealed barrels or packages. The revenue stamps herein provided for need not be affixed and canceled in the making of resales of barrels or packages already taxed by the affixation and cancellation of stamps as provided in this section.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) Until July 1, 1995, an additional tax is imposed on all beer subject to tax under subsection (1) of this section. The additional tax is equal to two dollars per barrel of thirty-one gallons. All revenues collected during any month from this additional tax shall be deposited in the drug enforcement and education account under section 401 of this 1989 act by the twenty-fifth day of the following month.

(4) The tax imposed under this section shall not apply to "strong beer" as defined in this title.

Sec. 503. Section 82.08.150, chapter 15, Laws of 1961 as last amended by section 12, chapter 3, Laws of 1983 2nd ex. sess. and RCW 82.08.150 are each amended to read as follows:

(1) There is levied and shall be collected a tax upon each retail sale of spirits, or strong beer in the original package at the rate of fifteen percent of the selling price. The tax imposed in this subsection shall apply to all such

sales including sales by the Washington state liquor stores and agencies, but excluding sales to class H licensees.

(2) There is levied and shall be collected a tax upon each sale of spirits, or strong beer in the original package at the rate of ten percent of the selling price on sales by Washington state liquor stores and agencies to class H licensees.

(3) There is levied and shall be collected an additional tax upon each retail sale of spirits in the original package at the rate of one dollar and seventy-two cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to class H licensees.

(4) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the taxes payable under subsections (1), (2), and (3) of this section.

(5) Until July 1, 1995, an additional tax is imposed upon each retail sale of spirits in the original package at the rate of seven cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to class H licensees. All revenues collected during any month from this additional tax shall be deposited in the drug enforcement and education account under section 401 of this 1989 act by the twenty-fifth day of the following month.

(6) The tax imposed in RCW 82.08.020, as now or hereafter amended, shall not apply to sales of spirits or strong beer in the original package.

~~((6))~~ (7) The taxes imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale under this section. The taxes required by this section to be collected by the seller shall be stated separately from the selling price and for purposes of determining the tax due from the buyer to the seller, it shall be conclusively presumed that the selling price quoted in any price list does not include the taxes imposed by this section.

~~((7))~~ (8) As used in this section, the terms, "spirits," "strong beer," and "package" shall have the meaning ascribed to them in chapter 66.04 RCW.

Sec. 504. Section 82.24.020, chapter 15, Laws of 1961 as last amended by section 1, chapter 80, Laws of 1987 and RCW 82.24.020 are each amended to read as follows:

(1) There is levied and there shall be collected as hereinafter provided, a tax upon the sale, use, consumption, handling, possession or distribution of all cigarettes, in an amount equal to the rate of eleven and one-half mills per cigarette.

(2) Until July 1, 1995, an additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an

amount equal to the rate of one and one-half mills per cigarette. All revenues collected during any month from this additional tax shall be deposited in the drug enforcement and education account under section 401 of this 1989 act by the twenty-fifth day of the following month.

(3) Wholesalers and retailers subject to the payment of this tax may, if they wish, absorb one-half mill per cigarette of the tax and not pass it on to purchasers without being in violation of this section or any other act relating to the sale or taxation of cigarettes.

~~((3))~~ (4) For purposes of this chapter, "possession" shall mean both (a) physical possession by the purchaser and, (b) when cigarettes are being transported to or held for the purchaser or his designee by a person other than the purchaser, constructive possession by the purchaser or his designee, which constructive possession shall be deemed to occur at the location of the cigarettes being so transported or held.

NEW SECTION. Sec. 505. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Carbonated beverage" has its ordinary meaning and includes any nonalcoholic liquid intended for human consumption which contains carbon dioxide, whether carbonation is obtained by natural or artificial means.

(2) "Possession" means the control of a carbonated beverage or syrup located within this state and includes both actual and constructive possession. "Actual possession" occurs when the person with control has physical possession. "Constructive possession" occurs when the person with control does not have physical possession. "Control" means the power to sell or use a carbonated beverage or syrup or to authorize the sale or use by another.

(3) "Previously taxed carbonated beverage or syrup" means a carbonated beverage or syrup in respect to which a tax has been paid under this chapter. A "previously taxed carbonated beverage" includes carbonated beverages in respect to which a tax has been paid under this chapter on the carbonated beverage or on the syrup in the carbonated beverage.

(4) "Syrup" means a concentrated liquid which is added to carbonated water to produce a carbonated beverage.

(5) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter.

NEW SECTION. Sec. 506. (1) A tax is imposed on the privilege of possession of a carbonated beverage or syrup in this state. The rate of the tax shall be equal to eighty-four one-thousandths of a cent per ounce for carbonated beverages and seventy-five cents per gallon for syrups. Fractional amounts shall be taxed proportionally.

(2) Moneys collected under this chapter shall be deposited in the drug enforcement and education account under section 401 of this act.

(3) Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter.

NEW SECTION. Sec. 507. The following are exempt from the tax imposed in this chapter:

(1) Any successive possession of a previously taxed carbonated beverage or syrup. If tax due under this chapter has not been paid with respect to a carbonated beverage or syrup, the department may collect the tax from any person who has had possession of the carbonated beverage or syrup. If the tax is paid by any person other than the first person having taxable possession of a carbonated beverage or syrup, the amount of tax paid constitutes a debt owed by the first person having taxable possession to the person who paid the tax.

(2) Any carbonated beverage or syrup that is transferred to a point outside the state for use outside the state.

(3) Any possession of a carbonated beverage or syrup where the first possession occurred before the effective date of this section.

NEW SECTION. Sec. 508. (1) Credit shall be allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any carbonated beverage or syrup tax paid to another state with respect to the same carbonated beverage or syrup. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that carbonated beverage or syrup.

(2) For the purpose of this section:

(a) "Carbonated beverage or syrup tax" means a tax:

(i) That is imposed on the act or privilege of possessing carbonated beverages or syrup and that is not generally imposed on other activities or privileges; and

(ii) That is measured by the volume of the carbonated beverage or syrup.

(b) "State" means (i) a state of the United States other than Washington, or any political subdivision of such other state, (ii) the District of Columbia, and (iii) any foreign country or political subdivision thereof.

NEW SECTION. Sec. 509. This chapter shall expire July 1, 1995.

NEW SECTION. Sec. 510. Sections 505 through 509 of this act shall constitute a new chapter in Title 82 RCW.

PART VI MISCELLANEOUS

NEW SECTION. Sec. 601. A new section is added to chapter 69.50 RCW to read as follows:

The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided for

by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality.

NEW SECTION. Sec. 602. The legislature ratifies the juvenile disposition standards commission guidelines submitted to the 1989 legislature and endorses the action to increase penalties for juvenile drug offenders.

NEW SECTION. Sec. 603. (1) In order to determine the effectiveness of this act, it is necessary to have an independent evaluation of those programs that have the most potential for useful program review.

(2) The legislative budget committee shall prepare a plan to conduct studies of the effectiveness of programs initiated in this act. A plan for study shall include:

- (a) Institution-based drug testing;
- (b) The juvenile offenders structured residential program;
- (c) The state-wide drug prosecution assistance program;
- (d) Community mobilization;
- (e) Drug and alcohol abuse prevention and early intervention in schools; and

(f) Maternity care support services for alcohol and drug-abusing pregnant women.

(3) The plan for conducting studies, including start and completion dates, general research approaches, potential research problems, data requirements, necessary implementation authority, and cost estimates are to be provided to the appropriate policy and fiscal committees of the house and senate by December 1, 1989. The plan may include proposals to use contract evaluators and shall identify ways to measure program progress and outcomes.

(4) In order to establish a beginning point for any future studies of the effectiveness of programs initiated in this act, all programs proposed for analysis in this section shall submit a plan detailing expenditures related to goals and objectives of the program being initiated, to the legislative budget committee by October 1, 1989.

NEW SECTION. Sec. 604. A new section is added to chapter 44.28 RCW to read as follows:

The legislative budget committee shall cause to be conducted a review of the taxes and the dedication of revenues for drug enforcement and education purposes and a review of the programs as provided in section 603 of this act. The legislative budget committee shall report its findings to the legislature by January 1, 1995, and include in its report specific recommendations as to whether public policy would be best served by continuation of the programs, taxes, and dedication of revenues for the drug enforcement and education account.

NEW SECTION. Sec. 605. Part, subpart, and section headings and the index as used in this act do not constitute any part of the law.

NEW SECTION. Sec. 606. 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. 607. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately, except:

- (1) Sections 502 and 504 of this act shall take effect June 1, 1989; and
- (2) Sections 229 through 233, 501, 503, and 505 through 509 of this act shall take effect July 1, 1989.

Passed the House April 22, 1989.

Passed the Senate April 22, 1989.

Approved by the Governor May 7, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 7, 1989.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 107, Engrossed Second Substitute House Bill No. 1793 entitled:

"AN ACT Relating to alcohol and controlled substances abuse."

This omnibus bill represents a major accomplishment by the Legislature in working to address the serious and pressing issue of substance abuse in our state and society. The Legislature is to be commended for its efforts to address this issue in a comprehensive fashion. It also contains the essence of five Governor-request bills which address this issue.

Section 107 of the bill would prohibit and force closure of needle exchange programs, currently operating in Tacoma and Seattle which are a means to reduce HIV/AIDS transmission and encourage treatment referral. These model programs have received national attention for their innovative and credible management of the needle exchange. Both programs are operated and strictly controlled by local public health authorities and are structured to accommodate maximum research benefit. I do not condone use of illegal drugs or their taking by intravenous means. The reality is that these programs have very little potential for encouraging more illegal drug use but a very high potential for limiting the spread of serious and deadly diseases which impact not only the persons involved but others. For both humane and economic reasons, we must do everything we can to halt the spread of AIDS.

With the exception of section 107, Engrossed Second Substitute House Bill No. 1793 is approved."

CHAPTER 272

[Substitute House Bill No. 1322]

PUBLIC EMPLOYEES' AND TEACHERS' RETIREMENT SYSTEMS—COST OF LIVING ADJUSTMENTS

AN ACT Relating to cost-of-living adjustments for members of the public employees' and teachers' retirement systems; amending RCW 41.32.005, 41.32.485, 41.32.487, 41.40.005,