

NINETY THIRD DAY

MORNING SESSION

Senate Chamber, Olympia
Tuesday, April 11, 2023

The Senate was called to order at 9 o'clock a.m. by the President of the Senate, Lt. Governor Heck presiding. The Secretary called the roll and announced to the President that all senators were present.

The Sergeant at Arms Color Guard consisting of Pages Miss Grace Farrell and Mr. Logan Christy, presented the Colors. Page Miss Annabelle Yip led the Senate in the Pledge of Allegiance. The prayer was offered by Reverend Brad Carlson, Pastor, Yelm Prairie Christian Center.

MOTIONS

On motion of Senator Pedersen, the reading of the Journal of the previous day was dispensed with and it was approved.

There being no objection, the Senate advanced to the first order of business.

REPORTS OF STANDING COMMITTEES

April 10, 2023

SHB 1850 Prime Sponsor, Committee on Appropriations: Concerning the hospital safety net program. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Rivers, Assistant Ranking Member, Capital; Boehnke; Braun; Conway; Dhingra; Hasegawa; Hunt; Keiser; Muzzall; Nguyen; Pedersen; Saldaña; Torres; Van De Wege; Wagoner and Wellman.

Referred to Committee on Rules for second reading.

MOTIONS

On motion of Senator Pedersen, the measure listed on the Standing Committee report was referred to the committee as designated.

On motion of Senator Pedersen, the Senate advanced to the fourth order of business.

MESSAGES FROM THE HOUSE

April 10, 2023

MR. PRESIDENT:

The House has passed:

SECOND SUBSTITUTE SENATE BILL NO. 5046,
ENGROSSED SUBSTITUTE SENATE BILL NO. 5124,
SUBSTITUTE SENATE BILL NO. 5127,
SENATE BILL NO. 5155,
SUBSTITUTE SENATE BILL NO. 5261,
SUBSTITUTE SENATE BILL NO. 5381,
SENATE BILL NO. 5459,
ENGROSSED SENATE BILL NO. 5534,

SENATE BILL NO. 5550,
SUBSTITUTE SENATE BILL NO. 5561,
ENGROSSED SECOND SUBSTITUTE
SENATE BILL NO. 5634,

and the same are herewith transmitted.

BERNARD DEAN, Chief Clerk

April 10, 2023

MR. PRESIDENT:

The House has passed:

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1853,
and the same is herewith transmitted.

BERNARD DEAN, Chief Clerk

April 10, 2023

MR. PRESIDENT:

The Speaker has signed:

SECOND SUBSTITUTE HOUSE BILL NO. 1032,
SUBSTITUTE HOUSE BILL NO. 1085,
SUBSTITUTE HOUSE BILL NO. 1177,
SUBSTITUTE HOUSE BILL NO. 1355,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1361,
SUBSTITUTE HOUSE BILL NO. 1406,
SUBSTITUTE HOUSE BILL NO. 1577,
SUBSTITUTE HOUSE BILL NO. 1658,
HOUSE BILL NO. 1763,

and the same are herewith transmitted.

BERNARD DEAN, Chief Clerk

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MR. PRESIDENT:

The Speaker has signed:

ENGROSSED SENATE BILL NO. 5015,
ENGROSSED SUBSTITUTE SENATE BILL NO. 5082,
SUBSTITUTE SENATE BILL NO. 5087,
ENGROSSED SUBSTITUTE SENATE BILL NO. 5217,
SENATE BILL NO. 5228,
SENATE BILL NO. 5242,
SENATE BILL NO. 5331,
SENATE BILL NO. 5347,
SUBSTITUTE SENATE BILL NO. 5415,
SENATE BILL NO. 5452,
SENATE BILL NO. 5531,
ENGROSSED SECOND SUBSTITUTE
SENATE BILL NO. 5582,
SENATE BILL NO. 5683,

and the same are herewith transmitted.

BERNARD DEAN, Chief Clerk

MOTION

On motion of Senator Pedersen, the Senate advanced to the fifth order of business.

INTRODUCTION AND FIRST READING

SHB 1851 by House Committee on Appropriations (originally sponsored by Callan, Macri, Bergquist and Gregerson)

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AN ACT Relating to implementation of a sustainable funding model for the services provided through the first approach skills training program; and amending RCW 71.24.061, 71.24.063, and 71.24.064.

Referred to Committee on Ways & Means.

MOTIONS

On motion of Senator Pedersen, the measure listed on the Introduction and First Reading report was referred to the committee as designated.

At 9:05 a.m., on motion of Senator Pedersen, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 11:44 a.m. by the President of the Senate, Lt. Governor Heck presiding.

SIGNED BY THE PRESIDENT

Pursuant to Article 2, Section 32 of the State Constitution and Senate Rule 1(5), the President announced the signing of and thereupon did sign in open session:

- SECOND SUBSTITUTE HOUSE BILL NO. 1032,
- SUBSTITUTE HOUSE BILL NO. 1085,
- SUBSTITUTE HOUSE BILL NO. 1177,
- SUBSTITUTE HOUSE BILL NO. 1355,
- ENGROSSED SUBSTITUTE HOUSE BILL NO. 1361,
- SUBSTITUTE HOUSE BILL NO. 1406,
- SUBSTITUTE HOUSE BILL NO. 1577,
- SUBSTITUTE HOUSE BILL NO. 1658,
- HOUSE BILL NO. 1763.

MOTION

On motion of Senator Pedersen, the Senate advanced to the seventh order of business.

THIRD READING
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Randall moved that John W. Pedlow, Senate Gubernatorial Appointment No. 9088, be confirmed as a member of the Whatcom Community College Board of Trustees.

Senators Randall and Holy spoke in favor of passage of the motion.

APPOINTMENT OF JOHN W. PEDLOW

The President declared the question before the Senate to be the confirmation of John W. Pedlow, Senate Gubernatorial Appointment No. 9088, as a member of the Whatcom Community College Board of Trustees.

The Secretary called the roll on the confirmation of John W. Pedlow, Senate Gubernatorial Appointment No. 9088, as a member of the Whatcom Community College Board of Trustees and the appointment was confirmed by the following vote: Yeas, 47; Nays, 0; Absent, 2; Excused, 0.

Voting yea: Senators Billig, Boehnke, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett,

Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

Absent: Senators Braun and Nobles

John W. Pedlow, Senate Gubernatorial Appointment No. 9088, having received the constitutional majority was declared confirmed as a member of the Whatcom Community College Board of Trustees.

THIRD READING
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Keiser moved that James R. Vollendroff, Senate Gubernatorial Appointment No. 9317, be confirmed as a member of the Liquor and Cannabis Board.

Senator Keiser spoke in favor of the motion.

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced members of the students of Quilcene School who were seated in the gallery, guests of Senator Van De Wege.

APPOINTMENT OF JAMES R. VOLLENDROFF

The President declared the question before the Senate to be the confirmation of James R. Vollendroff, Senate Gubernatorial Appointment No. 9317, as a member of the Liquor and Cannabis Board.

The Secretary called the roll on the confirmation of James R. Vollendroff, Senate Gubernatorial Appointment No. 9317, as a member of the Liquor and Cannabis Board and the appointment was confirmed by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

James R. Vollendroff, Senate Gubernatorial Appointment No. 9317, having received the constitutional majority was declared confirmed as a member of the Liquor and Cannabis Board.

THIRD READING
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator King moved that Blaine Tamaki, Senate Gubernatorial Appointment No. 9276, be confirmed as a member of the University of Washington Board of Regents.

Senators King and Kuderer spoke in favor of passage of the motion.

APPOINTMENT OF BLAINE TAMAKI

The President declared the question before the Senate to be the confirmation of Blaine Tamaki, Senate Gubernatorial Appointment No. 9276, as a member of the University of Washington Board of Regents.

The Secretary called the roll on the confirmation of Blaine Tamaki, Senate Gubernatorial Appointment No. 9276, as a member of the University of Washington Board of Regents and the appointment was confirmed by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Liias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

Blaine Tamaki, Senate Gubernatorial Appointment No. 9276, having received the constitutional majority was declared confirmed as a member of the University of Washington Board of Regents.

MOTION

On motion of Senator Pedersen, the Senate reverted to the sixth order of business.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1043, by House Committee on Housing (originally sponsored by McEntire, Leavitt and Walsh)

Concerning association records in common interest communities.

The measure was read the second time.

MOTION

Senator Padden moved that the following committee striking amendment by the Committee on Law & Justice be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 64.32.170 and 1965 ex.s. c 11 s 5 are each amended to read as follows:

~~((The manager or board of directors, as the case may be, shall keep complete and accurate books and records of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. Such books and records and the vouchers authorizing payments shall be available for examination by the apartment owners, their agents or attorneys, at any reasonable time or times.))~~ (1) An association of apartment owners must retain the following:

(a) The current budget, detailed records of receipts and expenditures affecting the operation and administration of the association, and other appropriate accounting records within the last seven years;

(b) Minutes of all meetings of its apartment owners and board other than executive sessions, a record of all actions taken by the apartment owners or board without a meeting, and a record of all

actions taken by a committee in place of the board on behalf of the association;

(c) The names of current apartment owners, addresses used by the association to communicate with them, and the number of votes allocated to each apartment;

(d) Its original or restated declaration, organizational documents, all amendments to the declaration and organizational documents, and all rules currently in effect;

(e) All financial statements and tax returns of the association for the past seven years;

(f) A list of the names and addresses of its current board members and officers;

(g) Its most recent annual report delivered to the secretary of state, if any;

(h) Copies of contracts to which it is or was a party within the last seven years;

(i) Materials relied upon by the board or any committee to approve or deny any requests for design or architectural approval for a period of seven years after the decision is made;

(j) Materials relied upon by the board or any committee concerning a decision to enforce the governing documents for a period of seven years after the decision is made;

(k) Copies of insurance policies under which the association is a named insured;

(l) Any current warranties provided to the association;

(m) Copies of all notices provided to apartment owners or the association in accordance with this chapter or the governing documents; and

(n) Ballots, proxies, absentee ballots, and other records related to voting by apartment owners for one year after the election, action, or vote to which they relate.

(2)(a) Subject to subsections (3) through (5) of this section, and except as provided in (b) of this subsection, all records required to be retained by an association of apartment owners must be made available for examination and copying by all apartment owners, holders of mortgages on the apartments, and their respective authorized agents as follows, unless agreed otherwise:

(i) During reasonable business hours or at a mutually convenient time and location; and

(ii) At the offices of the association or its managing agent.

(b) The list of apartment owners required to be retained by an association under subsection (1)(c) of this section is not required to be made available for examination and copying by holders of mortgages on the apartments.

(3) Records retained by an association of apartment owners must have the following information redacted or otherwise removed prior to disclosure:

(a) Personnel and medical records relating to specific individuals;

(b) Contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated;

(c) Existing or potential litigation or mediation, arbitration, or administrative proceedings;

(d) Existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the governing documents;

(e) Legal advice or communications that are otherwise protected by the attorney-client privilege or the attorney work product doctrine, including communications with the managing agent or other agent of the association;

(f) Information the disclosure of which would violate a court order or law;

(g) Records of an executive session of the board;

(h) Individual apartment files other than those of the requesting

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apartment owner;

(i) Unlisted telephone number or electronic address of any apartment owner or resident;

(j) Security access information provided to the association for emergency purposes; or

(k) Agreements that for good cause prohibit disclosure to the members.

(4) In addition to the requirements in subsection (3) of this section, an association of apartment owners must, prior to disclosure of the list of apartment owners required to be retained by an association under subsection (1)(c) of this section, redact or otherwise remove the address of any apartment owner or resident who is known to the association to be a participant in the address confidentiality program described in chapter 40.24 RCW or any similar program established by law.

(5)(a) Except as provided in (b) of this subsection, an association of apartment owners may charge a reasonable fee for producing and providing copies of any records under this section and for supervising the apartment owner's inspection.

(b) An apartment owner is entitled to receive a free annual electronic or paper copy of the list retained under subsection (1)(c) of this section from the association.

(6) A right to copy records under this section includes the right to receive copies by photocopying or other means, including through an electronic transmission if available upon request by the apartment owner.

(7) An association of apartment owners is not obligated to compile or synthesize information.

(8) Information provided pursuant to this section may not be used for commercial purposes.

(9) An association of apartment owner's managing agent must deliver all of the association's original books and records to the association immediately upon termination of its management relationship with the association, or upon such other demand as is made by the board. An association managing agent may keep copies of the association records at its own expense.

(10) All books and records shall be kept in accordance with good accounting procedures and be audited at least once a year by an auditor outside of the organization.

(11) This section applies to records in the possession of the association on the effective date of this section, and to records created or maintained after the effective date of this section. An association has no liability under this section for records disposed of prior to the effective date of this section.

Sec. 2. RCW 64.34.372 and 1992 c 220 s 19 are each amended to read as follows:

(1) The association shall keep financial records sufficiently detailed to enable the association to comply with RCW 64.34.425. All financial and other records of the association, including but not limited to checks, bank records, and invoices, are the property of the association (~~(, but shall be made reasonably available for examination and copying by the manager of the association, any unit owner, or the owner's authorized agents)~~). At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association in accordance with generally accepted accounting principles. The financial statements of condominiums consisting of ~~((fifty))~~ 50 or more units shall be audited at least annually by a certified public accountant. In the case of a condominium consisting of fewer than ~~((fifty))~~ 50 units, an annual audit is also required but may be waived annually by unit owners other than the declarant of units to which ~~((sixty))~~ 60 percent of the votes are allocated, excluding the votes allocated to units owned by the declarant.

(2) The funds of an association shall be kept in accounts in the name of the association and shall not be commingled with the

funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds. Any reserve funds of an association shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two persons who are officers or directors of the association.

(3) An association must retain the following:

(a) The current budget, detailed records of receipts and expenditures affecting the operation and administration of the association, and other appropriate accounting records within the last seven years;

(b) Minutes of all meetings of its unit owners and board other than executive sessions, a record of all actions taken by the unit owners or board without a meeting, and a record of all actions taken by a committee in place of the board on behalf of the association;

(c) The names of current unit owners, addresses used by the association to communicate with them, and the number of votes allocated to each unit;

(d) Its original or restated declaration, organizational documents, all amendments to the declaration and organizational documents, and all rules currently in effect;

(e) All financial statements and tax returns of the association for the past seven years;

(f) A list of the names and addresses of its current board members and officers;

(g) Its most recent annual report delivered to the secretary of state, if any;

(h) Copies of contracts to which it is or was a party within the last seven years;

(i) Materials relied upon by the board or any committee to approve or deny any requests for design or architectural approval for a period of seven years after the decision is made;

(j) Materials relied upon by the board or any committee concerning a decision to enforce the governing documents for a period of seven years after the decision is made;

(k) Copies of insurance policies under which the association is a named insured;

(l) Any current warranties provided to the association;

(m) Copies of all notices provided to unit owners or the association in accordance with this chapter or the governing documents; and

(n) Ballots, proxies, absentee ballots, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate.

(4)(a) Subject to subsections (5) through (7) of this section, and except as provided in (b) of this subsection, all records required to be retained by an association must be made available for examination and copying by all unit owners, holders of mortgages on the units, and their respective authorized agents as follows, unless agreed otherwise:

(i) During reasonable business hours or at a mutually convenient time and location; and

(ii) At the offices of the association or its managing agent.

(b) The list of unit owners required to be retained by an association under subsection (3)(c) of this section is not required to be made available for examination and copying by holders of mortgages on the units.

(5) Records retained by an association must have the following information redacted or otherwise removed prior to disclosure:

(a) Personnel and medical records relating to specific individuals;

(b) Contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated;

(c) Existing or potential litigation or mediation, arbitration, or

administrative proceedings;

(d) Existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the governing documents;

(e) Legal advice or communications that are otherwise protected by the attorney-client privilege or the attorney work product doctrine, including communications with the managing agent or other agent of the association;

(f) Information the disclosure of which would violate a court order or law;

(g) Records of an executive session of the board;

(h) Individual unit files other than those of the requesting unit owner;

(i) Unlisted telephone number or electronic address of any unit owner or resident;

(j) Security access information provided to the association for emergency purposes; or

(k) Agreements that for good cause prohibit disclosure to the members.

(6) In addition to the requirements in subsection (5) of this section, an association must, prior to disclosure of the list of unit owners required to be retained by an association under subsection (3)(c) of this section, redact or otherwise remove the address of any unit owner or resident who is known to the association to be a participant in the address confidentiality program described in chapter 40.24 RCW or any similar program established by law.

(7)(a) Except as provided in (b) of this subsection, an association may charge a reasonable fee for producing and providing copies of any records under this section and for supervising the unit owner's inspection.

(b) A unit owner is entitled to receive a free annual electronic or paper copy of the list retained under subsection (3)(c) of this section from the association.

(8) A right to copy records under this section includes the right to receive copies by photocopying or other means, including through an electronic transmission if available upon request by the unit owner.

(9) An association is not obligated to compile or synthesize information.

(10) Information provided pursuant to this section may not be used for commercial purposes.

(11) An association's managing agent must deliver all of the association's original books and records to the association immediately upon termination of its management relationship with the association, or upon such other demand as is made by the board. An association managing agent may keep copies of the association records at its own expense.

(12) This section applies to records in the possession of the association on the effective date of this section, and to records created or maintained after the effective date of this section. An association has no liability under this section for records disposed of prior to the effective date of this section.

Sec. 3. RCW 64.38.045 and 1995 c 283 s 9 are each amended to read as follows:

(1) The association or its managing agent shall keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status. All financial and other records of the association, including but not limited to checks, bank records, and invoices, in whatever form they are kept, are the property of the association. Each association managing agent shall turn over all original books and records to the association immediately upon termination of the management relationship with the association, or upon such other demand as is made by the board of directors. An association

managing agent is entitled to keep copies of association records. All records which the managing agent has turned over to the association shall be made reasonably available for the examination and copying by the managing agent.

~~(2) ((All records of the association, including the names and addresses of owners and other occupants of the lots, shall be available for examination by all owners, holders of mortgages on the lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the association or its managing agent. The association shall not release the unlisted telephone number of any owner. The association may impose and collect a reasonable charge for copies and any reasonable costs incurred by the association in providing access to records.~~

~~(3))~~ At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association. The financial statements of associations with annual assessments of ~~((fifty thousand dollars))~~ \$50,000 or more shall be audited at least annually by an independent certified public accountant, but the audit may be waived if ~~((sixty seven))~~ 67 percent of the votes cast by owners, in person or by proxy, at a meeting of the association at which a quorum is present, vote each year to waive the audit.

~~((4))~~ (3) The funds of the association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds.

(4) An association must retain the following:

(a) The current budget, detailed records of receipts and expenditures affecting the operation and administration of the association, and other appropriate accounting records within the last seven years;

(b) Minutes of all meetings of its owners and board other than executive sessions, a record of all actions taken by the owners or board without a meeting, and a record of all actions taken by a committee in place of the board on behalf of the association;

(c) The names of current owners, addresses used by the association to communicate with them, and the number of votes allocated to each lot;

(d) Its original or restated declaration, organizational documents, all amendments to the declaration and organizational documents, and all rules currently in effect;

(e) All financial statements and tax returns of the association for the past seven years;

(f) A list of the names and addresses of its current board members and officers;

(g) Its most recent annual report delivered to the secretary of state, if any;

(h) Copies of contracts to which it is or was a party within the last seven years;

(i) Materials relied upon by the board or any committee to approve or deny any requests for design or architectural approval for a period of seven years after the decision is made;

(j) Materials relied upon by the board or any committee concerning a decision to enforce the governing documents for a period of seven years after the decision is made;

(k) Copies of insurance policies under which the association is a named insured;

(l) Any current warranties provided to the association;

(m) Copies of all notices provided to owners or the association in accordance with this chapter or the governing documents; and

(n) Ballots, proxies, absentee ballots, and other records related to voting by owners for one year after the election, action, or vote to which they relate.

(5)(a) Subject to subsections (6) through (8) of this section, and

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except as provided in (b) of this subsection, all records required to be retained by an association must be made available for examination and copying by all owners, holders of mortgages on the lots, and their respective authorized agents as follows, unless agreed otherwise:

(i) During reasonable business hours or at a mutually convenient time and location; and

(ii) At the offices of the association or its managing agent.

(b) The list of owners required to be retained by an association under subsection (4)(c) of this section is not required to be made available for examination and copying by holders of mortgages on the lots.

(6) Records retained by an association must have the following information redacted or otherwise removed prior to disclosure:

(a) Personnel and medical records relating to specific individuals;

(b) Contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated;

(c) Existing or potential litigation or mediation, arbitration, or administrative proceedings;

(d) Existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the governing documents;

(e) Legal advice or communications that are otherwise protected by the attorney-client privilege or the attorney work product doctrine, including communications with the managing agent or other agent of the association;

(f) Information the disclosure of which would violate a court order or law;

(g) Records of an executive session of the board;

(h) Individual lot files other than those of the requesting owner;

(i) Unlisted telephone number or electronic address of any owner or resident;

(j) Security access information provided to the association for emergency purposes; or

(k) Agreements that for good cause prohibit disclosure to the members.

(7) In addition to the requirements in subsection (6) of this section, an association must, prior to disclosure of the list of owners required to be retained by an association under subsection (4)(c) of this section, redact or otherwise remove the address of any owner or resident who is known to the association to be a participant in the address confidentiality program described in chapter 40.24 RCW or any similar program established by law.

(8)(a) Except as provided in (b) of this subsection, an association may charge a reasonable fee for producing and providing copies of any records under this section and for supervising the owner's inspection.

(b) An owner is entitled to receive a free annual electronic or paper copy of the list retained under subsection (4)(c) of this section from the association.

(9) A right to copy records under this section includes the right to receive copies by photocopying or other means, including through an electronic transmission if available upon request by the owner.

(10) An association is not obligated to compile or synthesize information.

(11) Information provided pursuant to this section may not be used for commercial purposes.

(12) An association's managing agent must deliver all of the association's original books and records to the association immediately upon termination of its management relationship with the association, or upon such other demand as is made by the board. An association managing agent may keep copies of the

association records at its own expense.

(13) This section applies to records in the possession of the association on the effective date of this section, and to records created or maintained after the effective date of this section. An association has no liability under this section for records disposed of prior to the effective date of this section.

Sec. 4. RCW 64.90.495 and 2018 c 277 s 320 are each amended to read as follows:

(1) An association must retain the following:

(a) The current budget, detailed records of receipts and expenditures affecting the operation and administration of the association, and other appropriate accounting records within the last seven years;

(b) Minutes of all meetings of its unit owners and board other than executive sessions, a record of all actions taken by the unit owners or board without a meeting, and a record of all actions taken by a committee in place of the board on behalf of the association;

(c) The names of current unit owners, addresses used by the association to communicate with them, and the number of votes allocated to each unit;

(d) Its original or restated declaration, organizational documents, all amendments to the declaration and organizational documents, and all rules currently in effect;

(e) All financial statements and tax returns of the association for the past seven years;

(f) A list of the names and addresses of its current board members and officers;

(g) Its most recent annual report delivered to the secretary of state, if any;

(h) Financial and other records sufficiently detailed to enable the association to comply with RCW 64.90.640;

(i) Copies of contracts to which it is or was a party within the last seven years;

(j) Materials relied upon by the board or any committee to approve or deny any requests for design or architectural approval for a period of seven years after the decision is made;

(k) Materials relied upon by the board or any committee concerning a decision to enforce the governing documents for a period of seven years after the decision is made;

(l) Copies of insurance policies under which the association is a named insured;

(m) Any current warranties provided to the association;

(n) Copies of all notices provided to unit owners or the association in accordance with this chapter or the governing documents; and

(o) Ballots, proxies, absentee ballots, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate.

(2)(a) Subject to subsections (3) ~~(and (4))~~ through (5) of this section, and except as provided in (b) of this subsection, all records required to be retained by an association must be made available for examination and copying by all unit owners, holders of mortgages on the units, and their respective authorized agents as follows, unless agreed otherwise:

~~((a))~~ (i) During reasonable business hours or at a mutually convenient time and location; and

~~((b))~~ (ii) At the offices of the association or its managing agent.

(b) The list of unit owners required to be retained by an association under subsection (1)(c) of this section is not required to be made available for examination and copying by holders of mortgages on the units.

(3) Records retained by an association ~~((may be withheld from inspection and copying to the extent that they concern))~~ must have

the following information redacted or otherwise removed prior to disclosure:

(a) Personnel and medical records relating to specific individuals;

(b) Contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated;

(c) Existing or potential litigation or mediation, arbitration, or administrative proceedings;

(d) Existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the governing documents;

(e) Legal advice or communications that are otherwise protected by the attorney-client privilege or the attorney work product doctrine, including communications with the managing agent or other agent of the association;

(f) Information the disclosure of which would violate a court order or law;

(g) Records of an executive session of the board;

(h) Individual unit files other than those of the requesting unit owner;

(i) Unlisted telephone number or electronic address of any unit owner or resident;

(j) Security access information provided to the association for emergency purposes; or

(k) Agreements that for good cause prohibit disclosure to the members.

(4) In addition to the requirements in subsection (3) of this section, an association must, prior to disclosure of the list of unit owners required to be retained by an association under subsection (1)(c) of this section, redact or otherwise remove the address of any unit owner or resident who is known to the association to be a participant in the address confidentiality program described in chapter 40.24 RCW or any similar program established by law.

~~(A)~~ (5)(a) Except as provided in (b) of this subsection, an association may charge a reasonable fee for producing and providing copies of any records under this section and for supervising the unit owner's inspection.

(b) A unit owner is entitled to receive a free annual electronic or paper copy of the list retained under subsection (1)(c) of this section from the association.

~~((5))~~ (6) A right to copy records under this section includes the right to receive copies by photocopying or other means, including through an electronic transmission if available upon request by the unit owner.

~~((6))~~ (7) An association is not obligated to compile or synthesize information.

~~((7))~~ (8) Information provided pursuant to this section may not be used for commercial purposes.

~~((8))~~ (9) An association's managing agent must deliver all of the association's original books and records to the association immediately upon termination of its management relationship with the association, or upon such other demand as is made by the board. An association managing agent may keep copies of the association records at its own expense."

On page 1, line 2 of the title, after "communities;" strike the remainder of the title and insert "and amending RCW 64.32.170, 64.34.372, 64.38.045, and 64.90.495."

Senator Padden spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Law & Justice to Substitute House Bill No. 1043.

The motion by Senator Padden carried and the committee

striking amendment was adopted by voice vote.

MOTION

On motion of Senator Padden, the rules were suspended, Substitute House Bill No. 1043 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Padden and Dhingra spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1043 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1043 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

SUBSTITUTE HOUSE BILL NO. 1043, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1138, by House Committee on Appropriations (originally sponsored by Chapman, Dent, Ramel, Leavitt, Doglio, Lekanoff, Donaghy and Ormsby)

Concerning drought preparedness.

The measure was read the second time.

MOTION

Senator Salomon moved that the following committee striking amendment by the Committee on Agriculture, Water, Natural Resources & Parks be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 43.83B.415 and 2020 c 168 s 5 are each amended to read as follows:

(1)(a) The department is authorized to issue grants to eligible public entities to reduce current or future hardship caused by water unavailability stemming from drought conditions. No single entity may receive more than ~~((twenty-five))~~ 25 percent of the total funds available. The department is not obligated to fund projects that do not provide sufficient benefit to alleviating hardship caused by drought or water unavailability. Projects must show substantial benefit from securing water supply, availability, or reliability relative to project costs. Projects do not need to be completed while a drought emergency order under RCW 43.83B.405(2) is in effect.

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(b) Except for projects for public water systems serving economically disadvantaged communities, the department may only fund up to ~~((fifty))~~ 50 percent of the total eligible cost of the project. Money used by applicants as a cash match may not originate from other state funds.

(c) For the purposes of this chapter, eligible public entities include only:

- (i) Counties, cities, and towns;
- (ii) Water and sewer districts formed under chapter 57.02 RCW;
- (iii) Public utility districts formed under chapter 54.04 RCW;
- (iv) Port districts formed under chapter 53.04 RCW;
- (v) Conservation districts formed under chapter 89.08 RCW;
- (vi) Irrigation districts formed under chapter 87.03 RCW;
- (vii) Watershed management partnerships formed under RCW 39.34.200; and
- (viii) Federally recognized tribes.

(2) Grants may be used to develop projects that enhance the ability of water users to effectively mitigate for the impacts of water unavailability arising from drought. Project applicants must demonstrate that the projects will increase their resiliency, preparedness, or ability to withstand drought conditions when they occur. Projects may include, but are not limited to:

- (a) Creation of additional water storage;
- (b) Implementation of source substitution projects;
- (c) Development of alternative, backup, or emergency water supplies or interties;
- (d) Installation of infrastructure or creation of educational programs that improve water conservation and efficiency or promote use of reclaimed water;
- (e) Development or update of local drought contingency plans if not already required by state rules adopted under chapter 246-290 WAC;
- (f) Mitigation of emergency withdrawals authorized under RCW 43.83B.410(1);
- (g) Projects designed to mitigate for the impacts of water supply shortages on fish and wildlife; and
- (h) Emergency construction or modification of water recreational facilities.

(3) During a drought emergency order pursuant to RCW 43.83B.405(2), the department shall prioritize funding for projects designed to relieve the immediate hardship caused by water unavailability.

Sec. 2. RCW 43.83B.430 and 2022 c 297 s 957 and 2022 c 296 s 7008 are each reenacted and amended to read as follows:

The state drought preparedness ~~((and response))~~ account is created in the state treasury. All receipts from appropriated funds designated for the account and all cost recovery revenues collected under RCW 43.83B.410(5) must be deposited into the account. Expenditures from the account may be used for drought planning and preparedness ~~((and response))~~ activities under this chapter, including grants issued under RCW 43.83B.415. During the 2021-2023 fiscal biennium, moneys in the account may be used for water banking pilot projects. Moneys in the account may be spent only after appropriation. During the 2021-2023 fiscal biennium, the legislature may appropriate moneys from the account for activities related to water banking.

NEW SECTION. Sec. 3. A new section is added to chapter 43.83B RCW to read as follows:

Upon the issuance of an order of drought emergency under RCW 43.83B.405(2), the state treasurer shall transfer from the general fund to the emergency drought response account created in section 4 of this act those amounts necessary to bring the balance of the emergency drought response account to \$3,000,000, based upon the determination of the transfer amount

from the office of financial management. The office of financial management must determine the fund balance of the emergency drought response account as of the previous fiscal month before the issuance of an order of drought emergency. The office of financial management must promptly notify the state treasurer and the department of the account balance and the necessary transfer amount once a determination is made. A transfer based on the determination by the office of financial management may be made only once every fiscal year.

NEW SECTION. Sec. 4. A new section is added to chapter 43.83B RCW to read as follows:

The emergency drought response account is created in the state treasury. All receipts from moneys received pursuant to section 3 of this act, moneys appropriated to the account by the legislature for the purpose of funding emergency drought response actions or moneys directed to the account from any other lawful source must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the costs of implementing the powers set forth in RCW 43.83B.410 through 43.83B.420 to provide relief for the immediate hardship caused by water unavailability while a drought emergency order issued pursuant to RCW 43.83B.405(2) is in effect. The department must, at a minimum, provide the director of the office of financial management, legislative fiscal committees, and the joint legislative committee on water supply during drought, established under RCW 90.86.010, with a close-out cost summary following the expiration of an emergency drought order during which expenditures were made from the account.

Sec. 5. RCW 90.86.030 and 2010 1st sp.s. c 7 s 122 are each amended to read as follows:

(1) The joint legislative committee on water supply during drought shall convene from time to time at the call of the chair when an advisory is in effect under RCW 43.83B.405(1), when a drought ~~((conditions))~~ emergency order under RCW 43.83B.405 is in effect, or when the chair determines, in consultation with the department of ecology, that it is likely that such an order will be issued within the next year.

(2) The committee may request and review information relating to water supply conditions in the state, and economic, environmental, and other impacts relating to decreased water supply being experienced or anticipated. The governor's executive water emergency committee, the department of ecology, and other state agencies with water management or related responsibilities shall cooperate in responding to requests from the committee.

(3) During drought conditions in which ~~((an))~~ a drought emergency order issued under RCW 43.83B.405(2) is in effect, the department of ecology shall provide to the committee no less than monthly a report describing drought response activities of the department and other state and federal agencies participating on the water supply availability committee. The report shall include information regarding applications for, and approvals and denials of emergency water withdrawals and temporary changes or transfers of, water rights under RCW 43.83B.410. The report must include information regarding grants applied for or issued under RCW 43.83B.415.

(4) The committee from time to time shall make recommendations to the senate and house of representatives on budgetary and legislative actions that will improve the state's drought response programs and planning."

On page 1, beginning on line 1 of the title, after "preparedness;" strike the remainder of the title and insert "amending RCW 43.83B.415 and 90.86.030; reenacting and amending RCW 43.83B.430; and adding new sections to chapter 43.83B RCW."

water right holders in the Walla Walla River Basin?”

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Agriculture, Water, Natural Resources & Parks to Substitute House Bill No. 1138.

The motion by Senator Salomon carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Salomon, the rules were suspended, Substitute House Bill No. 1138 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Salomon and Muzzall spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1138 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1138 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

SUBSTITUTE HOUSE BILL NO. 1138, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 1322, by House Committee on Capital Budget (originally sponsored by Rude, Chapman, Klicker, Lekanoff and Reeves)

Concerning the Walla Walla water 2050 plan.

The measure was read the second time.

MOTION

On motion of Senator Salomon, the rules were suspended, Second Substitute House Bill No. 1322 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

POINT OF INQUIRY

Senator Salomon: “Will the Senator from the 16th District yield to a question?”

President Heck: “Senator Dozier, do you yield? He yields.”

Senator Salomon: “In order to make this a clear record of legislative intent and for clarification, how will this plan effect

Senator Dozier: “Thank you Mr. President. Thank you Senator Salomon. Um, just a real quick history on this. I actually have the Senate version of the bill that was not introduced. We went with the House version. To get to the question, I will just tell you my history with this is the Walla Walla Water Partnership Board was developed over twenty years ago, which managed the water issues in the Columbia or in the Walla Walla River Basin. So, this is really site-specific, to the 16th District and the irrigators in that area, along with the water users. Um, it is really a very important piece of legislation. I served on that Board, the Walla Walla Partnership Board, for eight years, along with Snake River Salmon Recovery Board – working with a lot of the same members that developed this plan. When we came out with the bill, Mr. President, it’s a, as I said, it’s a good bill but there’s a couple of things in here that we wanted to address. Um, I think we are still going to move this forward so the effects on the irrigators themselves, we wanted to know the intent with Ecology. I do have a letter from Ecology as we worked on this. I will not read the entire thing Mr. President but if I could pick out a few, three, small paragraphs on how this will affect everybody I would appreciate that opportunity?”

President Heck: “Please proceed.”

Senator Dozier: “Thank you. Department of Ecology. This is regarding House Bill No. 1322. The intent for implementation of the act in the Walla Walla 2050 Plan. ‘Dear Representatives Rude, Representative Klippert and Senator Dozier: We are responding to your request to clarify the implication of House Bill No. 1322 and Ecology’s intent for implementation of the act in the Walla Walla 2050 Plan. The statute is structured so that it provides specific management authority for developed water supplies. Through this act the Legislature will provide authority and a framework to manage water supplies, cooperatively across two states to meet multiple objectives including improving instream flows and water supply reliability, to restore fisheries, sustain the local agricultural economy, and develop climate resiliency. Ecology will implement the act consistent with the statutory authority so that programs and projects funded under this act will not reduce water availability for existing water right holders with valid Washington state certificates or permits.’ Mr. President, I think this is a tremendous step moving forward for protecting...”

President Heck: “Senator Dozier, it is important in a colloquy that you respond to Senator Salomon’s question. It sounds like you are beginning to veer into final passage remarks.”

Senator Dozier: “Senator Salomon, this shouldn’t have any effect on existing water right holders based on the letter that I read from Ecology.”

Senator Salomon spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 1322.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 1322 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland,

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Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Liias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

SECOND SUBSTITUTE HOUSE BILL NO. 1322, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1466, by House Committee on Health Care & Wellness (originally sponsored by Riccelli, Leavitt and Morgan)

Concerning currently credentialed dental auxiliaries.

The measure was read the second time.

MOTION

Senator Cleveland moved that the following committee striking amendment by the Committee on Health & Long-Term Care be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 18.29.190 and 2019 c 111 s 3 are each amended to read as follows:

(1) The department shall issue an initial ~~((limited))~~ temporary license without the examination required by this chapter to any applicant who, as determined by the secretary:

(a) Holds a valid license in another state or Canadian province that allows a substantively equivalent scope of practice in subsection (3)(a) through (j) of this section;

~~(b) ((Is currently engaged in active practice in another state or Canadian province. For the purposes of this section, "active practice" means five hundred sixty hours of practice in the preceding twenty-four months;~~

~~(c))~~ Files with the secretary documentation certifying that the applicant:

(i) Has graduated from an accredited dental hygiene school approved by the secretary;

(ii) Has successfully completed the dental hygiene national board examination; and

(iii) Is licensed to practice in another state or Canadian province;

~~((d))~~ (c) Provides information as the secretary deems necessary pertaining to the conditions and criteria of the uniform disciplinary act, chapter 18.130 RCW;

~~((e))~~ (d) Demonstrates to the secretary a knowledge of Washington state law pertaining to the practice of dental hygiene, including the administration of legend drugs; and

~~((f))~~ (e) Pays any required fees; ~~and~~

~~(g) Meets requirements for AIDS education).~~

(2) The term of the initial ~~((limited))~~ temporary license issued under this section is ~~((eighteen months))~~ five years and it is renewable upon:

(a) Demonstration of successful passage of a substantively equivalent dental hygiene patient evaluation/prophylaxis examination;

(b) Demonstration of successful passage of a substantively

equivalent local anesthesia examination;

(c) Demonstration of didactic and clinical competency in the administration of nitrous oxide analgesia; and

(d) Demonstration of successful passage of an educational program on the administration of local anesthesia and nitrous oxide analgesia.

(3) A person practicing with an initial ~~((limited))~~ temporary license granted under this section has the authority to perform hygiene procedures that are limited to:

(a) Oral inspection and measuring of periodontal pockets;

(b) Patient education in oral hygiene;

(c) Taking intra-oral and extra-oral radiographs;

(d) Applying topical preventive or prophylactic agents;

(e) Polishing and smoothing restorations;

(f) Oral prophylaxis and removal of deposits and stains from the surface of the teeth;

(g) Recording health histories;

(h) Taking and recording blood pressure and vital signs;

(i) Performing subgingival and supragingival scaling; and

(j) Performing root planing.

(4)(a) A person practicing with an initial ~~((limited))~~ temporary license granted under this section may not perform the following dental hygiene procedures unless authorized in (b) or (c) of this subsection:

(i) Give injections of local anesthetic;

(ii) Place restorations into the cavity prepared by a licensed dentist and afterwards carve, contour, and adjust contacts and occlusion of the restoration;

(iii) Soft tissue curettage; or

(iv) Administer nitrous oxide/oxygen analgesia.

(b) A person licensed in another state or Canadian province who can demonstrate substantively equivalent licensing standards in the administration of local anesthetic may receive a temporary endorsement to administer local anesthesia. For purposes of the renewed ~~((limited))~~ temporary license, this endorsement demonstrates the successful passage of the local anesthesia examination.

(c) A person licensed in another state or Canadian province who can demonstrate substantively equivalent licensing standards in restorative procedures may receive a temporary endorsement for restorative procedures.

(d) A person licensed in another state or Canadian province who can demonstrate substantively equivalent licensing standards in administering nitrous oxide analgesia may receive a temporary endorsement to administer nitrous oxide analgesia.

(5)(a) A person practicing with a renewed ~~((limited))~~ temporary license granted under this section may:

(i) Perform hygiene procedures as provided under subsection (3) of this section;

(ii) Give injections of local anesthetic;

(iii) Perform soft tissue curettage; and

(iv) Administer nitrous oxide/oxygen analgesia.

(b) A person practicing with a renewed ~~((limited))~~ temporary license granted under this section may not place restorations into the cavity prepared by a licensed dentist and afterwards carve, contour, and adjust contacts and occlusion of the restoration.

(6) The secretary shall issue an initial temporary license to all dental hygienists with an active limited license as of the effective date of this section. The initial temporary license expires five years after the date the initial limited license was issued.

On page 1, line 1 of the title, after "auxiliaries;" strike the remainder of the title and insert "and amending RCW 18.29.190."

Senator Cleveland spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Health & Long-Term Care to Engrossed Substitute House Bill No. 1466.

The motion by Senator Cleveland carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Cleveland, the rules were suspended, Engrossed Substitute House Bill No. 1466 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Cleveland and Rivers spoke in favor of passage of the bill.

MOTION

On motion of Senator Nobles, Senator Liias was excused.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1466 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1466 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

Excused: Senator Liias

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1466, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1493, by House Committee on Community Safety, Justice, & Reentry (originally sponsored by Goodman)

Concerning impaired driving.

The measure was read the second time.

MOTION

Senator Padden moved that the following committee striking amendment by the Committee on Law & Justice be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 9.94A RCW to read as follows:

(1) An offender is eligible for the special drug offender sentencing alternative for driving under the influence if the

offender:

(a) Does not have a prior conviction under RCW 46.61.520, 46.61.522, 46.61.502(6), or 46.61.504(6); and either

(b) Is convicted of felony driving while under the influence of intoxicating liquor, cannabis, or any drug under RCW 46.61.502(6)(a); or

(c) Is convicted of felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6)(a).

(2) A motion for a special drug offender sentencing alternative for driving under the influence may be made by the court, the offender, or the state if the midpoint of the standard sentence range is 26 months or less. If an offender has a higher midpoint, a motion for a special drug offender sentencing alternative for driving under the influence can only be made by joint agreement of the state and offender.

(3) If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range and:

(a) Impose a sentence equivalent to a prison-based alternative under RCW 9.94A.662, and subject to the same requirements and restrictions as are established in that section, if the low end of the standard sentence range is greater than 24 months; or

(b) Impose a sentence consisting of a residential treatment-based alternative consistent with this section if the low end of the standard sentence range is 24 months or less.

(4)(a) To assist the court in making its determination, the court may order the department to complete either a risk assessment report or a substance use disorder screening report as provided in RCW 9.94A.500, or both.

(b) If the court is considering imposing a sentence under the residential substance use disorder treatment-based alternative, the court may order an examination of the offender by the department. The examination shall, at a minimum, address the following issues:

(i) Whether the offender suffers from a substance use disorder;

(ii) Whether effective treatment for the offender's substance use disorder is available from a provider that has been licensed or certified by the department of health; and

(iii) Whether the offender and the community will benefit from the use of the alternative.

(5) An offender who is eligible for a residential treatment-based alternative under this section shall be sentenced as follows:

(a) If necessary, an indeterminate term of confinement of no more than 30 days in a facility operated, licensed, or utilized under contract, by the county in order to facilitate direct transfer to a residential substance use disorder treatment facility;

(b) Treatment in a residential substance use disorder treatment program licensed or certified by the department of health for a period set by the court up to six months with treatment completion and continued care delivered in accordance with rules established by the department of health. In establishing rules pursuant to this subsection, the department of health must consider criteria established by the American society of addiction medicine;

(c) Twenty-four months of partial confinement to consist of 12 months work release followed by 12 months of home detention with electronic monitoring; and

(d) Twelve months of community custody.

(6)(a) During any period of partial confinement or community custody, the court shall impose treatment and other conditions as provided in RCW 9.94A.703 or as the court considers appropriate.

(b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and 9.94A.737.

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(c) The department shall, within available resources, make substance use disorder assessment and treatment services available to the offender.

(d) An offender sentenced to community custody under subsection (3)(a) of this section as part of the prison-based alternative or under subsection (3)(b) of this section as part of the residential treatment-based alternative may be required to pay \$30 per month while on community custody to offset the cost of monitoring for alcohol or controlled substances.

(7)(a) If the court imposes a sentence under subsection (3)(b) of this section, the treatment provider must send the treatment plan to the court within 30 days of the offender's arrival to the residential substance use disorder treatment program.

(b) Upon receipt of the plan, the court shall schedule a progress hearing during the period of treatment and schedule a treatment termination hearing for three months before the expiration of the term of community custody.

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

(8) At a progress hearing or treatment termination hearing, the court may:

(a) Authorize the department to terminate the offender's community custody status on the expiration date determined under subsection (7) of this section;

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

(c) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

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

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

(c) An offender ordered to serve a term of total confinement under (b) of this subsection shall receive credit for any time previously served in total confinement or residential treatment under this section and shall receive 50 percent credit for any time previously served in partial confinement or community custody under this section.

(10) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program for driving under the influence under this section, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.

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

(12) Costs of examinations and preparing the recommended service delivery plans under a special drug offender sentencing alternative for driving under the influence may be paid, at the option of the county, from funds provided to the county from the

criminal justice treatment account under RCW 71.24.580.

Sec. 2. RCW 9.94A.030 and 2022 c 231 s 11 are each amended to read as follows:

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

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department.

(6) "Community protection zone" means the area within 880 feet of the facilities and grounds of a public or private school.

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

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

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

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

(11) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere, and any issued certificates of restoration of opportunity pursuant to RCW 9.97.020.

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

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon. However, when a defendant is charged with a recidivist offense, "criminal history" includes a vacated prior conviction for the sole purpose of establishing that such vacated prior conviction constitutes an element of the present recidivist offense as provided in RCW 9.94A.640(4)(b) and 9.96.060(7)(c).

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

part of the defendant's criminal history.

(12) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

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

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

- (a) To gain admission, prestige, or promotion within the gang;
- (b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;
- (c) To exact revenge or retribution for the gang or any member of the gang;
- (d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;
- (e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or
- (f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter 9.68 RCW).

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

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

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

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(19) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any

other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

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

(b) "Domestic violence" also means: (i) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, sexual assault, or stalking, as defined in RCW 9A.46.110, of one intimate partner by another intimate partner as defined in RCW 10.99.020; or (ii) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, sexual assault, or stalking, as defined in RCW 9A.46.110, of one family or household member by another family or household member as defined in RCW 10.99.020.

(21) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense who are eligible for the option under RCW 9.94A.660.

(22) "Drug offender sentencing alternative for driving under the influence" is a sentencing option available to persons convicted of felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6) who are eligible under section 1 of this act.

(23) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

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

~~((23))~~ (24) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

~~((24))~~ (25) "Electronic monitoring" means tracking the location of an individual through the use of technology that is capable of determining or identifying the monitored individual's presence or absence at a particular location including, but not limited to:

(a) Radio frequency signaling technology, which detects if the monitored individual is or is not at an approved location and notifies the monitoring agency of the time that the monitored individual either leaves the approved location or tampers with or removes the monitoring device; or

(b) Active or passive global positioning system technology, which detects the location of the monitored individual and notifies the monitoring agency of the monitored individual's location and which may also include electronic monitoring with victim notification technology that is capable of notifying a victim or protected party, either directly or through a monitoring agency, if the monitored individual enters within the restricted distance of a victim or protected party, or within the restricted distance of a designated location.

~~((25))~~ (26) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW

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72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

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

~~((26))~~ (27) "Felony traffic offense" means:

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

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

~~((27))~~ (28) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

~~((28))~~ (29) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

~~((29))~~ (30) "Home detention" is a subset of electronic monitoring and means a program of partial confinement available to offenders wherein the offender is confined in a private residence 24 hours a day, unless an absence from the residence is approved, authorized, or otherwise permitted in the order by the court or other supervising agency that ordered home detention, and the offender is subject to electronic monitoring.

~~((30))~~ (31) "Homelessness" or "homeless" means a condition where an individual lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is:

(a) A supervised, publicly or privately operated shelter designed to provide temporary living accommodations;

(b) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or

(c) A private residence where the individual stays as a transient invitee.

~~((31))~~ (32) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

~~((32))~~ (33) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age 14;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Sexual exploitation;

(p) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(q) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(r) Any other class B felony offense with a finding of sexual motivation;

(s) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

(t) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(u)(i) A prior conviction for indecent liberties under RCW 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of 14; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;

(v) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was 10 years or more; provided that the out-of-state felony offense must be comparable to a felony offense under this title and Title 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

~~((33))~~ (34) "Nonviolent offense" means an offense which is not a violent offense.

~~((34))~~ (35) "Offender" means a person who has committed a felony established by state law and is 18 years of age or older or is less than 18 years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer ordered by a superior court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and supervised by the department pursuant to RCW 9.94A.501 and 9.94A.5011. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

~~((35))~~ (36) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention, electronic monitoring, or work crew has been ordered by the court or home detention has been ordered by the

department as part of the parenting program or the graduated reentry program, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, electronic monitoring, and a combination of work crew, electronic monitoring, and home detention.

~~((36))~~ (37) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Hate Crime (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person 18 years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

~~((37))~~ (38) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender

was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection ~~((37))~~ (38)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was 16 years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was 18 years of age or older when the offender committed the offense.

~~((38))~~ (39) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority; or (iv) a teacher, counselor, volunteer, or other person in authority providing home-based instruction and the victim was a student receiving home-based instruction while under his or her authority or supervision. For purposes of this subsection: (A) "Home-based instruction" has the same meaning as defined in RCW 28A.225.010; and (B) "teacher, counselor, volunteer, or other person in authority" does not include the parent or legal guardian of the victim.

~~((39))~~ (40) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

~~((40))~~ (41) "Public school" has the same meaning as in RCW 28A.150.010.

~~((41))~~ (42) "Recidivist offense" means a felony offense where a prior conviction of the same offense or other specified offense is an element of the crime including, but not limited to:

(a) Assault in the fourth degree where domestic violence is pleaded and proven, RCW 9A.36.041(3);

(b) Cyber harassment, RCW 9A.90.120(2)(b)(i);

(c) Harassment, RCW 9A.46.020(2)(b)(i);

(d) Indecent exposure, RCW 9A.88.010(2)(c);

(e) Stalking, RCW 9A.46.110(5)(b) (i) and (iii);

(f) Telephone harassment, RCW 9.61.230(2)(a); and

(g) Violation of a no-contact or protection order, RCW 7.105.450 or former RCW 26.50.110(5).

~~((42))~~ (43) "Repetitive domestic violence offense" means

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any:

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

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

(iii) Domestic violence violation of a protection order under chapter 26.09, 26.26A, or 26.26B RCW or former chapter 26.50 RCW, or violation of a domestic violence protection order under chapter 7.105 RCW, that is not a felony offense;

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

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

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

~~((43))~~ (44) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

~~((44))~~ (45) "Risk assessment" means the application of the risk instrument recommended to the department by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

~~((45))~~ (46) "Serious traffic offense" means:

(a)(i) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502)~~((nonfelony))~~;

(ii) Nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504)~~((reckless))~~;

(iii) Reckless driving (RCW 46.61.500)~~((or hit and run))~~;

(iv) Negligent driving if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522 while under the influence of intoxicating liquor or any drug (RCW 46.61.5249);

(v) Reckless endangerment if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522 while under the influence of intoxicating liquor or any drug (RCW 9A.36.050); or

(vi) Hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

~~((46))~~ (47) "Serious violent offense" is a subcategory of violent offense and means:

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

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

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

~~((47))~~ (48) "Sex offense" means:

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

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080;

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

(v) A felony violation of RCW 9A.44.132(1) (failure to register as a sex offender) if the person has been convicted of violating RCW 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130 prior to June 10, 2010, on at least one prior occasion;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

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

~~((48))~~ (49) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

~~((49))~~ (50) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((50))~~ (51) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

~~((51))~~ (52) "Stranger" means that the victim did not know the offender 24 hours before the offense.

~~((52))~~ (53) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for 24 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

~~((53))~~ (54) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

~~((54))~~ (55) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

~~((55))~~ (56) "Victim of domestic violence" means an intimate partner or household member who has been subjected to the infliction of physical harm or sexual and psychological abuse by an intimate partner or household member as part of a pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance from or control over that intimate partner or household member. Domestic violence includes, but is not limited to, the offenses listed in RCW 10.99.020 and 26.50.010 committed by an intimate partner or household member against a victim who is an intimate partner or household member.

~~((56))~~ (57) "Victim of sex trafficking, prostitution, or commercial sexual abuse of a minor" means a person who has been forced or coerced to perform a commercial sex act including, but not limited to, being a victim of offenses defined in RCW 9A.40.100, 9A.88.070, 9.68A.101, and the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq.; or a person who was induced to perform a commercial sex act when they were less than 18 years of age including but not limited to the offenses defined in chapter 9.68A RCW.

~~((57))~~ (58) "Victim of sexual assault" means any person who is a victim of a sexual assault offense, nonconsensual sexual

conduct, or nonconsensual sexual penetration and as a result suffers physical, emotional, financial, or psychological impacts. Sexual assault offenses include, but are not limited to, the offenses defined in chapter 9A.44 RCW.

~~((58))~~ (59) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

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

~~((59))~~ (60) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

~~((60))~~ (61) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

~~((61))~~ (62) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

Sec. 3. RCW 9.94A.190 and 2018 c 166 s 5 are each amended to read as follows:

(1) A sentence that includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state, or in home detention pursuant to RCW 9.94A.6551 or the graduated reentry program under RCW 9.94A.733. Except as provided in subsection (3) or (5) of this section, a sentence of not more than one year of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county, or if home detention or work crew has been ordered by the court, in the residence of either the offender or a member of the offender's immediate family.

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for not more than one year, the county shall reimburse the state for the use of the facility as provided in this subsection. The office of

financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.589.

(4) Notwithstanding any other provision of this section, a sentence imposed pursuant to RCW 9.94A.660 or section 1 of this act which has a standard sentence range of over one year, regardless of length, shall be served in a facility or institution operated, or utilized under contract, by the state.

(5) Sentences imposed pursuant to RCW 9.94A.507 shall be served in a facility or institution operated, or utilized under contract, by the state.

Sec. 4. RCW 9.94A.501 and 2021 c 242 s 2 are each amended to read as follows:

(1) The department shall supervise the following offenders who are sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

(a) Offenders convicted of:

(i) Sexual misconduct with a minor second degree;

(ii) Custodial sexual misconduct second degree;

(iii) Communication with a minor for immoral purposes; and

(iv) Violation of RCW 9A.44.132(2) (failure to register); and

(b) Offenders who have:

(i) A current conviction for a repetitive domestic violence offense where domestic violence has been pleaded and proven after August 1, 2011; and

(ii) A prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence has been pleaded and proven after August 1, 2011.

(2) Misdemeanor and gross misdemeanor offenders supervised by the department pursuant to this section shall be placed on community custody.

(3) The department shall supervise every felony offender sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk assessment classifies the offender as one who is at a high risk to reoffend.

(4) Notwithstanding any other provision of this section, the department shall supervise an offender sentenced to community custody regardless of risk classification if the offender:

(a) Has a current conviction for a sex offense or a serious violent offense and was sentenced to a term of community custody pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

(b) Has been identified by the department as a dangerous mentally ill offender pursuant to RCW 72.09.370;

(c) Has an indeterminate sentence and is subject to parole pursuant to RCW 9.95.017;

(d) Has a current conviction for violating RCW 9A.44.132(1) (failure to register) and was sentenced to a term of community custody pursuant to RCW 9.94A.701;

(e)(i) Has a current conviction for a domestic violence felony offense where domestic violence has been pleaded and proven after August 1, 2011, and a prior conviction for a repetitive domestic violence offense or domestic violence felony offense

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where domestic violence was pleaded and proven after August 1, 2011. This subsection (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

(i) Has a current conviction for a domestic violence felony offense where domestic violence was pleaded and proven. The state and its officers, agents, and employees shall not be held criminally or civilly liable for its supervision of an offender under this subsection (4)(e)(ii) unless the state and its officers, agents, and employees acted with gross negligence;

(f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, 9.94A.670, 9.94A.711, ~~((e))~~ 9.94A.695, or section 1 of this act;

(g) Is subject to supervision pursuant to RCW 9.94A.745; or

(h) Was convicted and sentenced under RCW 46.61.520 (vehicular homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6) (felony DUI), or RCW 46.61.504(6) (felony physical control).

(5) The department shall supervise any offender who is released by the indeterminate sentence review board and who was sentenced to community custody or subject to community custody under the terms of release.

(6) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody or any probationer unless the offender or probationer is one for whom supervision is required under this section or RCW 9.94A.5011.

(7) The department shall conduct a risk assessment for every felony offender sentenced to a term of community custody who may be subject to supervision under this section or RCW 9.94A.5011.

(8) The period of time the department is authorized to supervise an offender under this section may not exceed the duration of community custody specified under RCW 9.94B.050, 9.94A.701 (1) through (9), or 9.94A.702, except in cases where the court has imposed an exceptional term of community custody under RCW 9.94A.535.

(9) The period of time the department is authorized to supervise an offender under this section may be reduced by the earned award of supervision compliance credit pursuant to RCW 9.94A.717.

Sec. 5. RCW 9.94A.505 and 2022 c 260 s 23 are each amended to read as follows:

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

(iii) RCW 9.94A.570, relating to persistent offenders;

(iv) RCW 9.94A.540, relating to mandatory minimum terms;

(v) RCW 9.94A.650, relating to the first-time offender waiver;

(vi) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(vii) Section 1 of this act, relating to the drug offender sentencing alternative for driving under the influence;

~~((viii))~~ (viii) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

~~((ix))~~ (ix) RCW 9.94A.655, relating to the parenting sentencing alternative;

~~((x))~~ (x) RCW 9.94A.695, relating to the mental health sentencing alternative;

~~((xi))~~ (xi) RCW 9.94A.507, relating to certain sex offenses;

~~((xii))~~ (xii) RCW 9.94A.535, relating to exceptional

sentences;

~~((xiii))~~ (xiii) RCW 9.94A.589, relating to consecutive and concurrent sentences;

~~((xiv))~~ (xiv) RCW 9.94A.603, relating to felony driving while under the influence of intoxicating liquor or any drug and felony physical control of a vehicle while under the influence of intoxicating liquor or any drug;

~~((xv))~~ (xv) RCW 9.94A.711, relating to the theft or taking of a motor vehicle.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; a term of community custody under RCW 9.94A.702 not to exceed one year; and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement and a community custody term under RCW 9.94A.701 if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

(3) If the court imposes a sentence requiring confinement of 30 days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than 30 days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, and 9.94A.760.

(5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(7) The sentencing court shall not give the offender credit for any time the offender was required to comply with an electronic monitoring program prior to sentencing if the offender was convicted of one of the following offenses:

(a) A violent offense;

(b) Any sex offense;

(c) Any drug offense;

(d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;

(e) Assault in the third degree as defined in RCW 9A.36.031;

(f) Assault of a child in the third degree;

(g) Unlawful imprisonment as defined in RCW 9A.40.040; or

(h) Harassment as defined in RCW 9A.46.020.

(8) The court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

(9) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter. "Crime-related prohibitions" may include a prohibition on the use or possession of alcohol or controlled substances if the court finds that any chemical dependency or substance abuse contributed to the offense.

(10) In any sentence of partial confinement, the court may require the offender to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

Sec. 6. RCW 9.94A.525 and 2021 c 215 s 100 are each 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.589.

(2)(a) Class A and sex prior felony convictions shall always be included in the offender score.

(b) Class B prior felony convictions other than sex offenses 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))~~ 10 consecutive years in the community without committing any crime that subsequently results in a conviction.

(c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses 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 committing any crime that subsequently results in a conviction.

(d) Except as provided in (e) of this subsection, 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 conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction.

(e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate crimes for the offense as defined by RCW 46.61.5055(14) shall be included in the offender score, and prior convictions for felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)) shall always be included in the offender score. All other convictions of the defendant shall be scored according to this section.

(f) Prior convictions for a repetitive domestic violence offense, as defined in RCW 9.94A.030, shall not be included in the offender score if, since the last date of release from confinement or entry of judgment and sentence, the offender had spent ~~((ten))~~ 10 consecutive years in the community without committing any crime that subsequently results in a conviction.

(g) 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. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

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

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

(i) Prior offenses which were found, under RCW 9.94A.589(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 or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), 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. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;

(ii) 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.

(b) As used in this subsection (5), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

(6) 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. When these convictions are used as criminal history, score them the same as a completed crime.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11), (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.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (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.

(9) If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, 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.

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

(11) 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 count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each

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juvenile prior conviction for operation of a vessel while under the influence of intoxicating liquor or any drug; count one point for a deferred prosecution granted under chapter 10.05 RCW for a second or subsequent violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance.

(12) If the present conviction is for homicide by watercraft or assault by watercraft count two points for each adult or juvenile prior conviction for homicide by watercraft or assault by watercraft; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for driving under the influence of intoxicating liquor or any drug, actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, or operation of a vessel while under the influence of intoxicating liquor or any drug.

(13) If the present conviction is for manufacture of methamphetamine count three points for each adult prior manufacture of methamphetamine conviction and two points for each juvenile manufacture of methamphetamine offense. If the present conviction is for a drug offense and the offender has a criminal history that includes a sex offense or serious violent offense, count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(14) If the present conviction is for Escape from Community Custody, RCW 72.09.310, 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 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(17) If the present conviction is for a sex offense, count priors as in subsections (7) through (11) and (13) through (16) of this section; however, count three points for each adult and juvenile prior sex offense conviction.

(18) If the present conviction is for failure to register as a sex offender under RCW (~~9A.44.130~~) 9A.44.132, count priors as in subsections (7) through (11) and (13) through (16) of this section; however, count three points for each adult and juvenile prior sex offense conviction, excluding prior convictions for failure to register as a sex offender under RCW (~~9A.44.130~~) 9A.44.132, which shall count as one point.

(19) If the present conviction is for an offense committed while the offender was under community custody, add one point. For purposes of this subsection, community custody includes community placement or postrelease supervision, as defined in chapter 9.94B RCW.

(20) If the present conviction is for Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2, count priors as in subsections (7) through (18) of this section; however, count one point for prior convictions of Vehicle Prowling 2, and three points for each adult and juvenile prior Theft 1 (of a motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor vehicle), Possession

of Stolen Property 2 (of a motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2 conviction.

(21) If the present conviction is for a felony domestic violence offense where domestic violence as defined in RCW 9.94A.030 was pleaded and proven, count priors as in subsections (7) through (20) of this section; however, count points as follows:

(a) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after August 1, 2011, for any of the following offenses: A felony violation of a no-contact or protection order (RCW 7.105.450 or former RCW 26.50.110), felony Harassment (RCW 9A.46.020(2)(b)), felony Stalking (RCW 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020), Kidnapping 1 (RCW 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful imprisonment (RCW 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2 (RCW 9A.56.210), Assault 1 (RCW 9A.36.011), Assault 2 (RCW 9A.36.021), Assault 3 (RCW 9A.36.031), Arson 1 (RCW 9A.48.020), or Arson 2 (RCW 9A.48.030);

(b) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after July 23, 2017, for any of the following offenses: Assault of a child in the first degree, RCW 9A.36.120; Assault of a child in the second degree, RCW 9A.36.130; Assault of a child in the third degree, RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW 9A.42.020; or Criminal Mistreatment in the second degree, RCW 9A.42.030;

(c) Count one point for each second and subsequent juvenile conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after August 1, 2011, for the offenses listed in (a) of this subsection; and

(d) Count one point for each adult prior conviction for a repetitive domestic violence offense as defined in RCW 9.94A.030, where domestic violence as defined in RCW 9.94A.030, was pleaded and proven after August 1, 2011.

(22) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the sentencing reform act requires including or counting those convictions. Prior convictions that were not included in criminal history or in the offender score shall be included upon any resentencing to ensure imposition of an accurate sentence.

Sec. 7. RCW 9.94A.633 and 2021 c 242 s 4 are each amended to read as follows:

(1)(a) An offender who violates any condition or requirement of a sentence may be sanctioned by the court with up to (~~sixty~~) 60 days' confinement for each violation or by the department with up to (~~thirty~~) 30 days' confinement as provided in RCW 9.94A.737.

(b) In lieu of confinement, an offender may be sanctioned with work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other community-based sanctions.

(2) If an offender was under community custody pursuant to one of the following statutes, the offender may be sanctioned as follows:

(a) If the offender was transferred to community custody in lieu

of earned early release in accordance with RCW 9.94A.728, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(b) If the offender was sentenced under the drug offender sentencing alternative set out in RCW 9.94A.660, the offender may be sanctioned in accordance with that section.

(c) If the offender was sentenced under the drug offender sentencing alternative for driving under the influence set out in section 1 of this act, the offender may be sanctioned in accordance with that section.

(d) If the offender was sentenced under the parenting sentencing alternative set out in RCW 9.94A.655, the offender may be sanctioned in accordance with that section.

~~((4))~~ (e) If the offender was sentenced under the special sex offender sentencing alternative set out in RCW 9.94A.670, the suspended sentence may be revoked and the offender committed to serve the original sentence of confinement.

~~((5))~~ (f) If the offender was sentenced under the mental health sentencing alternative set out in RCW 9.94A.695, the offender may be sanctioned in accordance with that section.

~~((6))~~ (g) If the offender was sentenced to a work ethic camp pursuant to RCW 9.94A.690, the offender may be reclassified to serve the unexpired term of his or her sentence in total confinement.

~~((7))~~ (h) If a sex offender was sentenced pursuant to RCW 9.94A.507, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(3) If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be sanctioned pursuant to subsection (1) of this section. The department shall have authority to issue a warrant for the arrest of an offender who violates a condition of community custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions.

(4) The parole or probation of an offender who is charged with a new felony offense may be suspended and the offender placed in total confinement pending disposition of the new criminal charges if:

(a) The offender is on parole pursuant to RCW 9.95.110(1); or

(b) The offender is being supervised pursuant to RCW 9.94A.745 and is on parole or probation pursuant to the laws of another state.

Sec. 8. RCW 9.94A.6332 and 2021 c 242 s 5 are each amended to read as follows:

The procedure for imposing sanctions for violations of sentence conditions or requirements is as follows:

(1) If the offender was sentenced under the drug offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.660.

(2) If the offender was sentenced under the drug offender sentencing alternative for driving under the influence, any sanctions shall be imposed by the department or the court pursuant to section 1 of this act.

(3) If the offender was sentenced under the special sex offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.670.

~~((3))~~ (4) If the offender was sentenced under the parenting sentencing alternative, any sanctions shall be imposed by the

department or by the court pursuant to RCW 9.94A.655.

~~((4))~~ (5) If the offender was sentenced under the mental health sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.695.

~~((5))~~ (6) If a sex offender was sentenced pursuant to RCW 9.94A.507, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

~~((6))~~ (7) If the offender was released pursuant to RCW 9.94A.730, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

~~((7))~~ (8) If the offender was sentenced pursuant to RCW 10.95.030(3) or 10.95.035, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

~~((8))~~ (9) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon receipt of a violation hearing report from the department, the court retains any authority that those statutes provide to respond to a probationer's violation of conditions.

~~((9))~~ (10) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.

Sec. 9. RCW 9.94A.660 and 2021 c 215 s 102 are each amended to read as follows:

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

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

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense for which the offender is currently or may be required to register pursuant to RCW 9A.44.130;

(d) The offender has no prior convictions in this state, and no prior convictions for an equivalent out-of-state or federal offense, for the following offenses during the following time frames:

(i) Robbery in the second degree that did not involve the use of a firearm and was not reduced from robbery in the first degree within seven years before conviction of the current offense; or

(ii) Any other violent offense within ~~((ten))~~ 10 years before conviction of the current offense;

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

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

(g) The offender has not received a drug offender sentencing alternative under this section, or a drug offender sentencing alternative for driving under the influence under section 1 of this act, more than once in the prior ~~((ten))~~ 10 years before the current offense.

(2) A motion for a special drug offender sentencing alternative may be made by the court, the offender, or the state.

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(3) If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential substance use disorder treatment-based alternative under RCW 9.94A.664. The residential substance use disorder treatment-based alternative is only available if the midpoint of the standard sentence range is ~~((twenty-six))~~ 26 months or less.

(4)(a) To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a substance use disorder screening report as provided in RCW 9.94A.500.

(b) To assist the court in making its determination in domestic violence cases, the court shall order the department to complete a presentence investigation and a chemical dependency screening report as provided in RCW 9.94A.500, unless otherwise specifically waived by the court.

(5) If the court is considering imposing a sentence under the residential substance use disorder treatment-based alternative, the court may order an examination of the offender by the department. The examination must be performed by an agency licensed or certified by the department of health to provide substance use disorder services. The examination shall, at a minimum, address the following issues:

- (a) Whether the offender suffers from a substance use disorder;
- (b) ~~((Whether the substance use disorder is such that there is a probability that criminal behavior will occur in the future;~~
- (~~e~~)) Whether effective treatment for the offender's substance use disorder is available from a provider that has been licensed or certified by the department of health, and where applicable, whether effective domestic violence perpetrator treatment is available from a state-certified domestic violence treatment provider pursuant to RCW 43.20A.735; and

~~((d))~~ (c) Whether the offender and the community will benefit from the use of the alternative.

(6) When a court imposes a sentence of community custody under this section:

(a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate. In addition, an offender may be required to pay ~~((thirty dollars))~~ \$30 per month while on community custody to offset the cost of monitoring for alcohol or controlled substances, or in cases of domestic violence for monitoring with global positioning system technology for compliance with a no-contact order.

(b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and 9.94A.737.

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

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

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

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for time previously served in total or partial confinement and inpatient treatment

under this section, and shall receive ~~((fifty))~~ 50 percent credit for time previously served in community custody under this section.

(8) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.

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

(10) The Washington state institute for public policy shall submit a report to the governor and the appropriate committees of the legislature by November 1, 2022, analyzing the effectiveness of the drug offender sentencing alternative in reducing recidivism among various offender populations. An additional report is due November 1, 2028, and every five years thereafter. The Washington state institute for public policy may coordinate with the department and the caseload forecast council in tracking data and preparing the report.

Sec. 10. RCW 9.94A.701 and 2021 c 242 s 6 are each amended to read as follows:

(1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody for three years:

- (a) A sex offense not sentenced under RCW 9.94A.507; or
- (b) A serious violent offense.

(2) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for ~~((eighteen))~~ 18 months when the court sentences the person to the custody of the department for a violent offense that is not considered a serious violent offense.

(3) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for one year when the court sentences the person to the custody of the department for:

- (a) Any crime against persons under RCW 9.94A.411(2);
- (b) An offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate;
- (c) A felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000; or
- (d) A felony violation of RCW 9A.44.132(1) (failure to register) that is the offender's first violation for a felony failure to register.

(4) If an offender is sentenced under the drug offender sentencing alternative, the court shall impose community custody as provided in:

- (a) RCW 9.94A.660 and 9.94A.662 for a prison-based drug offender sentencing alternative;
- (b) RCW 9.94A.660 and 9.94A.664 for a residential-based drug offender sentencing alternative;
- (c) RCW 9.94A.662 and section 1(6) of this act for a prison-based drug offender sentencing alternative for driving under the influence; and
- (d) Section 1 (5) and (6) of this act for a residential-based drug offender sentencing alternative for driving under the influence.

(5) If an offender is sentenced under the special sex offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.670.

(6) If an offender is sentenced to a work ethic camp, the court shall impose community custody as provided in RCW 9.94A.690.

(7) If an offender is sentenced under the parenting sentencing alternative, the court shall impose a term of community custody as provided in RCW 9.94A.655.

(8) If the offender is sentenced under the mental health sentencing alternative, the court shall impose a term of community custody as provided in RCW 9.94A.695.

(9) If a sex offender is sentenced as a nonpersistent offender pursuant to RCW 9.94A.507, the court shall impose community custody as provided in that section.

(10) The term of community custody specified by this section shall be reduced by the court whenever an offender's standard sentence range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.

Sec. 11. RCW 10.05.010 and 2019 c 263 s 701 are each amended to read as follows:

(1) In a court of limited jurisdiction a person charged with a misdemeanor or gross misdemeanor may petition the court to be considered for a deferred prosecution (~~(program)~~). The petition shall be filed with the court at least seven days before the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial. A person charged with a misdemeanor or gross misdemeanor shall not be eligible for a deferred prosecution unless the court makes specific findings pursuant to RCW 10.05.020.

(2) A person charged with a (~~traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW, or a misdemeanor or gross misdemeanor domestic violence offense,~~) violation of RCW 46.61.502 or 46.61.504 shall not be eligible for a deferred prosecution (~~(program)~~) unless the court makes specific findings pursuant to RCW 10.05.020. A person (~~may not participate in a deferred prosecution program for a traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW if he or she has participated in a deferred prosecution program for a prior traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW, and a person may not participate in a deferred prosecution program for a misdemeanor or gross misdemeanor domestic violence offense if he or she has participated in a deferred prosecution program for a prior domestic violence offense~~) who petitions the court for the deferred prosecution and participates in the deferred prosecution under this chapter for his or her first violation of RCW 46.61.502 or 46.61.504 is eligible to petition the court for a second deferred prosecution for the person's next violation of RCW 46.61.502 or 46.61.504 when the person has no other prior convictions defined as a "prior offense" under RCW 46.61.5055. Separate offenses committed more than seven days apart may not be consolidated in a single program.

(3) A person charged with a misdemeanor or a gross misdemeanor under chapter 9A.42 RCW shall not be eligible for a deferred prosecution (~~(program)~~) unless the court makes specific findings pursuant to RCW 10.05.020. Such person shall not be eligible for a deferred prosecution (~~(program)~~) more than once.

(4) A person is not eligible for a deferred prosecution (~~(program)~~) if the misdemeanor or gross misdemeanor domestic violence offense was originally charged as a felony offense in superior court.

(5) A person may petition a court for a second deferred prosecution while still under the jurisdiction of a court for the person's first deferred prosecution; however, the first deferred prosecution shall be revoked prior to the entry of the second deferred prosecution.

(6) A person may not be on two deferred prosecutions at the same time unless separate offenses are committed within seven

days of each other and the person petitions to consolidate each offense into a single deferred prosecution.

(7) A person charged with a misdemeanor or gross misdemeanor for a violation of RCW 46.61.502 or 46.61.504 who does not participate in a deferred prosecution for his or her first violation of RCW 46.61.502 or 46.61.504 remains eligible to petition the court for a deferred prosecution pursuant to the terms of this section and specific findings made under RCW 10.05.020. Such person shall not be eligible for a deferred prosecution more than once.

Sec. 12. RCW 10.05.015 and 2019 c 263 s 702 are each amended to read as follows:

At the time of arraignment a person charged with a violation of RCW 46.61.502 or 46.61.504 or a misdemeanor or gross misdemeanor domestic violence offense may be given a statement by the court that explains the availability, operation, and effects of the deferred prosecution (~~(program)~~).

Sec. 13. RCW 10.05.020 and 2021 c 215 s 115 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the petitioner shall allege under oath in the petition that the wrongful conduct charged is the result of or caused by substance use disorders or mental (~~problems~~) health disorders or domestic violence behavior problems for which the person is in need of treatment and unless treated the probability of future recurrence is great, along with a statement that the person agrees to pay the cost of a diagnosis and treatment of the alleged problem or problems if financially able to do so. The petition shall also contain a case history and written assessment prepared by an approved (~~substance use disorder treatment program~~) behavioral health agency, approved for mental health services or substance use disorder services, as designated in chapter 71.24 RCW (~~if the petition alleges a substance use disorder, by an approved mental health center if the petition alleges a mental problem,~~) or by a state-certified domestic violence treatment provider pursuant to RCW 43.20A.735 (~~if the petition alleges a domestic violence behavior problem~~).

(2) In the case of a petitioner charged with a misdemeanor or gross misdemeanor under chapter 9A.42 RCW, the petitioner shall allege under oath in the petition that the petitioner is the natural or adoptive parent of the alleged victim; that the wrongful conduct charged is the result of parenting problems for which the petitioner is in need of services; that the petitioner is in need of child welfare services under chapter 74.13 RCW to improve his or her parenting skills in order to better provide his or her child or children with the basic necessities of life; that the petitioner wants to correct his or her conduct to reduce the likelihood of harm to his or her minor children; that in the absence of child welfare services the petitioner may be unable to reduce the likelihood of harm to his or her minor children; and that the petitioner has cooperated with the department of (~~social and health services~~) children, youth, and families to develop a plan to receive appropriate child welfare services; along with a statement that the person agrees to pay the cost of the services if he or she is financially able to do so. The petition shall also contain a case history and a written service plan from the department of (~~social and health services~~) children, youth, and families.

(3) Before entry of an order deferring prosecution, a petitioner shall be advised of his or her rights as an accused and execute, as a condition of receiving treatment, a statement that contains: (a) An acknowledgment of his or her rights; (b) an acknowledgment and waiver of the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; (c) a stipulation to the admissibility and sufficiency of the facts contained in the

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written police report; and (d) an acknowledgment that the statement will be entered and used to support a finding of guilty if the court finds cause to revoke the order granting deferred prosecution. The petitioner shall also be advised that he or she may, if he or she proceeds to trial and is found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may be ordered upon the condition that he or she seek treatment and, further, that he or she may seek treatment from public and private agencies at any time without regard to whether or not he or she is found guilty of the offense charged. He or she shall also be advised that the court will not accept a petition for deferred prosecution from a person who: (i) Sincerely believes that he or she is innocent of the charges; (ii) sincerely believes that he or she does not, in fact, suffer from ~~((alcoholism, drug addiction, mental problems))~~ a substance use disorder, a mental health disorder, or domestic violence behavior problems; or (iii) in the case of a petitioner charged under chapter 9A.42 RCW, sincerely believes that he or she does not need child welfare services.

(4) Before entering an order deferring prosecution, the court shall make specific findings that: (a) The petitioner has stipulated to the admissibility and sufficiency of the facts as contained in the written police report; (b) the petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing on the underlying offense or offenses held subsequent to revocation of the order granting deferred prosecution; (c) the petitioner has acknowledged and waived the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; and (d) the petitioner's statements were made knowingly and voluntarily. Such findings shall be included in the order granting deferred prosecution.

Sec. 14. RCW 10.05.030 and 2021 c 215 s 116 are each amended to read as follows:

The arraigning judge upon consideration of the petition and with the concurrence of the prosecuting attorney may continue the arraignment and refer such person for a diagnostic investigation and evaluation to:

(1) ~~((An approved substance use disorder treatment program))~~ A state-approved behavioral health agency, approved for substance use disorder services, as designated in chapter 71.24 RCW if the petition alleges a substance use disorder;

(2) ~~((An approved mental health center))~~ A state-approved behavioral health agency, approved for mental health services, as designated in chapter 71.24 RCW, if the petition alleges a mental ~~(problem))~~ health disorder;

(3) The department of ~~((social and health services))~~ children, youth, and families if the petition is brought under RCW 10.05.020(2); or

(4) An approved state-certified domestic violence treatment provider pursuant to RCW 43.20A.735 if the petition alleges a domestic violence behavior problem.

Sec. 15. RCW 10.05.040 and 2018 c 201 s 9005 are each amended to read as follows:

The program to which such person is referred, or the department of ~~((social and health services))~~ children, youth, and families if the petition is brought under RCW 10.05.020(2), shall conduct an investigation and examination to determine:

- (1) Whether the person suffers from the problem described;
- (2) Whether the problem is such that if not treated, or if no child welfare services are provided, there is a probability that similar misconduct will occur in the future;
- (3) Whether extensive and long term treatment is required;
- (4) Whether effective treatment or child welfare services for the person's problem are available; and

(5) Whether the person is ~~((amenable))~~: (a) Amenable to treatment as demonstrated by (i) completion of residential treatment; (ii) completion of a minimum of 18 hours of intensive outpatient treatment, for substance use disorder petitions; (iii) completion of a minimum of six mental health sessions, for mental health disorder petitions; or (iv) completion of a minimum of six domestic violence treatment sessions for domestic violence petitions; or (b) willing to cooperate with child welfare services. The requirement for completing a minimum number of sessions may be waived if the court finds good cause.

Sec. 16. RCW 10.05.050 and 2018 c 201 s 9006 are each amended to read as follows:

(1) The program, or the department of ~~((social and health services))~~ children, youth, and families if the petition is brought under RCW 10.05.020(2), shall make a written report to the court stating its findings and recommendations after the examination required by RCW 10.05.040. If its findings and recommendations support treatment or the implementation of a child welfare service plan, it shall also recommend a treatment or service plan setting out:

- (a) The type;
- (b) Nature;
- (c) Length;
- (d) A treatment or service time schedule; and
- (e) Approximate cost of the treatment or child welfare services.

(2) In the case of a child welfare service plan, the plan shall be designed in a manner so that a parent who successfully completes the plan will not be likely to withhold the basic necessities of life from his or her child.

(3) The report with the treatment or service plan shall be filed with the court and a copy given to the petitioner and petitioner's counsel. A copy of the treatment or service plan shall be given to the prosecutor by petitioner's counsel at the request of the prosecutor. The evaluation facility, or the department of ~~((social and health services))~~ children, youth, and families if the petition is brought under RCW 10.05.020(2), making the written report shall append to the report a commitment by the treatment program or the department of ~~((social and health services))~~ children, youth, and families that it will provide the treatment or child welfare services in accordance with this chapter. The facility or the service provider shall agree to provide the court with a statement ~~((every three months for the first year and every six months for the second year))~~ monthly regarding (a) the petitioner's cooperation with the treatment or child welfare service plan proposed and (b) the petitioner's progress or failure in treatment or child welfare services. These statements shall be made as a declaration by the person who is personally responsible for providing the treatment or services.

Sec. 17. RCW 10.05.060 and 2009 c 135 s 1 are each amended to read as follows:

If the report recommends treatment, the court shall examine the treatment plan. If it approves the plan and the petitioner agrees to comply with its terms and conditions and agrees to pay the cost thereof, if able to do so, or arrange for the treatment, an entry shall be made upon the person's court docket showing that the person has been accepted for deferred prosecution. A copy of the treatment plan shall be filed with the court. If the charge be one that an abstract of the docket showing the charge, the date of the violation for which the charge was made, and the date of petitioner's acceptance is required to be sent to the department of licensing, an abstract shall be sent, and the department of licensing shall make an entry of the charge and of the petitioner's acceptance for deferred prosecution on the department's driving record of the petitioner. The entry is not a conviction for purposes of Title 46 RCW. Upon receipt of the abstract of the docket, the

department shall issue notice that 45 days after receipt, the petitioner must apply for a probationary license in accordance with RCW 46.20.355, and the petitioner's driver's license shall be on probationary status for five years from the date of the violation that gave rise to the charge. The department shall maintain the record ~~((for ten years from date of entry of the order granting deferred prosecution))~~ consistent with the requirements of RCW 46.01.260.

Sec. 18. RCW 10.05.090 and 2010 c 269 s 10 are each amended to read as follows:

If a petitioner, who has been accepted for a deferred prosecution, fails or neglects to carry out and fulfill any term or condition of the petitioner's treatment plan or any term or condition imposed in connection with the installation of an interlock or other device under RCW 46.20.720, the facility, center, institution, or agency administering the treatment or the entity administering the use of the device, shall immediately report such breach to the court, the prosecutor, and the petitioner or petitioner's attorney of record, together with its recommendation. The court upon receiving such a report shall hold a hearing to determine whether the petitioner should be removed from the deferred prosecution ~~((program))~~. At the hearing, evidence shall be taken of the petitioner's alleged failure to comply with the treatment plan or device installation and the petitioner shall have the right to present evidence on his or her own behalf. The court shall either order that the petitioner continue on the treatment plan or be removed from deferred prosecution. If removed from deferred prosecution, the court shall enter judgment pursuant to RCW 10.05.020 and, if the charge for which the deferred prosecution was granted was a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify the department of licensing of the removal and entry of judgment.

Sec. 19. RCW 10.05.100 and 1998 c 208 s 2 are each amended to read as follows:

If a petitioner is subsequently convicted of a similar offense that was committed while the petitioner was in a deferred prosecution ~~((program))~~, upon notice the court shall remove the petitioner's docket from the deferred prosecution file and the court shall enter judgment pursuant to RCW 10.05.020.

Sec. 20. RCW 10.05.120 and 2019 c 263 s 705 are each amended to read as follows:

(1) Three years after receiving proof of successful completion of the ~~((two-year))~~ approved treatment ~~((program))~~ plan, and following proof to the court that the petitioner has complied with the conditions imposed by the court following successful completion of the ~~((two-year))~~ approved treatment ~~((program))~~ plan, but not before five years following entry of the order of deferred prosecution pursuant to a petition brought under RCW 10.05.020(1), the court shall dismiss the charges pending against the petitioner.

(2) When a deferred prosecution is ordered pursuant to a petition brought under RCW 10.05.020(2) and the court has received proof that the petitioner has successfully completed the child welfare service plan, or the plan has been terminated because the alleged victim has reached his or her majority and there are no other minor children in the home, the court shall dismiss the charges pending against the petitioner: PROVIDED, That in any case where the petitioner's parental rights have been terminated with regard to the alleged victim due to abuse or neglect that occurred during the pendency of the deferred prosecution, the termination shall be per se evidence that the petitioner did not successfully complete the child welfare service plan.

~~((3) When a deferred prosecution is ordered for a petition brought under RCW 10.05.020(1) involving a domestic violence~~

~~behavior problem and the court has received proof that the petitioner has successfully completed the domestic violence treatment plan, the court shall dismiss the charges pending against the petitioner.))~~

Sec. 21. RCW 10.05.140 and 2019 c 263 s 706 are each amended to read as follows:

(1) As a condition of granting a deferred prosecution petition for a violation of RCW 46.61.502 or 46.61.504, the court shall order that the petitioner shall not operate a motor vehicle upon the public highways without a valid operator's license and proof of liability insurance. The amount of liability insurance shall be established by the court at not less than that established by RCW 46.29.490. As a condition of granting a deferred prosecution petition on any ~~((alcohol dependency))~~ substance use disorder-based case, the court shall also order the installation of an ignition interlock under RCW 46.20.720. The required periods of use of the interlock shall be not less than the periods provided for in RCW 46.20.720. As a condition of granting a deferred prosecution petition, the court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160. To help ensure continued sobriety and reduce the likelihood of reoffense, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for ~~((alcoholism or drugs))~~ substance use disorder, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. The court may terminate the deferred prosecution ~~((program))~~ upon violation of the deferred prosecution order.

(2) As a condition of granting a deferred prosecution petition for a case involving a domestic violence behavior problem:

(a) The court shall order the petitioner not to possess firearms and order the petitioner to surrender firearms under RCW 9.41.800; and

(b) The court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160. In addition, to help ensure continued sobriety and reduce the likelihood of reoffense in co-occurring domestic violence and substance ~~((abuse))~~ use disorder or mental health disorder cases, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for ~~((alcoholism or drugs))~~ substance use disorder, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. The court may terminate the deferred prosecution ~~((program))~~ upon violation of the deferred prosecution order.

Sec. 22. RCW 10.05.150 and 2016 sp.s. c 29 s 527 are each amended to read as follows:

~~(1) A deferred prosecution ((program)) for ((alcoholism)) either substance use disorder or mental health co-occurring disorder shall be for a two-year period and shall include, but not be limited to, the following requirements:~~

~~((4)) (a) Total abstinence from alcohol and all other nonprescribed mind-altering drugs;~~

~~((2) Participation in an intensive inpatient or intensive outpatient program in a state approved substance use disorder treatment program;~~

~~(3) Participation in a minimum of two meetings per week of an alcoholism self help recovery support group, as determined by the assessing agency, for the duration of the treatment program;~~

~~(4) Participation in an alcoholism self help recovery support group, as determined by the assessing agency, from the date of court approval of the plan to entry into intensive treatment;~~

~~(5) Not less than weekly approved outpatient counseling group~~

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~~or individual, for a minimum of six months following the intensive phase of treatment;~~

~~(6) Not less than monthly outpatient contact, group or individual, for the remainder of the two-year deferred prosecution period;~~

~~(7) The decision to include the use of prescribed drugs, including disulfiram, as a condition of treatment shall be reserved to the treating facility and the petitioner's physician;~~

~~(8)) (b) All treatment within the purview of this section shall occur within or be approved by a state-approved ((substance use disorder treatment program)) behavioral health agency as described in chapter ((70.96A)) 71.24 RCW;~~

~~((9)) (c) Signature of the petitioner agreeing to the terms and conditions of the treatment program;~~

~~(d) Periodic, random urinalysis or breath analysis;~~

~~(e) If the petitioner fails to remain abstinent, a full substance use disorder reassessment and recommended treatment;~~

~~(f) No less than weekly approved outpatient counseling, whether group or individual, for a minimum of six months following the intensive phase of treatment;~~

~~(g) No less than monthly outpatient contact, whether group or individual, for the remainder of the two-year deferred prosecution period; and~~

~~(h) The decision to include the use of prescribed drugs, including disulfiram, as a condition of treatment shall be reserved to the treating facility and the petitioner's physician.~~

~~(2) A deferred prosecution for substance use disorder shall include the following requirements:~~

~~(a) Completion of an intensive outpatient treatment program or residential inpatient treatment program, depending on the severity of the diagnosis; and~~

~~(b) Participation in a minimum of two meetings per week of a substance use disorder self-help recovery support group, as determined by the assessing agency, for the duration of the treatment program.~~

~~(3) A deferred prosecution for mental health co-occurring disorder shall include the following requirements:~~

~~(a) Completion of the requirements described in subsection (2) of this section, or completion of an outpatient program as determined by the petitioner's diagnostic evaluation; and~~

~~(b) Completion of individual or group mental health services.~~

Sec. 23. RCW 10.05.155 and 2019 c 263 s 708 are each amended to read as follows:

A deferred prosecution ((program)) for domestic violence behavior, or domestic violence co-occurring with substance abuse or mental health, must include, but is not limited to, the following requirements:

(1) Completion of a risk assessment;

(2) Participation in the level of treatment recommended by the program as outlined in the current treatment plan;

(3) Compliance with the contract for treatment;

(4) Participation in any ancillary or co-occurring treatments that are determined to be necessary for the successful completion of the domestic violence intervention treatment including, but not limited to, mental health or substance use treatment;

(5) Domestic violence intervention treatment within the purview of this section to be completed with a state-certified domestic violence intervention treatment program;

(6) Signature of the petitioner agreeing to the terms and conditions of the treatment program;

(7) Proof of compliance with any active order to surrender weapons issued in this program or related civil protection orders or no-contact orders.

NEW SECTION. Sec. 24. A new section is added to chapter 10.05 RCW to read as follows:

A deferred prosecution for mental health disorder where the wrongful conduct did not involve, and was not caused by, alcohol, drugs, or a substance use disorder, shall include treatment recommended by a state-approved mental health provider.

Sec. 25. RCW 10.05.170 and 1991 c 247 s 2 are each amended to read as follows:

As a condition of granting deferred prosecution, the court may order supervision of the petitioner during the period of deferral and may levy a monthly assessment upon the petitioner as provided in RCW 10.64.120. In a jurisdiction with a probation department, the court may appoint the probation department to supervise the petitioner. In a jurisdiction without a probation department, the court may appoint an appropriate person or agency to supervise the petitioner. A supervisor appointed under this section shall be required to do at least the following:

(1) If the charge for which deferral is granted relates to operation of a motor vehicle, at least once every ((six)) three months request ((from the department of licensing)) an abstract of the petitioner's driving record; ((and))

(2) At least once every month make contact with the petitioner ((or with any agency to which the petitioner has been directed for treatment as a part of the deferral)) until treatment is completed;

(3) Review the petitioner's criminal history at a minimum of every 90 days until the end of the deferral period; and

(4) Report known violations of supervision or law and noncompliance with conditions of the deferred prosecution to the court within five business days or as soon as practicable.

Sec. 26. RCW 46.20.355 and 2020 c 330 s 8 are each amended to read as follows:

(1) Upon receipt of an abstract indicating a deferred prosecution has been granted under RCW 10.05.060, or upon receipt of a notice of conviction of RCW 46.61.502 or 46.61.504, the department of licensing shall issue notice that 45 days after receipt, the person must apply for a probationary license, and order the person to surrender any nonprobationary Washington state driver's license that may be in his or her possession. The department shall revoke the license, permit, or privilege to drive of any person who fails to surrender it as required by this section for one year, unless the license has been previously surrendered to the department, a law enforcement officer, or a court, or the person has completed an affidavit of lost, stolen, destroyed, or previously surrendered license, such revocation to take effect ((thirty)) 30 days after notice is given of the requirement for license surrender.

(2) The department shall place a person's driving privilege in probationary status as required by RCW 10.05.060 or 46.61.5055 for a period of five years from the date the probationary status is required to go into effect.

(3) Following receipt of an abstract indicating a deferred prosecution has been granted under RCW 10.05.060, or upon reinstatement or reissuance of a driver's license suspended or revoked as the result of a conviction of RCW 46.61.502 or 46.61.504, the department shall require the person to obtain a probationary license in order to operate a motor vehicle in the state of Washington, except as otherwise exempt under RCW 46.20.025. The department shall not issue the probationary license unless the person is otherwise qualified for licensing, and the person must renew the probationary license on the same cycle as the person's regular license would have been renewed until the expiration of the five-year probationary status period imposed under subsection (2) of this section.

(4) If a person is eligible for full credit under RCW 46.61.5055(9)(b)(ii) and, by the date specified in the notice issued under RCW 46.20.245, has completed the requirements under RCW 46.20.311 and paid the fee under subsection (5) of this

section, the department shall issue a probationary license on the date specified in the notice with no further action required of the person.

(5) For each original issue or renewal of a probationary license under this section, the department shall charge a fee of (~~fifty dollars~~) \$50 in addition to any other licensing fees required. Except for when renewing a probationary license, the department shall waive the requirement to obtain an additional probationary license and the (~~fifty-dollar~~) \$50 fee if the person has a probationary license in his or her possession at the time a new probationary license is required.

(6) A probationary license shall enable the department and law enforcement personnel to determine that the person is on probationary status. The fact that a person's driving privilege is in probationary status or that the person has been issued a probationary license shall not be a part of the person's record that is available to insurance companies.

Sec. 27. RCW 46.20.385 and 2020 c 330 s 9 are each amended to read as follows:

(1)(a) Any person licensed under this chapter or who has a valid driver's license from another state, who is convicted of: (i) A violation of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute or ordinance, or (ii) a violation of RCW 46.61.520(1)(a) or an equivalent local or out-of-state statute or ordinance, or (iii) a conviction for a violation of RCW 46.61.520(1) (b) or (c) if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520(1)(a), or (iv) RCW 46.61.522(1)(b) or an equivalent local or out-of-state statute or ordinance, or (v) RCW 46.61.522(1) (a) or (c) if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.522(1)(b) committed while under the influence of intoxicating liquor or any drug, or (vi) who has had or will have his or her license suspended, revoked, or denied under RCW 46.20.3101, or has had his or her license suspended, revoked, or denied under RCW 46.61.5055(1)(c), or who is otherwise permitted under subsection (8) of this section, may submit to the department an application for an ignition interlock driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue an ignition interlock driver's license.

(b) A person may apply for an ignition interlock driver's license anytime, including immediately after receiving the notices under RCW 46.20.308 or after his or her license is suspended, revoked, or denied.

(c) An applicant under this subsection shall provide proof to the satisfaction of the department that a functioning ignition interlock device has been installed on all vehicles operated by the person.

(i) The department shall require the person to maintain the device on all vehicles operated by the person and shall restrict the person to operating only vehicles equipped with the device, for the remainder of the period of suspension, revocation, or denial, unless otherwise permitted under RCW 46.20.720(6).

(ii) Subject to any periodic renewal requirements established by the department under this section and subject to any applicable compliance requirements under this chapter or other law, an ignition interlock driver's license granted upon a suspension or revocation under RCW 46.61.5055 or 46.20.3101 extends through the remaining portion of any concurrent or consecutive suspension or revocation that may be imposed as the result of administrative action and criminal conviction arising out of the same incident.

(2) An applicant for an ignition interlock driver's license who qualifies under subsection (1) of this section is eligible to receive a license only if the applicant files satisfactory proof of financial

responsibility under chapter 46.29 RCW.

(3) Upon receipt of evidence that a holder of an ignition interlock driver's license granted under this subsection no longer has a functioning ignition interlock device installed on all vehicles operated by the driver, the director shall give written notice by first-class mail to the driver that the ignition interlock driver's license shall be canceled. If at any time before the cancellation goes into effect the driver submits evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new ignition interlock driver's license upon submittal of evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver.

(4) A person aggrieved by the decision of the department on the application for an ignition interlock driver's license may request a hearing as provided by rule of the department.

(5) The director shall cancel an ignition interlock driver's license after receiving notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, no longer meets the eligibility requirements, or has been convicted of or found to have committed a separate offense or any other act or omission that under this chapter would warrant suspension or revocation of a regular driver's license. The department must give notice of the cancellation as provided under RCW 46.20.245. A person whose ignition interlock driver's license has been canceled under this section may reapply for a new ignition interlock driver's license if he or she is otherwise qualified under this section and pays the fee required under RCW 46.20.380.

(6)(a) Unless costs are waived by the ignition interlock company or the person is indigent under RCW 10.101.010, the applicant shall pay the cost of installing, removing, and leasing the ignition interlock device and shall pay an additional fee of twenty-one dollars per month. Payments shall be made directly to the ignition interlock company. The company shall remit the additional fee to the department, except that the company may retain (~~twenty-five~~) 25 cents per month of the additional fee to cover the expenses associated with administering the fee.

(b) The department shall deposit the proceeds of the twenty-one dollar fee into the ignition interlock device revolving account. Expenditures from the account may be used only to administer and operate the ignition interlock device revolving account program. The department shall adopt rules to provide monetary assistance according to greatest need and when funds are available.

(7) The department shall adopt rules to implement ignition interlock licensing. The department shall consult with the administrative office of the courts, the state patrol, the Washington association of sheriffs and police chiefs, ignition interlock companies, and any other organization or entity the department deems appropriate.

(8)(a) Any person licensed under this chapter who is convicted of a violation of RCW 46.61.500 when the charge was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, may submit to the department an application for an ignition interlock driver's license under this section.

(b) A person who does not have any driver's license under this chapter, but who would otherwise be eligible under this section to apply for an ignition interlock license, may submit to the department an application for an ignition interlock license. The department may require the person to take any driver's licensing examination under this chapter and may require the person to also apply and qualify for a temporary restricted driver's license under

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RCW 46.20.391.

Sec. 28. RCW 46.20.720 and 2020 c 330 s 10 are each amended to read as follows:

(1) **Ignition interlock restriction.** The department shall require that a person may drive only a motor vehicle equipped with a functioning ignition interlock device:

(a) **Pretrial release.** Upon receipt of notice from a court that an ignition interlock device restriction has been imposed under RCW 10.21.055;

(b) **Ignition interlock driver's license.** As required for issuance of an ignition interlock driver's license under RCW 46.20.385;

(c) **Deferred prosecution.** Upon receipt of notice from a court that the person is participating in a deferred prosecution program under RCW 10.05.020 for a violation of:

(i) RCW 46.61.502 or 46.61.504 or an equivalent local ordinance; or

(ii) RCW 46.61.5249 or 46.61.500 or an equivalent local ordinance if the person would be required under RCW 46.61.5249(4) or 46.61.500(3) (a) or (b) to install an ignition interlock device on all vehicles operated by the person in the event of a conviction;

(d) **Post conviction.** After any applicable period of mandatory suspension, revocation, or denial of driving privileges, or upon fulfillment of day-for-day credit under RCW 46.61.5055(9)(b)(ii) for a suspension, revocation, or denial of driving privileges:

(i) Due to a conviction of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute or ordinance; or

(ii) Due to a conviction of a violation of RCW 46.61.5249 or 46.61.500 or an equivalent local ordinance if the person is required under RCW 46.61.5249(4) or 46.61.500(3) (a) or (b) to install an ignition interlock device on all vehicles operated by the person; or

(e) **Court order.** Upon receipt of an order by a court having jurisdiction that a person charged or convicted of any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle may drive only a motor vehicle equipped with a functioning ignition interlock. The court shall establish a specific alcohol set point at which the ignition interlock will prevent the vehicle from being started. The court shall also establish the period of time for which ignition interlock use will be required.

(2) **Alcohol set point.** Unless otherwise specified by the court for a restriction imposed under subsection (1)(e) of this section, the ignition interlock device shall have an alcohol set point that prevents the motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.020 or more.

(3) **Duration of restriction.** A restriction imposed under:

(a) Subsection (1)(a) of this section shall remain in effect until:

(i) The court has authorized the removal of the device under RCW 10.21.055; or

(ii) The department has imposed a restriction under subsection (1)(b), (c), or (d) of this section arising out of the same incident.

(b) Subsection (1)(b) of this section remains in effect during the validity of any ignition interlock driver's license that has been issued to the person.

(c) Subsection (1)(c)(i) or (d)(i) of this section shall be for no less than:

(i) For a person who has not previously been restricted under this subsection, a period of one year;

(ii) For a person who has previously been restricted under (c)(i) of this subsection, a period of five years;

(iii) For a person who has previously been restricted under (c)(ii) of this subsection, a period of ~~((ten))~~ 10 years.

The restriction of a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and who committed the offense while one or more passengers under the age of ~~((sixteen))~~ 16 were in the vehicle shall be extended for an additional period as required by RCW 46.61.5055(6)(a).

For purposes of determining a period of restriction for a person restricted pursuant to a conviction under (d) of this subsection, a restriction based on a deferred prosecution under subsection (1)(c) of this section arising out of the same incident is not considered a prior restriction for purposes of this subsection.

(d) Subsection (1)(c)(ii) or (d)(ii) of this section shall be for a period of no less than six months.

(e) The period of restriction under (c) or (d) of this subsection shall be extended by ~~((one hundred eighty))~~ 180 days whenever the department receives notice that the restricted person has been convicted under RCW 46.20.740 or 46.20.750. If the period of restriction under (c) or (d) of this subsection has been fulfilled and cannot be extended, the department must add a new ~~((one hundred eighty day))~~ 180-day restriction that is imposed from the date of conviction and is subject to the requirements for removal under subsection (4) of this section.

(f) Subsection (1)(e) of this section shall remain in effect for the period of time specified by the court.

(g) The period of restriction under (c) and (d) of this subsection based on incidents occurring on or after June 9, 2016, must be tolled for any period in which the person does not have an ignition interlock device installed on a vehicle owned or operated by the person unless the person receives a determination from the department that the person is unable to operate an ignition interlock device due to a physical disability. For all drivers restricted under this section with incidents and restriction start dates prior to June 9, 2016, a driver may apply to waive the restriction by applying for a determination from the department that the person is unable to operate an ignition interlock device due to a physical disability. The department's determination that a person is unable to operate an ignition interlock device must be reasonable and be based upon good and substantial evidence. This determination is subject to review by a court of competent jurisdiction. The department may charge a person seeking a medical exemption under this subsection a reasonable fee for the assessment.

(4) **Requirements for removal.** A restriction imposed under subsection (1)(c) or (d) of this section shall remain in effect until the department receives a declaration from the person's ignition interlock device vendor, in a form provided or approved by the department, certifying the following:

(a) That there have been none of the following incidents in the ~~((one hundred eighty))~~ 180 consecutive days prior to the date of release:

(i) Any attempt to start the vehicle with a breath alcohol concentration of 0.04 or more unless a subsequent test performed within ~~((ten))~~ 10 minutes registers a breath alcohol concentration lower than 0.04 and the digital image confirms the same person provided both samples;

(ii) Failure to take any random test unless a review of the digital image confirms that the vehicle was not occupied by the driver at the time of the missed test;

(iii) Failure to pass any random retest with a breath alcohol concentration of lower than 0.020 unless a subsequent test performed within ~~((ten))~~ 10 minutes registers a breath alcohol concentration lower than 0.020, and the digital image confirms the same person provided both samples;

(iv) Failure of the person to appear at the ignition interlock device vendor when required for maintenance, repair, calibration,

monitoring, inspection, or replacement of the device; or

(v) Removal of the ignition interlock device by a person other than an ignition interlock technician certified by the Washington state patrol; and

(b) That the ignition interlock device was inspected at the conclusion of the ~~((one hundred eighty day))~~ 180-day period by an ignition interlock technician certified by the Washington state patrol and no evidence was found that the device was tampered with in the manner described in RCW 46.20.750.

(5) **Day-for-day credit.** (a) The time period during which a person has an ignition interlock device installed in order to meet the requirements of subsection (1)(b) of this section shall apply on a day-for-day basis toward satisfying the period of time the ignition interlock device restriction is imposed under subsection (1)(c) or (d) of this section arising out of the same incident.

(b) The department must also give the person a day-for-day credit for any time period, beginning from the date of the incident, during which the person kept an ignition interlock device installed on all vehicles the person operates, other than those subject to the employer exemption under subsection (6) of this section.

(c) If the day-for-day credit granted under this subsection equals or exceeds the period of time the ignition interlock device restriction is imposed under subsection (1)(c) or (d) of this section arising out of the same incident, and the person has already met the requirements for removal of the device under subsection (4) of this section, the department may waive the requirement that a device be installed or that the person again meet the requirements for removal.

(6) **Employer exemption.** (a) Except as provided in (b) of this subsection, the installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer, and driven at the direction of a person's employer as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to chapter 5.50 RCW from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer or other persons during working hours. When the department receives a declaration under this subsection, it shall attach or imprint a notation on the person's driving record stating that the employer exemption applies.

(b) The employer exemption does not apply when the employer's vehicle is assigned exclusively to the restricted driver and used solely for commuting to and from employment.

(c) The employer exemption does not apply to a person who is self-employed unless the person's vehicle is used exclusively for the person's employment.

(7) **Ignition interlock device revolving account.** In addition to any other costs associated with the use of an ignition interlock device imposed on the person restricted under this section, the person shall pay an additional fee of ~~((twenty one dollars))~~ \$21 per month. Payments must be made directly to the ignition interlock company. The company shall remit the additional fee to the department to be deposited into the ignition interlock device revolving account, except that the company may retain ~~((twenty five))~~ 25 cents per month of the additional fee to cover the expenses associated with administering the fee. The department may waive the monthly fee if the person is indigent under RCW 10.101.010.

(8) **Foreign jurisdiction.** For a person restricted under this section who is residing outside of the state of Washington, the department may accept verification of installation of an ignition interlock device by an ignition interlock company authorized to do business in the jurisdiction in which the person resides,

provided the device meets any applicable requirements of that jurisdiction. The department may waive one or more requirements for removal under subsection (4) of this section if compliance with the requirement or requirements would be impractical in the case of a person residing in another jurisdiction, provided the person is in compliance with any equivalent requirement of that jurisdiction. The department may waive the monthly fee required by subsection (7) of this section if collection of the fee would be impractical in the case of a person residing in another jurisdiction.

Sec. 29. RCW 46.20.740 and 2020 c 330 s 11 are each amended to read as follows:

(1) The department shall attach or imprint a notation on the driving record of any person restricted under RCW 46.20.720, 46.61.5055, or 10.05.140 stating that the person may operate only a motor vehicle equipped with a functioning ignition interlock device. The department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person seeking reinstatement. If, based upon notification from the interlock provider or otherwise, the department determines that an ignition interlock required under this section is no longer installed or functioning as required, the department shall suspend the person's license or privilege to drive. Whenever the license or driving privilege of any person is suspended or revoked as a result of noncompliance with an ignition interlock requirement, the suspension shall remain in effect until the person provides notice issued by a company doing business in the state that a vehicle owned or operated by the person is equipped with a functioning ignition interlock device.

(2) It is a gross misdemeanor for a person with such a notation on his or her driving record to operate a motor vehicle that is not so equipped, unless the notation resulted from a restriction imposed as a condition of release and the restriction has been released by the court prior to driving. Any time a person is convicted under this section, the court shall immediately notify the department for purposes of RCW 46.20.720(3)(e). It is an affirmative defense, which the defendant must prove by a preponderance of the evidence, that the employer exemption in RCW 46.20.720(6) applies. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(3) Any sentence imposed for a violation of subsection (2) of this section shall be served consecutively with any sentence imposed under RCW 46.20.750, 46.61.502, 46.61.504, or 46.61.5055.

Sec. 30. RCW 46.52.130 and 2022 c 182 s 206 are each amended to read as follows:

Upon a proper request, the department may only furnish information contained in an abstract of a person's driving record as permitted under this section.

(1) **Contents of abstract of driving record.** An abstract of a person's driving record, whenever possible, must include:

(a) An enumeration of motor vehicle accidents in which the person was driving, including:

(i) The total number of vehicles involved;

(ii) Whether the vehicles were legally parked or moving;

(iii) Whether the vehicles were occupied at the time of the accident; and

(iv) Whether the accident resulted in a fatality;

(b) Any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law;

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(c) The status of the person's driving privilege in this state; and

(d) Any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

(2) **Release of abstract of driving record.** Unless otherwise required in this section, the release of an abstract does not require a signed statement by the subject of the abstract. An abstract of a person's driving record may be furnished to the following persons or entities:

(a) **Named individuals.** (i) An abstract of the full driving record maintained by the department may be furnished to the individual named in the abstract.

(ii) Nothing in this section prevents a court from providing a copy of the driver's abstract to the individual named in the abstract or that named individual's attorney, provided that the named individual has a pending or open infraction or criminal case in that court. A pending case includes criminal cases that have not reached a disposition by plea, stipulation, trial, or amended charge. An open infraction or criminal case includes cases on probation, payment agreement or subject to, or in collections. A probation clerk or probation officer employed by the court may also provide a copy of the driver's abstract to a treatment agency in accordance with (f) of this subsection. Courts may charge a reasonable fee for the production and copying of the abstract for the individual, unless the person is indigent as defined in RCW 10.101.010.

(b) **Employers or prospective employers.** (i) An abstract of the full driving record maintained by the department may be furnished to an employer or prospective employer or agents acting on behalf of an employer or prospective employer of the named individual for purposes related to driving by the individual as a condition of employment or otherwise at the direction of the employer.

(ii) The department may provide employers or their agents a three-year insurance carrier driving record of existing employees only for the purposes of sharing the driving record with its insurance carrier for underwriting. Employers may not provide the employees' full driving records to its insurance carrier.

(iii) An abstract of the full driving record maintained by the department may be furnished to an employer or prospective employer or the agent(s) acting on behalf of an employer or prospective employer of the named individual for purposes unrelated to driving by the individual when a driving record is required by federal or state law, or the employee or prospective employee will be handling heavy equipment or machinery.

(iv) Release of an abstract of the driving record of an employee or prospective employee requires a statement signed by: (A) The employee or prospective employee that authorizes the release of the record; and (B) the employer attesting that the information is necessary for employment purposes related to driving by the individual as a condition of employment or otherwise at the direction of the employer. If the employer or prospective employer authorizes agents to obtain this information on their behalf, this must be noted in the statement. The statement must also note that any information contained in the abstract related to an adjudication that is subject to a court order sealing the juvenile record of an employee or prospective employee may not be used by the employer or prospective employer, or an agent authorized to obtain this information on their behalf, unless required by federal regulation or law. The employer or prospective employer must afford the employee or prospective employee an opportunity to demonstrate that an adjudication contained in the abstract is subject to a court order sealing the juvenile record.

(v) Upon request of the person named in the abstract provided under this subsection, and upon that same person furnishing

copies of court records ruling that the person was not at fault in a motor vehicle accident, the department must indicate on any abstract provided under this subsection that the person was not at fault in the motor vehicle accident.

(vi) No employer or prospective employer, nor any agents of an employer or prospective employer, may use information contained in the abstract related to an adjudication that is subject to a court order sealing the juvenile record of an employee or prospective employee for any purpose unless required by federal regulation or law. The employee or prospective employee must furnish a copy of the court order sealing the juvenile record to the employer or prospective employer, or the agents of the employer or prospective employer, as may be required to ensure the application of this subsection.

(c) **Volunteer organizations.** (i) An abstract of the full driving record maintained by the department may be furnished to a volunteer organization or an agent for a volunteer organization for which the named individual has submitted an application for a position that would require driving by the individual at the direction of the volunteer organization.

(ii) Release of an abstract of the driving record of a prospective volunteer requires a statement signed by: (A) The prospective volunteer that authorizes the release of the record; and (B) the volunteer organization attesting that the information is necessary for purposes related to driving by the individual at the direction of the volunteer organization. If the volunteer organization authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

(d) **Transit authorities.** An abstract of the full driving record maintained by the department may be furnished to an employee or agents of a transit authority checking prospective or existing volunteer vanpool drivers for insurance and risk management needs.

(e) **Insurance carriers.** (i) An abstract of the driving record maintained by the department covering the period of not more than the last three years may be furnished to an insurance company or its agents:

(A) That has motor vehicle or life insurance in effect covering the named individual;

(B) To which the named individual has applied; or

(C) That has insurance in effect covering the employer or a prospective employer of the named individual.

(ii) The abstract provided to the insurance company must:

(A) Not contain any information related to actions committed by law enforcement officers or firefighters, as both terms are defined in RCW 41.26.030, or by Washington state patrol officers, while driving official vehicles in the performance of their occupational duty, or by registered tow truck operators as defined in RCW 46.55.010 in the performance of their occupational duties while at the scene of a roadside impound or recovery so long as they are not issued a citation. This does not apply to any situation where the vehicle was used in the commission of a misdemeanor or felony;

(B) Include convictions under RCW 46.61.5249 and 46.61.525, except that the abstract must report the convictions only as negligent driving without reference to whether they are for first or second degree negligent driving; and

(C) Exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract must show the deferred prosecution as well as the removal.

(iii) Any policy of insurance may not be canceled, nonrenewed, denied, or have the rate increased on the basis of information regarding an accident included in the abstract of a driving record, unless the policyholder was determined to be at fault.

(iv) Any insurance company or its agents, for underwriting purposes relating to the operation of commercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment. Any insurance company or its agents, for underwriting purposes relating to the operation of noncommercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of commercial motor vehicles. For the purposes of this subsection, "commercial motor vehicle" has the same meaning as in RCW 46.25.010(6).

(f) **Alcohol/drug assessment or treatment agencies.** An abstract of the full driving record maintained by the department (~~(covering the period of not more than the last five years)~~) may be furnished to an alcohol/drug assessment or treatment agency approved by the department of health to which the named individual has applied or been assigned for evaluation or treatment, for purposes of assisting employees in making a determination as to what level of treatment, if any, is appropriate, (~~(except that)~~) and the abstract must:

(i) Also include records of alcohol-related offenses, as defined in RCW 46.01.260(2) (~~(covering a period of not more than the last ten years)~~); and

(ii) Indicate whether an alcohol-related offense was originally charged as a violation of either RCW 46.61.502 or 46.61.504.

(g) **Attorneys—City attorneys, county prosecuting attorneys, and named individual's attorney of record.** An abstract of the full driving record maintained by the department, including whether a recorded violation is an alcohol-related offense, as defined in RCW 46.01.260(2), that was originally charged as a violation of either RCW 46.61.502 or 46.61.504, may be furnished to city attorneys, county prosecuting attorneys, or the named individual's attorney of record. City attorneys, county prosecuting attorneys, or the named individual's attorney of record may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.

(h) **State colleges, universities, or agencies, or units of local government.** An abstract of the full driving record maintained by the department may be furnished to (i) state colleges, universities, or agencies for employment and risk management purposes or (ii) units of local government authorized to self-insure under RCW 48.62.031, or their agents, for employment and risk management purposes. "Unit of local government" includes an insurance pool established under RCW 48.62.031.

(i) **Superintendent of public instruction.** (i) An abstract of the full driving record maintained by the department may be furnished to the superintendent of public instruction for review of public school bus driver records. The superintendent or superintendent's designee may discuss information on the driving record with an authorized representative of the employing school district for employment and risk management purposes.

(ii) The superintendent of public instruction is exempt from paying the fees related to the reviewing of records and the fee required in subsection (5) of this section.

(j) **State and federal agencies.** An abstract of the driving record maintained by the department may be furnished to state and federal agencies, or their agents, in carrying out its functions.

(k) **Transportation network companies.** An abstract of the full driving record maintained by the department may be furnished to a transportation network company or its agents acting on its behalf of the named individual for purposes related to driving by the individual as a condition of being a contracted driver.

(l) **Research.** (i) The department may furnish driving record

data to state agencies and bona fide scientific research organizations. The department may require review and approval by an institutional review board. For the purposes of this subsection, "research" means a planned and systematic sociological, psychological, epidemiological, biomedical, or other scientific investigation carried out by a state agency, or by a scientific research professional associated with a bona fide scientific research organization with an objective to contribute to scientific knowledge, the solution of social and health problems, or the evaluation of public benefit and service programs. This definition excludes methods of record analysis and data collection that are subjective, do not permit replication, and are not designed to yield reliable and valid results.

(ii) The state agency, or a scientific research professional associated with a bona fide scientific research organization, are exempt from paying the fees related to the reviewing of records and the fee required in subsection (5) of this section. However, the department may charge a cost-recovery fee for the actual cost of providing the data.

(3) **Reviewing of driving records.** (a) In addition to the methods described herein, the director may enter into a contractual agreement for the purpose of reviewing the driving records of existing employees for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that does not result in a net revenue loss to the state. Any information provided under this subsection must be treated in the same manner and is subject to the same restrictions as driving record abstracts.

(b) The department may provide reviewing services to the following entities:

(i) Employers for existing employees, or their agents;

(ii) Transit authorities for current vanpool drivers, or their agents;

(iii) Insurance carriers for current policyholders, or their agents;

(iv) State colleges, universities, or agencies, or units of local government, or their agents;

(v) The office of the superintendent of public instruction for school bus drivers statewide; and

(vi) Transportation network companies, or their agents.

(4) **Release to third parties prohibited.** (a) Any person or entity receiving an abstract of a person's driving record under subsection (2)(b) through (l) of this section shall use the abstract exclusively for his, her, or its own purposes or as otherwise expressly permitted under this section, and shall not divulge any information contained in the abstract to a third party.

(b) The following release of records to third parties are hereby authorized:

(i) Employers may divulge driving records to regulatory bodies, as defined by the department by rule, such as the United States department of transportation and the federal motor carrier safety administration.

(ii) Employers may divulge a three-year driving record to their insurance carrier for underwriting purposes.

(iii) Employers may divulge driving records to contracted motor carrier consultants for the purposes of ensuring driver compliance and risk management.

(5) **Fees.** (a) The director shall collect a \$15 fee for each abstract of a person's driving record furnished by the department. After depositing \$2 of the driver's abstract fee in the move ahead WA flexible account created in RCW 46.68.520, the remainder shall be distributed as follows:

(i) Fifty percent must be deposited in the highway safety fund; and

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(ii) Fifty percent must be deposited according to RCW 46.68.038.

(b) Beginning July 1, 2029, the director shall collect an additional \$2 fee for each abstract of a person's driving record furnished by the department. The \$2 additional driver's abstract fee must be deposited in the move ahead WA flexible account created in RCW 46.68.520.

(c) City attorneys and county prosecuting attorneys are exempt from paying the fees specified in (a) and (b) of this subsection for an abstract of a person's driving record furnished by the department for use in criminal proceedings.

(6) **Violation.** (a) Any negligent violation of this section is a gross misdemeanor.

(b) Any intentional violation of this section is a class C felony.

(7) Effective July 1, 2019, the contents of a driving abstract pursuant to this section shall not include any information related to sealed juvenile records unless that information is required by federal law or regulation.

Sec. 31. RCW 46.61.502 and 2022 c 16 s 40 are each amended to read as follows:

(1) A person is guilty of driving while under the influence of intoxicating liquor, cannabis, or any drug if the person drives a vehicle within this state:

(a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) The person has, within two hours after driving, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) While the person is under the influence of or affected by intoxicating liquor, cannabis, or any drug; or

(d) While the person is under the combined influence of or affected by intoxicating liquor, cannabis, and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state shall not constitute a defense against a charge of violating this section.

(3)(a) It is an affirmative defense to a violation of subsection (1)(a) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of cannabis after the time of driving and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4)(a) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(c) or (d) of this

section.

(b) Analyses of blood samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had a THC concentration of 5.00 or more in violation of subsection (1)(b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by cannabis in violation of subsection (1)(c) or (d) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class B felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if:

(a) The person has three or more prior offenses within ~~((ten))~~ 15 years as defined in RCW 46.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a);

(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b);

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or RCW 46.61.504(6).

Sec. 32. RCW 46.61.5055 and 2020 c 330 s 15 are each amended to read as follows:

(1) **No prior offenses in seven years.** Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

(a) **Penalty for alcohol concentration less than 0.15.** In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ~~((twenty-four))~~ 24 consecutive hours nor more than ~~((three hundred sixty-four))~~ 364 days. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court, in its discretion, may order not less than ~~((fifteen))~~ 15 days of electronic home monitoring or a ~~((ninety-day))~~ 90-day period of 24/7 sobriety program monitoring. The court may consider the offender's pretrial 24/7 sobriety program monitoring as fulfilling a portion of posttrial sentencing. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device or other separate alcohol monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than ~~((three hundred fifty dollars))~~ \$350 nor more than ~~((five thousand dollars))~~ \$5,000. ~~((Three hundred fifty dollars))~~ \$350 of the fine may not be suspended unless the court finds the offender to be indigent; or

(b) **Penalty for alcohol concentration at least 0.15.** In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ~~((forty-eight))~~ 48 consecutive hours nor more than ~~((three hundred sixty-four))~~ 364 days. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court, in its discretion, may order not less than ~~((thirty))~~ 30 days of electronic home monitoring or a ~~((one hundred twenty-day))~~ 120-day period of

24/7 sobriety program monitoring. The court may consider the offender's pretrial 24/7 sobriety program testing as fulfilling a portion of posttrial sentencing. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer or other separate alcohol monitoring device, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(i) By a fine of not less than ~~((five hundred dollars))~~ \$500 nor more than ~~((five thousand dollars))~~ \$5,000. ~~((Five hundred dollars))~~ \$500 of the fine may not be suspended unless the court finds the offender to be indigent.

(2) **One prior offense in seven years.** Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

(a) **Penalty for alcohol concentration less than 0.15.** In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ~~((thirty))~~ 30 days nor more than ~~((three hundred sixty four))~~ 364 days and ~~((sixty))~~ 60 days of electronic home monitoring. Thirty days of imprisonment and ~~((sixty))~~ 60 days of electronic home monitoring may not be suspended or converted unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. If the offender shows that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being, in lieu of the mandatory term of imprisonment and electronic home monitoring under this subsection (2)(a)(i), the court may order a minimum of either ~~((one hundred eighty))~~ 180 days of electronic home monitoring or a ~~((one hundred twenty day))~~ 120-day period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory minimum sentence is suspended or converted, the court shall state in writing the reason for granting the suspension or conversion and the facts upon which the suspension or conversion is based. The court may consider the offender's pretrial 24/7 sobriety program monitoring as fulfilling a portion of posttrial sentencing. The court shall order an expanded substance use disorder assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than ~~((five hundred dollars))~~ \$500 nor more than ~~((five thousand dollars))~~ \$5,000. ~~((Five hundred dollars))~~ \$500 of the fine may not be suspended unless the court finds the offender to be indigent; or

(b) **Penalty for alcohol concentration at least 0.15.** In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ~~((forty five))~~ 45 days nor more than ~~((three hundred sixty four))~~ 364 days and ~~((ninety))~~ 90 days of electronic home monitoring. Forty-five days of

imprisonment and ~~((ninety))~~ 90 days of electronic home monitoring may not be suspended or converted unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. If the offender shows that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being, in lieu of the mandatory minimum term of imprisonment and electronic home monitoring under this subsection (2)(b)(i), the court may order a minimum of either six months of electronic home monitoring or a ~~((one hundred twenty day))~~ 120-day period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory minimum sentence is suspended or converted, the court shall state in writing the reason for granting the suspension or conversion and the facts upon which the suspension or conversion is based. The court may consider the offender's pretrial 24/7 sobriety program monitoring as fulfilling a portion of posttrial sentencing. The court shall order an expanded substance use disorder assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than ~~((seven hundred fifty dollars))~~ \$750 nor more than ~~((five thousand dollars))~~ \$5,000. ~~((Seven hundred fifty dollars))~~ \$750 of the fine may not be suspended unless the court finds the offender to be indigent.

(3) **Two prior offenses in seven years.** Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two prior offenses within seven years shall be punished as follows:

(a) **Penalty for alcohol concentration less than 0.15.** In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ~~((ninety))~~ 90 days nor more than ~~((three hundred sixty four))~~ 364 days, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and ~~((one hundred twenty))~~ 120 days of electronic home monitoring. Ninety days of imprisonment and ~~((one hundred twenty))~~ 120 days of electronic home monitoring may not be suspended or converted unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. If the offender shows that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being, in lieu of the mandatory minimum term of ~~((ninety))~~ 90 days of imprisonment and ~~((one hundred twenty))~~ 120 days of electronic home monitoring, the court may order ~~((three hundred sixty))~~ 360 days of electronic home monitoring or a ~~((three hundred sixty day))~~ 360-day period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory minimum sentence is suspended or converted, the court shall state in writing the reason for granting the suspension or conversion and the facts upon which the suspension or conversion is based. The court shall order an expanded substance use disorder assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality

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where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than ~~((one thousand dollars))~~ \$1,000 nor more than ~~((five thousand dollars))~~ \$5,000. ~~((One thousand dollars))~~ \$1,000 of the fine may not be suspended unless the court finds the offender to be indigent; or

(b) **Penalty for alcohol concentration at least 0.15.** In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ~~((one hundred twenty))~~ 120 days nor more than ~~((three hundred sixty four))~~ 364 days, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and ~~((one hundred fifty))~~ 150 days of electronic home monitoring. One hundred twenty days of imprisonment and ~~((one hundred fifty))~~ 150 days of electronic home monitoring may not be suspended or converted unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. If the offender shows that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being, in lieu of the mandatory minimum term of ~~((one hundred twenty))~~ 120 days of imprisonment and ~~((one hundred fifty))~~ 150 days of electronic home monitoring, the court may order ~~((three hundred sixty))~~ 360 days of electronic home monitoring or a ~~((three hundred sixty day))~~ 360-day period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory minimum sentence is suspended or converted, the court shall state in writing the reason for granting the suspension or conversion and the facts upon which the suspension or conversion is based. The offender shall pay for the cost of the electronic monitoring. The court shall order an expanded substance use disorder assessment and treatment, if deemed appropriate by the assessment. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than ~~((one thousand five hundred dollars))~~ \$1,500 nor more than ~~((five thousand dollars))~~ \$5,000. ~~((One thousand five hundred))~~ \$1,500 dollars of the fine may not be suspended unless the court finds the offender to be indigent.

(4) **Three or more prior offenses in ~~((ten))~~ 15 years.** A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be punished under chapter 9.94A RCW if:

(a) The person has three or more prior offenses within ~~((ten))~~ 15 years; or

(b) The person has ever previously been convicted of:

(i) A violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(ii) A violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

(5) **Monitoring.** (a) **Ignition interlock device.** The court shall

require any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to comply with the rules and requirements of the department regarding the installation and use of a functioning ignition interlock device installed on all motor vehicles operated by the person.

(b) **Monitoring devices.** If the court orders that a person refrain from consuming any alcohol, the court may order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person's system. The person shall pay for the cost of the monitoring, unless the court specifies that the cost of monitoring will be paid with funds that are available from an alternative source identified by the court. The county or municipality where the penalty is being imposed shall determine the cost.

(c) **24/7 sobriety program monitoring.** In any county or city where a 24/7 sobriety program is available and verified by the Washington association of sheriffs and police chiefs, the court shall:

(i) Order the person to install and use a functioning ignition interlock or other device in lieu of such period of 24/7 sobriety program monitoring;

(ii) Order the person to a period of 24/7 sobriety program monitoring pursuant to subsections (1) through (3) of this section; or

(iii) Order the person to install and use a functioning ignition interlock or other device in addition to a period of 24/7 sobriety program monitoring pursuant to subsections (1) through (3) of this section.

(6) **Penalty for having a minor passenger in vehicle.** If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while one or more passengers under the age of ~~((sixteen))~~ 16 were in the vehicle, the court shall:

(a) Order the use of an ignition interlock or other device for an additional ~~((twelve))~~ 12 months for each passenger under the age of ~~((sixteen))~~ 16 when the person is subject to the penalties under subsection (1)(a), (2)(a), or (3)(a) of this section; and order the use of an ignition interlock device for an additional ~~((eighteen))~~ 18 months for each passenger under the age of ~~((sixteen))~~ 16 when the person is subject to the penalties under subsection (1)(b), (2)(b), (3)(b), or (4) of this section;

(b) In any case in which the person has no prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional ~~((twenty four))~~ 24 hours of imprisonment to be served consecutively for each passenger under the age of ~~((sixteen))~~ 16, and a fine of not less than ~~((one thousand dollars))~~ \$1,000 and not more than ~~((five thousand dollars))~~ \$5,000 for each passenger under the age of ~~((sixteen))~~ 16. ~~((One thousand dollars))~~ \$1,000 of the fine for each passenger under the age of ~~((sixteen))~~ 16 may not be suspended unless the court finds the offender to be indigent;

(c) In any case in which the person has one prior offense within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional five days of imprisonment to be served consecutively for each passenger under the age of ~~((sixteen))~~ 16, and a fine of not less than ~~((two thousand dollars))~~ \$2,000 and not more than ~~((five thousand dollars))~~ \$5,000 for each passenger under the age of ~~((sixteen))~~ 16. One thousand dollars of the fine for each passenger under the age of ~~((sixteen))~~ 16 may not be suspended unless the court finds the offender to be indigent;

(d) In any case in which the person has two prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional ten days of imprisonment to be served consecutively for each passenger under the age of

~~((sixteen))~~ 16, and a fine of not less than ~~((three thousand dollars))~~ \$3,000 and not more than ~~((ten thousand dollars))~~ \$10,000 for each passenger under the age of ~~((sixteen))~~ 16. ~~((One thousand dollars))~~ \$1,000 of the fine for each passenger under the age of ~~((sixteen))~~ 16 may not be suspended unless the court finds the offender to be indigent.

(7) **Other items courts must consider while setting penalties.** In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property;

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers;

(c) Whether the driver was driving in the opposite direction of the normal flow of traffic on a multiple lane highway, as defined by RCW 46.04.350, with a posted speed limit of ~~((forty five))~~ 45 miles per hour or greater; and

(d) Whether a child passenger under the age of ~~((sixteen))~~ 16 was an occupant in the driver's vehicle.

(8) **Treatment and information school.** An offender punishable under this section is subject to the substance use disorder assessment and treatment provisions of RCW 46.61.5056.

(9) **Driver's license privileges of the defendant.** (a) The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(i) **Penalty for alcohol concentration less than 0.15.** If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(A) Where there has been no prior offense within seven years, be suspended or denied by the department for ~~((ninety))~~ 90 days or until the person is evaluated by a substance use disorder agency or probation department pursuant to RCW 46.20.311 and the person completes or is enrolled in a ~~((ninety day))~~ 90-day period of 24/7 sobriety program monitoring. In no circumstances shall the license suspension be for fewer than two days;

(B) Where there has been one prior offense within seven years, be revoked or denied by the department for two years or until the person is evaluated by a substance use disorder agency or probation department pursuant to RCW 46.20.311 and the person completes or is enrolled in a six-month period of 24/7 sobriety program monitoring. In no circumstances shall the license suspension be for less than one year; or

(C) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(ii) **Penalty for alcohol concentration at least 0.15.** If the person's alcohol concentration was at least 0.15:

(A) Where there has been no prior offense within seven years, be revoked or denied by the department for one year or until the person is evaluated by a substance use disorder agency or probation department pursuant to RCW 46.20.311 and the person completes or is enrolled in a one hundred twenty day period of 24/7 sobriety program monitoring. In no circumstances shall the license revocation be for fewer than four days;

(B) Where there has been one prior offense within seven years, be revoked or denied by the department for ~~((nine hundred))~~ 900 days; or

(C) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years; or

(iii) **Penalty for refusing to take test.** If by reason of the person's refusal to take a test offered under RCW 46.20.308, there is no test result indicating the person's alcohol concentration:

(A) Where there have been no prior offenses within seven years, be revoked or denied by the department for two years;

(B) Where there has been one prior offense within seven years, be revoked or denied by the department for three years; or

(C) Where there have been two or more previous offenses within seven years, be revoked or denied by the department for four years.

(b)(i) The department shall grant credit on a day-for-day basis for a suspension, revocation, or denial imposed under this subsection (9) for any portion of a suspension, revocation, or denial already served under RCW 46.20.3101 arising out of the same incident.

(ii) If a person has already served a suspension, revocation, or denial under RCW 46.20.3101 for a period equal to or greater than the period imposed under this subsection (9), the department shall provide notice of full credit, shall provide for no further suspension or revocation under this subsection provided the person has completed the requirements under RCW 46.20.311 and paid the probationary license fee under RCW 46.20.355 by the date specified in the notice under RCW 46.20.245, and shall impose no additional reissue fees for this credit.

(c) Upon receipt of a notice from the court under RCW 36.28A.390 that a participant has been removed from a 24/7 sobriety program, the department must resume any suspension, revocation, or denial that had been terminated early under this subsection due to participation in the program, granting credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under RCW 46.20.3101 or this section arising out of the same incident.

(d) Upon its own motion or upon motion by a person, a court may find, on the record, that notice to the department under RCW 46.20.270 has been delayed for three years or more as a result of a clerical or court error. If so, the court may order that the person's license, permit, or nonresident privilege shall not be revoked, suspended, or denied for that offense. The court shall send notice of the finding and order to the department and to the person. Upon receipt of the notice from the court, the department shall not revoke, suspend, or deny the license, permit, or nonresident privilege of the person for that offense.

(e) For purposes of this subsection (9), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

(10) **Probation of driving privilege.** After expiration of any period of suspension, revocation, or denial of the offender's license, permit, or privilege to drive required by this section, the department shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

(11) **Conditions of probation.** (a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes up to ~~((three hundred sixty four))~~ 364 days in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive; (ii) not driving a motor vehicle within this state without proof of liability insurance or other financial responsibility for the future pursuant to RCW 46.30.020; (iii) not driving or being in physical control of a motor vehicle within this state while having an alcohol concentration of 0.08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher, within two hours after driving; (iv) not refusing to submit to a test of his or her breath or blood to determine

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alcohol or drug concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drug; and (v) not driving a motor vehicle in this state without a functioning ignition interlock device as required by the department under RCW 46.20.720. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, substance use disorder treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i), (ii), (iii), (iv), or (v) of this subsection, the court shall order the convicted person to be confined for ~~((thirty))~~ 30 days, which shall not be suspended or deferred.

(c) ~~((For))~~ (i) Except as provided in (c)(ii) of this subsection, for each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for ~~((thirty))~~ 30 days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by ~~((thirty))~~ 30 days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection. The person may apply for an ignition interlock driver's license under RCW 46.20.385 during the suspension period.

(ii) For each incident involving a violation of RCW 46.20.342(1)(c), the court has discretion not to impose a suspension when the person provides the court with proof that the violation has been cured within 30 days. The court is not required to notify the department of the violation unless it is not cured within 30 days.

(12) **Waiver of electronic home monitoring.** A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system. However, if a court determines that an alcohol monitoring device utilizing wireless reporting technology is reasonably available, the court may require the person to obtain such a device during the period of required electronic home monitoring;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, use of an ignition interlock device, the 24/7 sobriety program monitoring, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed ~~((three hundred sixty four))~~ 364 days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed ~~((three hundred sixty four))~~ 364 days.

(13) **Extraordinary medical placement.** An offender serving

a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(1)(c).

(14) **Definitions.** For purposes of this section and RCW 46.61.502 and 46.61.504:

(a) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.25.110 or an equivalent local ordinance;

(iv) A conviction for a violation of RCW 79A.60.040(2) or an equivalent local ordinance;

(v) A conviction for a violation of RCW 79A.60.040(1) or an equivalent local ordinance committed in a reckless manner if the conviction is the result of a charge that was originally filed as a violation of RCW 79A.60.040(2) or an equivalent local ordinance;

(vi) A conviction for a violation of RCW 47.68.220 or an equivalent local ordinance committed while under the influence of intoxicating liquor or any drug;

(vii) A conviction for a violation of RCW 47.68.220 or an equivalent local ordinance committed in a careless or reckless manner if the conviction is the result of a charge that was originally filed as a violation of RCW 47.68.220 or an equivalent local ordinance while under the influence of intoxicating liquor or any drug;

(viii) A conviction for a violation of RCW 46.09.470(2) or an equivalent local ordinance;

(ix) A conviction for a violation of RCW 46.10.490(2) or an equivalent local ordinance;

(x) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of RCW 46.61.520 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(xi) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of RCW 46.61.522 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(xii) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(xiii) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (x), (xi), or (xii) of this subsection if committed in this state;

(xiv) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance;

(xv) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(xvi) A deferred prosecution granted in another state for a

violation of driving or having physical control of a vehicle while under the influence of intoxicating liquor or any drug if the out-of-state deferred prosecution is equivalent to the deferred prosecution under chapter 10.05 RCW, including a requirement that the defendant participate in a chemical dependency treatment program; or

(xvii) A deferred sentence imposed in a prosecution for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local ordinance, if the charge under which the deferred sentence was imposed was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or a violation of RCW 46.61.520 or 46.61.522;

If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in this subsection (14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing;

(b) "Treatment" means substance use disorder treatment licensed or certified by the department of health;

(c) "Within seven years" means that the arrest for a prior offense occurred within seven years before or after the arrest for the current offense; and

(d) "Within ~~((ten))~~ 15 years" means that the arrest for a prior offense occurred within ~~((ten))~~ 15 years before or after the arrest for the current offense.

(15) All fines imposed by this section apply to adult offenders only.

Sec. 33. RCW 46.61.504 and 2022 c 16 s 42 are each amended to read as follows:

(1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this state:

(a) And the person has, within two hours after being in actual physical control of the vehicle, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) The person has, within two hours after being in actual physical control of a vehicle, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(d) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state does not constitute a defense against any charge of violating this section. No person may be convicted under this section and it is an affirmative defense to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny the privilege to drive if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(3)(a) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after being in such control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a

preponderance of the evidence, that the defendant consumed a sufficient quantity of cannabis after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after being in control of the vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4)(a) Analyses of blood or breath samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in such control, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(c) or (d) of this section.

(b) Analyses of blood samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in control of the vehicle, a person had a THC concentration of 5.00 or more in violation of subsection (1)(b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by cannabis in violation of subsection (1)(c) or (d) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if:

(a) The person has three or more prior offenses within ~~((ten))~~ 15 years as defined in RCW 46.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a);

(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b);

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or RCW 46.61.502(6).

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

NEW SECTION. Sec. 35. This act takes effect February 1, 2024."

On page 1, line 1 of the title, after "Relating to" strike the remainder of the title and insert "criminal justice system reforms involving impaired driving and deferred prosecutions; amending RCW 9.94A.030, 9.94A.190, 9.94A.501, 9.94A.505, 9.94A.525, 9.94A.633, 9.94A.6332, 9.94A.660, 9.94A.701, 10.05.010, 10.05.015, 10.05.020, 10.05.030, 10.05.040, 10.05.050, 10.05.060, 10.05.090, 10.05.100, 10.05.120, 10.05.140, 10.05.150, 10.05.155, 10.05.170, 46.20.355, 46.20.385, 46.20.720, 46.20.740, 46.52.130, 46.61.502, 46.61.5055, and 46.61.504; adding a new section to chapter 9.94A RCW; adding a new section to chapter 10.05 RCW; providing an effective date; and prescribing penalties."

Senator Padden spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee

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on Law & Justice to Substitute House Bill No. 1493.

The motion by Senator Padden carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Padden, the rules were suspended, Substitute House Bill No. 1493 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Padden and Dhingra spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1493 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1493 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

Excused: Senator Lias

SUBSTITUTE HOUSE BILL NO. 1493, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1552, by Representatives Reeves, Ramel, Springer, Gregerson, Fosse and Doglio

Directing the state conservation commission to conduct a study of urban agricultural opportunities and barriers in the state.

The measure was read the second time.

MOTION

On motion of Senator Salomon, the rules were suspended, House Bill No. 1552 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Salomon and Muzzall spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1552.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1552 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland,

Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

HOUSE BILL NO. 1552, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1753, by House Committee on Agriculture and Natural Resources (originally sponsored by Bronoske, Leavitt and Reed)

Changing certain notice provisions in the derelict vessel removal program.

The measure was read the second time.

MOTION

On motion of Senator Salomon, the rules were suspended, Substitute House Bill No. 1753 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Salomon and Muzzall spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1753.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1753 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

SUBSTITUTE HOUSE BILL NO. 1753, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE JOINT MEMORIAL NO. 4001, by House Committee on Transportation (originally sponsored by Orcutt, Walsh, McEntire, Abbarno, Christian and McClintock)

Requesting the transportation commission to designate a section of Interstate 5 the Cowlitz County Deputy Sheriff Justin DeRosier memorial highway. Revised for first Substitute: Requesting the transportation commission to designate a section of state route number 411 the Cowlitz County Deputy Sheriff Justin DeRosier memorial highway.

Concerning social insurance programs applicable to transportation network companies and drivers.

The measure was read the second time.

MOTION

On motion of Senator Wilson, J., the rules were suspended, Substitute House Joint Memorial No. 4001 was advanced to third reading, the second reading considered the third and the memorial was placed on final passage.

Senators Wilson, J. and Shewmake spoke in favor of passage of the bill.

MOTION

On motion of Senator Nobles, Senator Salomon was excused.

The President declared the question before the Senate to be the final passage of Substitute House Joint Memorial No. 4001.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Joint Memorial No. 4001 and the memorial passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

Excused: Senator Salomon

SUBSTITUTE HOUSE JOINT MEMORIAL NO. 4001, having received the constitutional majority, was declared passed. There being no objection, the title of the memorial was ordered to stand as the title of the act.

MOTIONS

On motion of Senator Pedersen, Rule 15 was suspended for the remainder of the day for the purpose of allowing continued floor action.

EDITOR'S NOTE: Senate Rule 15 establishes the floor schedule and calls for a lunch and dinner break of 90 minutes each per day during regular daily sessions.

At 12:46 p.m., on motion of Senator Pedersen, the Senate was declared to be at ease subject to the call of the President.

AFTERNOON SESSION

The Senate was called to order at 1:30 p.m. by the President of the Senate, Lt. Governor Heck presiding.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1570, by House Committee on Labor & Workplace Standards (originally sponsored by Berry, Ryu, Alvarado, Bateman, Fitzgibbon, Ramel, Doglio, Lekanoff, Reed, Pollet, Macri and Fosse)

The measure was read the second time.

MOTION

On motion of Senator Pedersen, the rules were suspended, Substitute House Bill No. 1570 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser and King spoke in favor of passage of the bill.

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced students and representatives of the Cusick Junior High / High School Chapter and the Jenkins High School Chapter, Chewelah, of the Future Farmers of America who were seated in the gallery and guests of Senator Short.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1570.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1570 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

SUBSTITUTE HOUSE BILL NO. 1570, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1175, by House Committee on Appropriations (originally sponsored by Doglio, Dye and Leavitt)

Creating a state financial assurance program for petroleum underground storage tanks.

The measure was read the second time.

MOTION

On motion of Senator Nguyen, the rules were suspended, Engrossed Substitute House Bill No. 1175 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Nguyen spoke in favor of passage of the bill.

Senator MacEwen spoke on passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1175.

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ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1175 and the bill passed the Senate by the following vote: Yeas, 35; Nays, 14; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Cleveland, Conway, Dhingra, Frame, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Liias, Lovelett, Lovick, Mullet, Muzzall, Nguyen, Nobles, Pedersen, Randall, Robinson, Rolfes, Saldaña, Salomon, Shewmake, Short, Stanford, Trudeau, Valdez, Van De Wege, Warnick, Wellman and Wilson, C.

Voting nay: Senators Boehnke, Braun, Dozier, Fortunato, Gildon, MacEwen, McCune, Padden, Rivers, Schoesler, Torres, Wagoner, Wilson, J. and Wilson, L.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1175, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1110, by House Committee on Appropriations (originally sponsored by Bateman, Barkis, Reed, Taylor, Riccelli, Berry, Fitzgibbon, Peterson, Duerr, Lekanoff, Alvarado, Street, Ryu, Ramel, Cortes, Doglio, Macri, Mena, Gregerson, Thai, Bergquist, Farivar, Wylie, Stonier, Pollet, Santos, Fosse and Ormsby)

Increasing middle housing in areas traditionally dedicated to single-family detached housing.

The measure was read the second time.

MOTION

Senator Trudeau moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that Washington is facing an unprecedented housing crisis for its current population and a lack of housing choices, and is not likely to meet the affordability goals for future populations. In order to meet the goal of 1,000,000 new homes by 2044, and enhanced quality of life and environmental protection, innovative housing policies will need to be adopted.

Increasing housing options that are more affordable to various income levels is critical to achieving the state's housing goals, including those codified by the legislature under chapter 254, Laws of 2021.

There is continued need for the development of housing at all income levels, including middle housing that will provide a wider variety of housing options and configurations to allow Washingtonians to live near where they work.

Homes developed at higher densities are more affordable by design for Washington residents both in their construction and reduced household energy and transportation costs.

While creating more housing options, it is essential for cities to identify areas at higher risk of displacement and establish antidisplacement policies as required in Engrossed Second Substitute House Bill No. 1220 (chapter 254, Laws of 2021).

The state has made historic investments in subsidized affordable housing through the housing trust fund, yet even with these historic investments, the magnitude of the housing shortage

requires both public and private investment.

In addition to addressing the housing shortage, allowing more housing options in areas already served by urban infrastructure will reduce the pressure to develop natural and working lands, support key strategies for climate change, food security, and Puget Sound recovery, and save taxpayers and ratepayers money.

Sec. 2. RCW 36.70A.030 and 2021 c 254 s 6 are each amended to read as follows:

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

(1) "Administrative design review" means a development permit process whereby an application is reviewed, approved, or denied by the planning director or the planning director's designee based solely on objective design and development standards without a public predecision hearing, unless such review is otherwise required by state or federal law, or the structure is a designated landmark or historic district established under a local preservation ordinance. A city may utilize public meetings, hearings, or voluntary review boards to consider, recommend, or approve requests for variances from locally established design review standards.

(2) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

~~((2))~~ (3) "Affordable housing" means, unless the context clearly indicates otherwise, residential housing whose monthly costs, including utilities other than telephone, do not exceed thirty percent of the monthly income of a household whose income is:

(a) For rental housing, sixty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development; or

(b) For owner-occupied housing, eighty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

~~((3))~~ (4) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

~~((4))~~ (5) "City" means any city or town, including a code city.

~~((5))~~ (6) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

~~((6))~~ (7) "Cottage housing" means residential units on a lot with a common open space that either: (a) Is owned in common; or (b) has units owned as condominium units with property owned in common and a minimum of 20 percent of the lot size as open space.

(8) "Courtyard apartments" means up to four attached dwelling units arranged on two or three sides of a yard or court.

(9) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

~~((7))~~ (10) "Department" means the department of commerce.

~~((8))~~ (11) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

~~((9))~~ (12) "Emergency housing" means temporary indoor accommodations for individuals or families who are homeless or at imminent risk of becoming homeless that is intended to address the basic health, food, clothing, and personal hygiene needs of individuals or families. Emergency housing may or may not require occupants to enter into a lease or an occupancy agreement.

~~((10))~~ (13) "Emergency shelter" means a facility that provides a temporary shelter for individuals or families who are currently homeless. Emergency shelter may not require occupants to enter into a lease or an occupancy agreement. Emergency shelter facilities may include day and warming centers that do not provide overnight accommodations.

~~((11))~~ (14) "Extremely low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below thirty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

~~((12))~~ (15) "Forestland" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forestland is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forestland to other uses.

~~((13))~~ (16) "Freight rail dependent uses" means buildings and other infrastructure that are used in the fabrication, processing, storage, and transport of goods where the use is dependent on and makes use of an adjacent short line railroad. Such facilities are both urban and rural development for purposes of this chapter. "Freight rail dependent uses" does not include buildings and other infrastructure that are used in the fabrication, processing, storage, and transport of coal, liquefied natural gas, or "crude oil" as defined in RCW 90.56.010.

~~((14))~~ (17) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

~~((15))~~ (18) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

~~((16))~~ (19) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below eighty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

~~((17))~~ (20) "Major transit stop" means:

(a) A stop on a high capacity transportation system funded or expanded under the provisions of chapter 81.104 RCW;

(b) Commuter rail stops;

(c) Stops on rail or fixed guideway systems; or

(d) Stops on bus rapid transit routes.

(21) "Middle housing" means buildings that are compatible in scale, form, and character with single-family houses and contain two or more attached, stacked, or clustered homes including duplexes, triplexes, fourplexes, fiveplexes, sixplexes, townhouses, stacked flats, courtyard apartments, and cottage housing.

(22) "Minerals" include gravel, sand, and valuable metallic substances.

~~((18))~~ (23) "Moderate-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 120 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

~~((19))~~ (24) "Permanent supportive housing" is subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices designed to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors. Permanent supportive housing is paired with on-site or off-site voluntary services designed to support a person living with a complex and disabling behavioral health or physical health condition who was experiencing homelessness or was at imminent risk of homelessness prior to moving into housing to retain their housing and be a successful tenant in a housing arrangement, improve the resident's health status, and connect the resident of the housing with community-based health care, treatment, or employment services. Permanent supportive housing is subject to all of the rights and responsibilities defined in chapter 59.18 RCW.

~~((20))~~ (25) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

~~((21))~~ (26) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

~~((22))~~ (27) "Recreational land" means land so designated under RCW 36.70A.1701 and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under RCW 36.70A.170. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

~~((23))~~ (28) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found

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in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

~~((24))~~ (29) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

~~((25))~~ (30) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, ~~(- transportation and public transit services, and other public utilities)~~ and fire and police protection services associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

~~((26))~~ (31) "Short line railroad" means those railroad lines designated class II or class III by the United States surface transportation board.

~~((27))~~ (32) "Single-family zones" means those zones where single-family detached housing is the predominant land use.

(33) "Stacked flat" means dwelling units in a residential building of no more than three stories on a residential zoned lot in which each floor may be separately rented or owned.

(34) "Townhouses" means buildings that contain three or more attached single-family dwelling units that extend from foundation to roof and that have a yard or public way on not less than two sides.

(35) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

~~((28))~~ (36) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

~~((29))~~ (37) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

~~((30))~~ (38) "Very low-income household" means a single person, family, or unrelated persons living together whose

adjusted income is at or below fifty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

~~((34))~~ (39) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

NEW SECTION. **Sec. 3.** A new section is added to chapter 36.70A RCW to read as follows:

(1) Except as provided in subsection (4) of this section, any city that is required or chooses to plan under RCW 36.70A.040 must provide by ordinance and incorporate into its development regulations, zoning regulations, and other official controls, authorization for the following:

(a) For cities with a population of at least 25,000 but less than 75,000 based on office of financial management population estimates:

(i) The development of at least two units per lot on all lots zoned predominantly for residential use;

(ii) The development of at least four units per lot on all lots zoned predominantly for residential use within one-quarter mile walking distance of a major transit stop; and

(iii) The development of at least four units per lot on all lots zoned predominantly for residential use if at least one unit is affordable housing.

(b) For cities with a population of at least 75,000 based on office of financial management population estimates:

(i) The development of at least four units per lot on all lots zoned predominantly for residential use;

(ii) The development of at least six units per lot on all lots zoned predominantly for residential use within one-quarter mile walking distance of a major transit stop; and

(iii) The development of at least six units per lot on all lots zoned predominantly for residential use if at least two units are affordable housing.

(c) For cities with a population of less than 25,000, that are within a contiguous urban growth area with the largest city in a county with a population of more than 275,000, based on office of financial management population estimates the development of at least two units per lot on all lots zoned predominantly for residential use.

(2)(a) To qualify for the additional units allowed under subsection (1) of this section, the applicant must commit to renting or selling the required number of units as affordable housing. The units must be maintained as affordable for a term of at least 50 years, and the property must satisfy that commitment and all required affordability and income eligibility conditions adopted by the local government under this chapter. A city must require the applicant to record a covenant or deed restriction that ensures the continuing rental of units subject to these affordability requirements consistent with the conditions in chapter 84.14 RCW for a period of no less than 50 years. The covenant or deed restriction must also address criteria and policies to maintain

public benefit if the property is converted to a use other than which continues to provide for permanently affordable housing.

(b) The units dedicated as affordable must be provided in a range of sizes comparable to other units in the development. To the extent practicable, the number of bedrooms in affordable units must be in the same proportion as the number of bedrooms in units within the entire development. The affordable units must generally be distributed throughout the development and have substantially the same functionality as the other units in the development.

(c) If a city has enacted a program under RCW 36.70A.540, the terms of that program govern to the extent they vary from the requirements of this subsection.

(3) If a city has enacted a program under RCW 36.70A.540, subsection (1) of this section does not preclude the city from requiring any development, including development described in subsection (1) of this section, to provide affordable housing, either on-site or through an in-lieu payment, nor limit the city's ability to expand such a program or modify its requirements.

(4)(a) As an alternative to the density requirements in subsection (1) of this section, a city may implement the density requirements in subsection (1) of this section for at least 75 percent of lots in the city that are primarily dedicated to single-family detached housing units.

(b) The 25 percent of lots for which the requirements of subsection (1) of this section are not implemented must include but are not limited to:

(i) Any areas within the city for which the department has certified an extension of the implementation timelines under section 5 of this act due to the risk of displacement;

(ii) Any areas within the city for which the department has certified an extension of the implementation timelines under section 7 of this act due to a lack of infrastructure capacity;

(iii) Any lots designated with critical areas or their buffers that are exempt from the density requirements as provided in subsection (8) of this section;

(iv) Any portion of a city within a one-mile radius of a commercial airport with at least 9,000,000 annual enplanements that is exempt from the parking requirements under subsection (7)(b) of this section; and

(v) Any areas subject to sea level rise, increased flooding, susceptible to wildfires, or geological hazards over the next 100 years.

(c) Unless identified as at higher risk of displacement under RCW 36.70A.070(2)(g), the 25 percent of lots for which the requirements of subsection (1) of this section are not implemented may not include:

(i) Any areas for which the exclusion would further racially disparate impacts or result in zoning with a discriminatory effect;

(ii) Any areas within one-half mile walking distance of a major transit stop; or

(iii) Any areas historically covered by a covenant or deed restriction excluding racial minorities from owning property or living in the area, as known to the city at the time of each comprehensive plan update.

(5) A city must allow at least six of the nine types of middle housing to achieve the unit density required in subsection (1) of this section. A city may allow accessory dwelling units to achieve the unit density required in subsection (1) of this section. Cities are not required to allow accessory dwelling units or middle housing types beyond the density requirements in subsection (1) of this section. A city must also allow zero lot line short subdivision where the number of lots created is equal to the unit density required in subsection (1) of this section.

(6) Any city subject to the requirements of this section:

(a) If applying design review for middle housing, only administrative design review shall be required;

(b) Except as provided in (a) of this subsection, shall not require through development regulations any standards for middle housing that are more restrictive than those required for detached single-family residences, but may apply any objective development regulations that are required for detached single-family residences, including, but not limited to, set-back, lot coverage, stormwater, clearing, and tree canopy and retention requirements to ensure compliance with existing ordinances intended to protect critical areas and public health and safety;

(c) Shall apply to middle housing the same development permit and environmental review processes that apply to detached single-family residences, unless otherwise required by state law including, but not limited to, shoreline regulations under chapter 90.58 RCW, building codes under chapter 19.27 RCW, energy codes under chapter 19.27A RCW, or electrical codes under chapter 19.28 RCW;

(d) Shall not require off-street parking as a condition of permitting development of middle housing within one-half mile walking distance of a major transit stop;

(e) Shall not require more than one off-street parking space per unit as a condition of permitting development of middle housing on lots smaller than 6,000 square feet before any zero lot line subdivisions or lot splits;

(f) Shall not require more than two off-street parking spaces per unit as a condition of permitting development of middle housing on lots greater than 6,000 square feet before any zero lot line subdivisions or lot splits; and

(g) Are not required to achieve the per unit density under this act on lots after subdivision below 1,000 square feet unless the city chooses to enact smaller allowable lot sizes.

(7) The provisions of subsection (6)(d) through (f) of this section do not apply:

(a) If a local government submits to the department an empirical study prepared by a credentialed transportation or land use planning expert that clearly demonstrates, and the department finds and certifies, that the application of the parking limitations of subsection (6)(d) through (f) of this section for middle housing will be significantly less safe for vehicle drivers or passengers, pedestrians, or bicyclists than if the jurisdiction's parking requirements were applied to the same location for the same number of detached houses. The department must develop guidance to assist cities on items to include in the study; or

(b) To portions of cities within a one-mile radius of a commercial airport in Washington with at least 9,000,000 annual enplanements.

(8) The provisions of this section do not apply to:

(a) Lots designated with critical areas designated under RCW 36.70A.170 or their buffers as required by RCW 36.70A.170;

(b) A watershed serving a reservoir for potable water if that watershed is or was listed, as of the effective date of this section, as impaired or threatened under section 303(d) of the federal clean water act (33 U.S.C. Sec. 1313(d)); or

(c) Lots that have been designated urban separators by countywide planning policies as of the effective date of this section.

(9) Nothing in this section prohibits a city from permitting detached single-family residences.

(10) Nothing in this section requires a city to issue a building permit if other federal, state, and local requirements for a building permit are not met.

(11) A city must comply with the requirements of this section on the latter of:

(a) Six months after its next periodic comprehensive plan

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update required under RCW 36.70A.130 if the city meets the population threshold based on the 2020 office of financial management population data; or

(b) 12 months after their next implementation progress report required under RCW 36.70A.130 after a determination by the office of financial management that the city has reached a population threshold established under this section.

(12) A city complying with this section and not granted a timeline extension under section 7 of this act does not have to update its capital facilities plan element required by RCW 36.70A.070(3) to accommodate the increased housing required by this act until the first periodic comprehensive plan update required for the city under RCW 36.70A.130(5) that occurs on or after June 30, 2034.

(13) Any city that adopts development regulations consistent with the requirements of this section shall be considered in compliance with RCW 36.70A.070(2)(f) until June 30, 2032, and shall have until the first periodic comprehensive plan update required for the city under RCW 36.70A.130(5) that occurs on or after June 30, 2034, to comply with RCW 36.70A.070(2)(f).

NEW SECTION. Sec. 4. A new section is added to chapter 36.70A RCW to read as follows:

(1)(a) The department is directed to provide technical assistance to cities as they implement the requirements under section 3 of this act.

(b) The department shall prioritize such technical assistance to cities demonstrating the greatest need.

(2)(a) The department shall publish model middle housing ordinances no later than six months following the effective date of this section.

(b) In any city subject to section 3 of this act that has not passed ordinances, regulations, or other official controls within the time frames provided under section 3(11) of this act, the model ordinance supersedes, preempts, and invalidates local development regulations until the city takes all actions necessary to implement section 3 of this act.

(3)(a) The department is directed to establish a process by which cities implementing the requirements of section 3 of this act may seek approval of alternative local action necessary to meet the requirements of this act.

(b) The department may approve actions under this section for cities that have, by January 1, 2023, adopted a comprehensive plan that is substantially similar to the requirements of this act and have adopted, or within one year of the effective date of this section adopts, permanent development regulations that are substantially similar to the requirements of this act. In determining whether a city's adopted comprehensive plan and permanent development regulations are substantially similar, the department must find as substantially similar plans and regulations that:

(i) Result in an overall increase in housing units allowed in single-family zones that is at least 75 percent of the increase in housing units allowed in single-family zones if the specific provisions of this act were adopted;

(ii) Allow for middle housing throughout the city, rather than just in targeted locations; and

(iii) Allow for additional density near major transit stops, and for projects that incorporate dedicated affordable housing.

(c) The department may also approve actions under this section for cities that have, by January 1, 2023, adopted a comprehensive plan or development regulations that have significantly reduced or eliminated residentially zoned areas that are predominantly single family. The department must find that a city's actions are substantially similar to the requirements of this act if they have adopted, or within one year of the effective date of this section

adopts, permanent development regulations that:

(i) Result in an overall increase in housing units allowed in single-family zones that is at least 75 percent of the increase in housing units allowed in single-family zones if the specific provisions of this act were adopted;

(ii) Allow for middle housing throughout the city, rather than just in targeted locations; and

(iii) Allow for additional density near major transit stops, and for projects that incorporate dedicated affordable housing.

(d) The department may determine that a comprehensive plan and development regulations that do not meet these criteria are otherwise substantially similar to the requirements of this act if the city can clearly demonstrate that the regulations adopted will allow for a greater increase in middle housing production within single family zones than would be allowed through implementation of section 3 of this act.

(e) Any local actions approved by the department pursuant to (a) of this subsection to implement the requirements under section 3 of this act are exempt from appeals under this chapter and chapter 43.21C RCW.

(f) The department's final decision to approve or reject actions by cities implementing section 3 of this act may be appealed to the growth management hearings board by filing a petition as provided in RCW 36.70A.290.

NEW SECTION. Sec. 5. A new section is added to chapter 36.70A RCW to read as follows:

Any city choosing the alternative density requirements in section 3(4) of this act may apply to the department for, and the department may certify, an extension for areas at risk of displacement as determined by the antidisplacement analysis that a jurisdiction is required to complete under RCW 36.70A.070(2). The city must create a plan for implementing antidisplacement policies by their next implementation progress report required by RCW 36.70A.130(9). The department may certify one further extension based on evidence of significant ongoing displacement risk in the impacted area.

Sec. 6. RCW 36.70A.280 and 2011 c 360 s 17 are each amended to read as follows:

(1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance with RCW 36.70A.5801;

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; ((or))

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous; or

(f) That the department's final decision to approve or reject actions by a city implementing section 3 of this act is clearly erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has

participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes.

NEW SECTION. Sec. 7. A new section is added to chapter 36.70A RCW to read as follows:

(1) Any city choosing the alternative density requirements in section 3(4) of this act may apply to the department for, and the department may certify, an extension of the implementation timelines established under section 3(11) of this act.

(2) An extension certified under this section may be applied only to specific areas where a city can demonstrate that water, sewer, stormwater, or fire protection services lack capacity to accommodate the density required in section 3 of this act, and the city has:

(a) Included one or more improvements, as needed, within its capital facilities plan to adequately increase capacity; or

(b) Identified which special district is responsible for providing the necessary infrastructure if the infrastructure is provided by a special purpose district.

(3) If an extension of the implementation timelines is requested due to lack of water supply from the city or the purveyors who serve water within the city, the department's evaluation of the extension must be based on the applicable water system plans in effect and approved by the department of health. Water system plan updates initiated after the effective date of this section must include consideration of water supply requirements for middle housing types.

(4) An extension granted under this section remains in effect until the earliest of:

(a) The infrastructure is improved to accommodate the capacity;

(b) The city's deadline to complete its next periodic comprehensive plan update under RCW 36.70A.130; or

(c) The city's deadline to complete its implementation progress report to the department as required under RCW 36.70A.130(9).

(5) A city that has received an extension under this section may reapply for any needed extension with its next periodic comprehensive plan update under RCW 36.70A.130 or its implementation progress report to the department under RCW 36.70A.130(9). The application for an additional extension must

include a list of infrastructure improvements necessary to meet the capacity required in section 3 of this act. Such additional extension must only be to address infrastructure deficiency that a city is not reasonably able to address within the first extension.

(6) The department may establish by rule any standards or procedures necessary to implement this section.

(7) The department must provide the legislature with a list of projects identified in a city's capital facilities plan that were the basis for the extension under this section, including planning level estimates. Additionally, the city must contact special purpose districts to identify additional projects associated with extensions under this section.

(8) A city granted an extension for a specific area must allow development as provided under section 3 of this act if the developer commits to providing the necessary water, sewer, or stormwater infrastructure.

(9) If an area zoned predominantly for residential use is currently served only by private wells, group B water systems or group A water systems with less than 50 connections, or a city or water providers within the city do not have an adequate water supply or available connections to serve the zoning increase required under section 3 of this act, the city may limit the areas subject to the requirements under section 3 of this act to match current water availability. Nothing in this act affects or modifies the responsibilities of cities to plan for or provide urban governmental services as defined in RCW 36.70A.030 or affordable housing as required by RCW 36.70A.070.

(10) No city shall approve a building permit for housing under section 3 of this act without compliance with the adequate water supply requirements of RCW 19.27.097.

(11) If an area zoned predominantly for residential use is currently served only by on-site sewage systems, development may be limited to two units per lot, until either the landowner or local government provides sewer service or demonstrates a sewer system will serve the development at the time of construction. Nothing in this act affects or modifies the responsibilities of cities to plan for or provide urban governmental services as defined in RCW 36.70A.030.

Sec. 8. RCW 43.21C.495 and 2022 c 246 s 3 are each amended to read as follows:

(1) Adoption of ordinances, development regulations and amendments to such regulations, and other nonproject actions taken by a city to implement: The actions specified in section 2, chapter 246, Laws of 2022 unless the adoption of such ordinances, development regulations and amendments to such regulations, or other nonproject actions has a probable significant adverse impact on fish habitat; and the increased residential building capacity actions identified in RCW 36.70A.600(1), with the exception of the action specified in RCW 36.70A.600(1)(f), are not subject to administrative or judicial appeals under this chapter.

(2) Amendments to development regulations and other nonproject actions taken by a city to implement the requirements under section 3 of this act pursuant to section 4(3)(b) of this act are not subject to administrative or judicial appeals under this chapter.

Sec. 9. RCW 43.21C.450 and 2012 1st sp.s. c 1 s 307 are each amended to read as follows:

The following nonproject actions are categorically exempt from the requirements of this chapter:

(1) Amendments to development regulations that are required to ensure consistency with an adopted comprehensive plan pursuant to RCW 36.70A.040, where the comprehensive plan was previously subjected to environmental review pursuant to this chapter and the impacts associated with the proposed regulation

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were specifically addressed in the prior environmental review;

(2) Amendments to development regulations that are required to ensure consistency with a shoreline master program approved pursuant to RCW 90.58.090, where the shoreline master program was previously subjected to environmental review pursuant to this chapter and the impacts associated with the proposed regulation were specifically addressed in the prior environmental review;

(3) Amendments to development regulations that, upon implementation of a project action, will provide increased environmental protection, limited to the following:

(a) Increased protections for critical areas, such as enhanced buffers or setbacks;

(b) Increased vegetation retention or decreased impervious surface areas in shoreline jurisdiction; and

(c) Increased vegetation retention or decreased impervious surface areas in critical areas;

(4) Amendments to technical codes adopted by a county, city, or town to ensure consistency with minimum standards contained in state law, including the following:

(a) Building codes required by chapter 19.27 RCW;

(b) Energy codes required by chapter 19.27A RCW; and

(c) Electrical codes required by chapter 19.28 RCW.

(5) Amendments to development regulations to remove requirements for parking from development proposed to fill in an urban growth area designated according to RCW 36.70A.110.

NEW SECTION. Sec. 10. A new section is added to chapter 64.34 RCW to read as follows:

A declaration created after the effective date of this section and applicable to an area within a city subject to the middle housing requirements in section 3 of this act may not actively or effectively prohibit the construction, development, or use of additional housing units as required in section 3 of this act.

NEW SECTION. Sec. 11. A new section is added to chapter 64.32 RCW to read as follows:

A declaration created after the effective date of this section and applicable to an association of apartment owners located within an area of a city subject to the middle housing requirements in section 3 of this act may not actively or effectively prohibit the construction, development, or use of additional housing units as required in section 3 of this act.

NEW SECTION. Sec. 12. A new section is added to chapter 64.38 RCW to read as follows:

Governing documents of associations within cities subject to the middle housing requirements in section 3 of this act that are created after the effective date of this section may not actively or effectively prohibit the construction, development, or use of additional housing units as required in section 3 of this act.

NEW SECTION. Sec. 13. A new section is added to chapter 64.90 RCW to read as follows:

Declarations and governing documents of a common interest community within cities subject to the middle housing requirements in section 3 of this act that are created after the effective date of this section may not actively or effectively prohibit the construction, development, or use of additional housing units as required in section 3 of this act.

NEW SECTION. Sec. 14. The department of commerce may establish by rule any standards or procedures necessary to implement sections 2 through 7 of this act.

NEW SECTION. Sec. 15. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2023, in the omnibus appropriations act, this act is null and void."

On page 1, line 3 of the title, after "housing;" strike the remainder of the title and insert "amending RCW 36.70A.030, 36.70A.280, 43.21C.495, and 43.21C.450; adding new sections

to chapter 36.70A RCW; adding a new section to chapter 64.34 RCW; adding a new section to chapter 64.32 RCW; adding a new section to chapter 64.38 RCW; adding a new section to chapter 64.90 RCW; and creating new sections."

MOTION

Senator Trudeau moved that the following amendment no. 0354 by Senator Trudeau be adopted:

On page 8, line 37, after "use" insert ", unless zoning permitting higher densities or intensities applies"

On page 9, line 2, after "use" insert ", unless zoning permitting higher densities or intensities applies,"

On page 9, line 5, after "use" insert ", unless zoning permitting higher densities or intensities applies,"

On page 9, line 10, after "use" insert ", unless zoning permitting higher densities or intensities applies"

On page 9, line 12, after "use" insert ", unless zoning permitting higher densities or intensities applies,"

On page 9, line 15, after "use" insert ", unless zoning permitting higher densities or intensities applies,"

On page 9, line 22, after "use" insert ", unless zoning permitting higher densities or intensities applies"

On page 13, after line 15, strike all material through "RCW 36.70A.070(2)(f)." on line 21

Senator Trudeau spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0354 by Senator Trudeau on page 8, line 37 to Engrossed Second Substitute House Bill No. 1110.

The motion by Senator Trudeau carried and amendment no. 0354 was adopted by voice vote.

MOTION

Senator Lovelett moved that the following amendment no. 0418 by Senator Lovelett be adopted:

On page 15, after line 10, insert the following:

"(4) The department may issue guidance for local jurisdictions to ensure that the levels of middle housing zoning under this act can be integrated with the methods used by cities to calculate zoning densities and intensities in local zoning and development regulations."

Senator Lovelett spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0418 by Senator Lovelett on page 15, after line 10 to Engrossed Second Substitute House Bill No. 1110.

The motion by Senator Lovelett carried and amendment no. 0418 was adopted by voice vote.

MOTION

Senator Billig moved that the following amendment no. 0408 by Senators Billig and Conway be adopted:

On page 17, line 9, after "stormwater," insert "transportation infrastructure, including facilities and transit services,"

Senator Billig spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0408 by Senators Billig and Conway on page 17, line 9 to Engrossed Second Substitute House Bill No. 1110.

The motion by Senator Billig carried and amendment no. 0408 was adopted by voice vote.

Senator Trudeau spoke in favor of adoption of the committee striking amendment as amended.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means as amended to Engrossed Second Substitute House Bill No. 1110.

The motion by Senator Trudeau carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

On motion of Senator Trudeau, the rules were suspended, Engrossed Second Substitute House Bill No. 1110 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Trudeau, Kuderer, Lovelett, Mullet, Braun, Nobles, Wellman and Shewmake spoke in favor of passage of the bill.

Senators Fortunato, Wagoner and Padden spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 1110 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 1110 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 35; Nays, 14; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Braun, Cleveland, Conway, Dhingra, Frame, Gildon, Hawkins, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett, Lovick, MacEwen, Mullet, Muzzall, Nguyen, Nobles, Pedersen, Randall, Rivers, Robinson, Saldaña, Salomon, Shewmake, Short, Stanford, Trudeau, Valdez, Van De Wege, Wellman and Wilson, C.

Voting nay: Senators Boehnke, Dozier, Fortunato, Hasegawa, Holy, McCune, Padden, Rolfes, Schoesler, Torres, Wagoner, Warnick, Wilson, J. and Wilson, L.

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1110, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1621, by House Committee on Local Government (originally sponsored by Ryu, Duerr, Pollet, Kloba and Senn)

Concerning standardizing local government procurement rules among special purpose districts, first-class and second-class cities, and public utility districts.

The measure was read the second time.

MOTION

Senator Lovelett moved that the following committee striking amendment by the Committee on Local Government, Land Use & Tribal Affairs be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 54.04.070 and 2019 c 434 s 7 are each amended to read as follows:

(1) Any item, or items of the same kind of materials, equipment, or supplies purchased, the estimated cost of which is in excess of (~~thirty thousand dollars~~) \$30,000, exclusive of sales tax, shall be by contract. However, a district may make purchases of the same kind of items of materials, equipment, and supplies not exceeding (~~twelve thousand dollars~~) \$12,000 in any calendar month without a contract, purchasing any excess thereof over (~~twelve thousand dollars~~) \$12,000 by contract.

(2) Any work ordered by a district commission, the estimated cost of which is in excess of (~~fifty thousand dollars, exclusive of sales tax~~) \$150,000 exclusive of sales tax if more than a single craft or trade is involved with the public works project, or a public works project in excess of \$75,500 exclusive of sales tax if only a single craft or trade is involved with the public works project, shall be by contract. However, a district commission may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. For purposes of this section, "prudent utility management" means performing work with regularly employed personnel utilizing material of a worth not exceeding (~~three hundred thousand dollars~~) \$300,000 in value without a contract. This limit on the value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment. For the purposes of this section, the term "equipment" includes but is not limited to conductor, cabling, wire, pipe, or lines used for electrical, water, fiber optic, or telecommunications.

(3) Before awarding a contract required under subsection (1) or (2) of this section, the commission shall publish a notice once or more in a newspaper of general circulation in the district at least (~~thirteen~~) 13 days before the last date upon which bids will be received, inviting sealed proposals for the work or materials. Plans and specifications for the work or materials shall at the time of publication be on file at the office of the district and subject to public inspection. Any published notice ordering work to be performed for the district shall be mailed at the time of publication to any established trade association which files a written request with the district to receive such notices. The commission may, at the same time and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by the bidders.

(4) As an alternative to the competitive bidding requirements of this section and RCW 54.04.080, a district may let contracts using the small works roster process under RCW 39.04.155.

(5) Whenever equipment or materials required by a district are held by a governmental agency and are available for sale but such agency is unwilling to submit a proposal, the commission may ascertain the price of such items and file a statement of such price supported by the sworn affidavit of one member of the commission, and may consider such price as a bid without a deposit or bond.

(6) Pursuant to RCW 39.04.280, the commission may waive the competitive bidding requirements of this section and RCW 54.04.080 if an exemption contained within RCW 39.04.280 applies to the purchase or public work.

(7)(a) A district may procure public works with a unit priced

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contract under this section, RCW 54.04.080, or 54.04.085 for the purpose of completing anticipated types of work based on hourly rates or unit pricing for one or more categories of work or trades.

(b) For the purposes of this section, unit priced contract means a competitively bid contract in which public works are anticipated on a recurring basis to meet the business or operational needs of a district, under which the contractor agrees to a fixed period indefinite quantity delivery of work, at a defined unit price, for each category of work.

(c) Unit priced contracts must be executed for an initial contract term not to exceed three years, with the district having the option of extending or renewing the unit priced contract for one additional year.

(d) Invitations for unit price bids shall include, for purposes of the bid evaluation, estimated quantities of the anticipated types of work or trades, and specify how the district will issue or release work assignments, work orders, or task authorizations pursuant to a unit priced contract for projects, tasks, or other work based on the hourly rates or unit prices bid by the contractor. Where electrical facility construction or improvement work is anticipated, contractors on a unit priced contract shall comply with the requirements under RCW 54.04.085 (1) through (5). Contracts must be awarded to the lowest responsible bidder as per RCW 39.04.010.

(e) Unit price contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each work order must be the prevailing wage rates in effect at the beginning date for each contract year. Unit priced contracts must have prevailing wage rates updated annually. Intents and affidavits for prevailing wages paid must be submitted annually for all work completed within the previous (~~twelve-month~~) 12-month period of the unit priced contract.

(8) For the purposes of this section, "lowest responsible bidder" means a bid that meets the criteria under RCW 39.04.350 and has the lowest bid; provided, that if the district commission issues a written finding that the lowest bidder has delivered a project to the district within the last three years which was late, over budget, or did not meet specifications, and the commission does not find in writing that such bidder has shown how they would improve performance to be likely to meet project specifications then the commission may choose the second lowest bidder whose bid is within five percent of the lowest bid and meets the same criteria as the lowest bidder.

Sec. 2. RCW 35.23.352 and 2019 c 434 s 1 are each amended to read as follows:

(1) Any second-class city or any town may construct any public works, as defined in RCW 39.04.010, by contract or day labor without calling for bids therefor whenever the estimated cost of the work or improvement, including cost of materials, supplies and equipment will not exceed the sum of (~~one hundred sixteen thousand one hundred fifty five dollars~~) \$150,000 if more than one craft or trade is involved with the public works, or (~~seventy-five thousand five hundred dollars~~) \$75,500 if a single craft or trade is involved with the public works or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project. However, a second-class city or any town may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. For purposes of this section, "prudent utility management" means performing work with regularly employed personnel utilizing material of a

worth not exceeding \$300,000 in value without a contract. This limit on value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment. For purposes of this section, "equipment" includes, but is not limited to, conductor, cabling, wire, pipe, or lines used for electrical, water, fiber optic, or telecommunications.

Whenever the cost of the public work or improvement, including materials, supplies and equipment, will exceed these figures, the same shall be done by contract. All such contracts shall be let at public bidding upon publication of notice calling for sealed bids upon the work. The notice shall be published in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, at least (~~thirteen~~) 13 days prior to the last date upon which bids will be received. The notice shall generally state the nature of the work to be done that plans and specifications therefor shall then be on file in the city or town hall for public inspections, and require that bids be sealed and filed with the council or commission within the time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, postal money order, or surety bond to the council or commission for a sum of not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. The council or commission of the city or town shall let the contract to the lowest responsible bidder or shall have power by resolution to reject any or all bids and to make further calls for bids in the same manner as the original call.

When the contract is let then all bid proposal deposits shall be returned to the bidders except that of the successful bidder which shall be retained until a contract is entered into and a bond to perform the work furnished, with surety satisfactory to the council or commission, in accordance with RCW 39.08.030. If the bidder fails to enter into the contract in accordance with his or her bid and furnish a bond within (~~ten~~) 10 days from the date at which he or she is notified that he or she is the successful bidder, the check or postal money order and the amount thereof shall be forfeited to the council or commission or the council or commission shall recover the amount of the surety bond. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

If no bid is received on the first call the council or commission may readvertise and make a second call, or may enter into a contract without any further call or may purchase the supplies, material or equipment and perform the work or improvement by day labor.

(2) For the purposes of this section, "lowest responsible bidder" means a bid that meets the criteria under RCW 39.04.350 and has the lowest bid; provided, that if the city issues a written finding that the lowest bidder has delivered a project to the city within the last three years which was late, over budget, or did not meet specifications, and the city does not find in writing that such bidder has shown how they would improve performance to be likely to meet project specifications then the city may choose the second lowest bidder whose bid is within five percent of the lowest bid and meets the same criteria as the lowest bidder.

(3) The allocation of public works projects to be performed by city or town employees shall not be subject to a collective bargaining agreement.

(4) In lieu of the procedures of subsection (1) of this section, a second-class city or a town may let contracts using the small works roster process provided in RCW 39.04.155.

Whenever possible, the city or town shall invite at least one proposal from a certified minority or woman contractor who shall

otherwise qualify under this section.

(5) The form required by RCW 43.09.205 shall be to account and record costs of public works in excess of ~~((five thousand dollars))~~ \$5,000 that are not let by contract.

(6) The cost of a separate public works project shall be the costs of the materials, equipment, supplies, and labor on that construction project.

(7) Any purchase of supplies, material, or equipment, except for public work or improvement, ~~((where the cost thereof exceeds seven thousand five hundred dollars shall be made upon call for bids))~~ with an estimated cost in excess of \$40,000, shall be by contract. Any purchase of materials, supplies, or equipment with an estimated cost of less than \$50,000 shall be made using the process provided in RCW 39.04.190.

(8) Bids shall be called annually and at a time and in the manner prescribed by ordinance for the publication in a newspaper of general circulation in the city or town of all notices or newspaper publications required by law. The contract shall be awarded to the lowest responsible bidder.

(9) For advertisement and formal sealed bidding to be dispensed with as to purchases with an estimated value of ~~((fifteen thousand dollars))~~ \$15,000 or less, the council or commission must authorize by resolution, use of the uniform procedure provided in RCW 39.04.190.

(10) The city or town legislative authority may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

(11) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020~~((4))~~ (6), that are negotiated under chapter 39.35A RCW.

(12) Nothing in this section shall prohibit any second-class city or any town from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

(13)(a) Any second-class city or any town may procure public works with a unit priced contract under this section for the purpose of completing anticipated types of work based on hourly rates or unit pricing for one or more categories of work or trades.

(b) For the purposes of this section, "unit priced contract" means a competitively bid contract in which public works are anticipated on a recurring basis to meet the business or operational needs of the city or town, under which the contractor agrees to a fixed period indefinite quantity delivery of work, at a defined unit price for each category of work.

(c) Unit priced contracts must be executed for an initial contract term not to exceed three years, with the city or town having the option of extending or renewing the unit priced contract for one additional year.

(d) Invitations for unit price bids shall include, for purposes of the bid evaluation, estimated quantities of the anticipated types of work or trades, and specify how the city or town will issue or release work assignments, work orders, or task authorizations pursuant to a unit priced contract for projects, tasks, or other work based on the hourly rates or unit prices bid by the contractor. Contracts must be awarded to the lowest responsible bidder as per RCW 39.04.010. Whenever possible, the city or town must invite at least one proposal from a certified minority or woman contractor who otherwise qualifies under this section.

(e) Unit price contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each work order must be the prevailing wage rates in effect at the beginning date for each contract year. Unit priced contracts must have prevailing wage rates updated annually.

Intents and affidavits for prevailing wages paid must be submitted annually for all work completed within the previous ~~((twelve-month))~~ 12-month period of the unit priced contract.

(14) Any second-class city or town that awards a project to a bidder under the criteria described in subsection (2) of this section must make an annual report to the department of commerce that includes the total number of bids awarded to certified minority or women contractors and describing how notice was provided to potential certified minority or women contractors.

Sec. 3. RCW 35.22.620 and 2019 c 434 s 11 are each amended to read as follows:

(1) As used in this section, the term "public works" means as defined in RCW 39.04.010.

(2) A first-class city may have public works performed by contract pursuant to public notice and call for competitive bids. As limited by subsection (3) of this section, a first-class city may have public works performed by city employees in any annual or biennial budget period equal to a dollar value not exceeding ~~((ten))~~ 10 percent of the public works construction budget, including any amount in a supplemental public works construction budget, over the budget period. The amount of public works that a first-class city has a county perform for it under RCW 35.77.020 shall be included within this ~~((ten))~~ 10 percent limitation.

If a first-class city has public works performed by public employees in any budget period that are in excess of this ~~((ten))~~ 10 percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that city in its next budget period. Twenty percent of the motor vehicle fuel tax distributions to that city shall be withheld if two years after the year in which the excess amount of work occurred, the city has failed to so reduce the amount of public works that it has performed by public employees. The amount so withheld shall be distributed to the city when it has demonstrated in its reports to the state auditor that the amount of public works it has performed by public employees has been so reduced.

Whenever a first-class city has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works within that budget period shall be done by contract pursuant to public notice and call for competitive bids.

The state auditor shall report to the state treasurer any first-class city that exceeds this amount and the extent to which the city has or has not reduced the amount of public works it has performed by public employees in subsequent years.

(3) In addition to the percentage limitation provided in subsection (2) of this section, a first-class city shall not have public employees perform a public works project in excess of ~~((one hundred fifty thousand dollars))~~ \$150,000 if more than a single craft or trade is involved with the public works project, or a public works project in excess of ~~((seventy five thousand five hundred dollars))~~ \$75,500 if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project. However, a first-class city may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. For purposes of this section, "prudent utility management" means performing work with regularly employed personnel utilizing material of a worth not exceeding \$300,000 in value without a contract. This limit on the value of material being

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utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment. For purposes of this section, the term "equipment" includes, but is not limited to, conductor, cabling, wire, pipe, or lines used for electrical, water, fiber optic, or telecommunications.

(4) In addition to the accounting and recordkeeping requirements contained in RCW 39.04.070, every first-class city annually may prepare a report for the state auditor indicating the total public works construction budget and supplemental public works construction budget for that year, the total construction costs of public works performed by public employees for that year, and the amount of public works that is performed by public employees above or below ~~((ten))~~ 10 percent of the total construction budget. However, if a city budgets on a biennial basis, this annual report may indicate the amount of public works that is performed by public employees within the current biennial period that is above or below ~~((ten))~~ 10 percent of the total biennial construction budget.

Each first-class city with a population of ~~((one hundred fifty thousand))~~ 150,000 or less shall use the form required by RCW 43.09.205 to account and record costs of public works in excess of ~~((five thousand dollars))~~ \$5,000 that are not let by contract.

(5) The cost of a separate public works project shall be the costs of materials, supplies, equipment, and labor on the construction of that project. The value of the public works budget shall be the value of all the separate public works projects within the budget.

(6) The competitive bidding requirements of this section may be waived by the city legislative authority pursuant to RCW 39.04.280 if an exemption contained within that section applies to the work or contract.

(7) In lieu of the procedures of subsections (2) and (6) of this section, a first-class city may let contracts using the small works roster process in RCW 39.04.155.

Whenever possible, the city shall invite at least one proposal from a certified minority or woman contractor who shall otherwise qualify under this section.

(8) The allocation of public works projects to be performed by city employees shall not be subject to a collective bargaining agreement.

(9) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020~~((4))~~ (6), that are negotiated under chapter 39.35A RCW.

(10) Nothing in this section shall prohibit any first-class city from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

(11)(a) Any first-class city may procure public works with a unit priced contract under this section for the purpose of completing anticipated types of work based on hourly rates or unit pricing for one or more categories of work or trades.

(b) For the purposes of this section, "unit priced contract" means a competitively bid contract in which public works are anticipated on a recurring basis to meet the business or operational needs of the city, under which the contractor agrees to a fixed period indefinite quantity delivery of work, at a defined unit price for each category of work.

(c) Unit priced contracts must be executed for an initial contract term not to exceed three years, with the city having the option of extending or renewing the unit priced contract for one additional year.

(d) Invitations for unit price bids shall include, for purposes of the bid evaluation, estimated quantities of the anticipated types of work or trades, and specify how the city will issue or release work assignments, work orders, or task authorizations pursuant to a unit priced contract for projects, tasks, or other work based on the

hourly rates or unit prices bid by the contractor. Contracts must be awarded to the lowest responsible bidder as per RCW 39.04.010. Whenever possible, the city must invite at least one proposal from a certified minority or woman contractor who otherwise qualifies under this section.

(e) Unit price contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each work order must be the prevailing wage rates in effect at the beginning date for each contract year. Unit priced contracts must have prevailing wage rates updated annually. Intents and affidavits for prevailing wages paid must be submitted annually for all work completed within the previous ~~((twelve-month))~~ 12-month period of the unit priced contract.

(12) For the purposes of this section, "lowest responsible bidder" means a bid that meets the criteria under RCW 39.04.350 and has the lowest bid; provided, that if the city issues a written finding that the lowest bidder has delivered a project to the city within the last three years which was late, over budget, or did not meet specifications, and the city does not find in writing that such bidder has shown how they would improve performance to be likely to meet project specifications then the city may choose the second lowest bidder whose bid is within five percent of the lowest bid and meets the same criteria as the lowest bidder.

Sec. 4. RCW 57.08.050 and 2019 c 434 s 10 are each amended to read as follows:

(1) All work ordered, the estimated cost of which is in excess of ~~((fifty thousand dollars))~~ \$150,000 if more than a single craft or trade is involved with the public works project, or a public works project in excess of \$75,500 if only a single craft or trade is involved with the public works project, shall be let by contract and competitive bidding. Before awarding any such contract the board of commissioners shall publish a notice in a newspaper of general circulation where the district is located at least once ~~((thirteen))~~ 13 days before the last date upon which bids will be received, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of commissioners subject to the public inspection. The notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of commissioners on or before the day and hour named therein.

Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond, unless the bidder enters into a contract in accordance with the bidder's bid, and no bid shall be considered unless accompanied by such check, cash or bid bond. At the time and place named such bids shall be publicly opened and read and the board of commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting the bidder's own plans and specifications. The board of commissioners may reject all bids for good cause and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If the contract is let, then all checks, cash, or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for doing the work, and a bond to perform such work furnished with sureties satisfactory to the board of commissioners in the full amount of the contract price between the bidder and the commission in accordance with the

bid. If the bidder fails to enter into the contract in accordance with the bid and furnish the bond within ~~((ten))~~ 10 days from the date at which the bidder is notified that the bidder is the successful bidder, the check, cash, or bid bonds and the amount thereof shall be forfeited to the district. If the bidder fails to enter into a contract in accordance with the bidder's bid, and the board of commissioners deems it necessary to take legal action to collect on any bid bond required by this section, then the district shall be entitled to collect from the bidder any legal expenses, including reasonable attorneys' fees occasioned thereby. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) As an alternative to requirements under subsection (1) of this section, a water-sewer district may let contracts using the small works roster process under RCW 39.04.155.

(3) Any purchase of materials, supplies, or equipment, with an estimated cost in excess of ~~((forty thousand dollars))~~ \$40,000, shall be by contract. Any purchase of materials, supplies, or equipment, with an estimated cost of less than ~~((fifty thousand dollars))~~ \$50,000 shall be made using the process provided in RCW 39.04.190. Any purchase of materials, supplies, or equipment with an estimated cost of ~~((fifty thousand dollars))~~ \$50,000 or more shall be made by competitive bidding following the procedure for letting contracts for projects under subsection (1) of this section.

(4) As an alternative to requirements under subsection (3) of this section, a water-sewer district may let contracts for purchase of materials, supplies, or equipment with the suppliers designated on current state agency, county, city, or town purchasing rosters for the materials, supplies, or equipment, when the roster has been established in accordance with the competitive bidding law for purchases applicable to the state agency, county, city, or town. The price and terms for purchases shall be as described on the applicable roster.

(5) The board may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

(6)(a) A district may procure public works with a unit priced contract under this section for the purpose of completing anticipated types of work based on hourly rates or unit pricing for one or more categories of work or trades.

(b) For the purposes of this section, "unit priced contract" means a competitively bid contract in which public works are anticipated on a recurring basis to meet the business or operational needs of the district, under which the contractor agrees to a fixed period indefinite quantity delivery of work, at a defined unit price for each category of work.

(c) Unit priced contracts must be executed for an initial contract term not to exceed one year, with the district having the option of extending or renewing the unit priced contract for one additional year.

(d) Invitations for unit price bids must include, for purposes of the bid evaluation, estimated quantities of the anticipated types of work or trades, and specify how the district will issue or release work assignments, work orders, or task authorizations pursuant to a unit priced contract for projects, tasks, or other work based on the hourly rates or unit prices bid by the contractor. Contracts must be awarded to the lowest responsible bidder as per RCW 39.04.010. Whenever possible, the district must invite at least one proposal from a certified minority or woman contractor who otherwise qualifies under this section.

(e) Unit price contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of

chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each work order must be the prevailing wage rates in effect at the beginning date for each contract year. Unit priced contracts must have prevailing wage rates updated annually. Intents and affidavits for prevailing wages paid must be submitted annually for all work completed within the previous ~~((twelve-month))~~ 12-month period of the unit priced contract.

(7) A water-sewer district may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. For purposes of this section, "prudent utility management" means performing work with regularly employed personnel utilizing material of a worth not exceeding \$300,000 in value without a contract. This limit on the value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment. For the purposes of this section, the term "equipment" includes but is not limited to conductor, cabling, wire, pipe, or lines used for electrical, water, fiber optic, or telecommunications.

(8) For the purposes of this section, "lowest responsible bidder" means a bid that meets the criteria under RCW 39.04.350 and has the lowest bid; provided, that if the district issues a written finding that the lowest bidder has delivered a project to the district within the last three years which was late, over budget, or did not meet specifications, and the district does not find in writing that such bidder has shown how they would improve performance to be likely to meet project specifications then the district may choose the second lowest bidder whose bid is within five percent of the lowest bid and meets the same criteria as the lowest bidder.

Sec. 5. RCW 52.14.110 and 2019 c 434 s 12 are each amended to read as follows:

(1) Insofar as practicable, purchases and any public works by the district shall be based on competitive bids. A formal sealed bid procedure shall be used as standard procedure for purchases and contracts for purchases executed by the board of commissioners. Formal sealed bidding shall not be required for:

~~((4))~~ (a) The purchase of any materials, supplies, or equipment if the cost will not exceed the sum of ~~((forty thousand dollars))~~ \$75,500. However, whenever the estimated cost does not exceed ~~((seventy five thousand dollars))~~ \$150,000, the commissioners may by resolution use the process provided in RCW 39.04.190 to award contracts;

~~((2))~~ (b) Contracting for work to be done involving the construction or improvement of a fire station or other buildings where the estimated cost will not exceed the sum of ~~((thirty thousand dollars, which includes the costs of labor, material, and equipment))~~ \$150,000 if more than a single craft or trade is involved with the public works project, or a public works project in excess of \$75,500 if only a single craft or trade is involved with the public works project;

~~((3))~~ (c) Contracts using the small works roster process under RCW 39.04.155; and

~~((4))~~ (d) Any contract for purchases or public work pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

(2) A fire protection district may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. For purposes of this section, "prudent utility management" means performing work with regularly employed personnel utilizing material of a worth not exceeding \$300,000 in value without a contract. This limit on the value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment. For the purposes of this section, the term "equipment" includes but is not

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limited to conductor, cabling, wire, pipe, or lines used for electrical, water, fiber optic, or telecommunications.

(3) For the purposes of this section, "lowest responsible bidder" means a bid that meets the criteria under RCW 39.04.350 and has the lowest bid; provided, that if the district issues a written finding that the lowest bidder has delivered a project to the district within the last three years which was late, over budget, or did not meet specifications, and the district does not find in writing that such bidder has shown how they would improve performance to be likely to meet project specifications then the district may choose the second lowest bidder whose bid is within five percent of the lowest bid and meets the same criteria as the lowest bidder.

NEW SECTION. Sec. 6. The capital projects advisory review board shall review this act and make recommendations to the appropriate committees of the legislature by December 31, 2023.

NEW SECTION. Sec. 7. Sections 1 through 5 of this act take effect June 30, 2024."

On page 1, line 3 of the title, after "districts;" strike the remainder of the title and insert "amending RCW 54.04.070, 35.23.352, 35.22.620, 57.08.050, and 52.14.110; creating a new section; and providing an effective date."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Local Government, Land Use & Tribal Affairs to Substitute House Bill No. 1621.

The motion by Senator Lovelett carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Lovelett, the rules were suspended, Substitute House Bill No. 1621 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Lovelett and Torres spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1621.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1621 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

SUBSTITUTE HOUSE BILL NO. 1621, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1369, by House Committee on Community Safety, Justice, & Reentry

(originally sponsored by Griffey, Bronoske, Riccelli, Maycumber, Couture, Abbarno, Volz, Barkis, Christian and Leavitt)

Concerning off-duty employment of fish and wildlife officers.

The measure was read the second time.

MOTION

Senator Padden moved that the following committee striking amendment by the Committee on Law & Justice be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 77.15 RCW to read as follows:

Washington fish and wildlife officers may engage in private law enforcement off-duty employment, in uniform or in plainclothes for private benefit, subject to guidelines adopted by the chief of fish and wildlife enforcement. These guidelines must ensure that the integrity and professionalism of the Washington fish and wildlife enforcement is preserved. Use of Washington fish and wildlife officer's uniforms shall be considered de minimis use of state property. For any employment authorized under this section that occurs on reservation, trust, or allotted lands of a federally-recognized Indian tribe, a Washington fish and wildlife officer must have taken the violence de-escalation and mental health training provided by the criminal justice training commission, including the curriculum of the history of police interactions with Native American communities; and the private employer must have obtained permission from the affected federally recognized Indian tribe.

NEW SECTION. Sec. 2. A new section is added to chapter 4.92 RCW to read as follows:

(1) The state is not liable for tortious conduct by department of fish and wildlife officers that occurs while such officers are engaged in private law enforcement off-duty employment.

(2) Upon petition of the state any suit, for which immunity is granted to the state under subsection (1) of this section, shall be dismissed.

(3) Department of fish and wildlife officers engaged in private law enforcement off-duty employment shall notify, in writing, prior to such employment, anyone who employs department of fish and wildlife officers in private off-duty employment of the specific provisions of subsections (1) and (2) of this section."

On page 1, line 2 of the title, after "officers;" strike the remainder of the title and insert "adding a new section to chapter 77.15 RCW; and adding a new section to chapter 4.92 RCW."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Law & Justice to Engrossed Substitute House Bill No. 1369.

The motion by Senator Padden carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Padden, the rules were suspended, Engrossed Substitute House Bill No. 1369 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Padden, MacEwen and Dhingra spoke in favor of passage of the bill.

The President declared the question before the Senate to be the

final passage of Engrossed Substitute House Bill No. 1369 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1369 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1369, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1775, by Representatives Lekanoff, Chapman, Ramel and Reed

Limiting liability for salmon recovery projects performed by regional fisheries enhancement groups.

The measure was read the second time.

MOTION

Senator Salomon moved that the following committee striking amendment by the Committee on Agriculture, Water, Natural Resources & Parks be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 77.85.050 and 2013 c 194 s 1 are each amended to read as follows:

(1)(a) Counties, cities, and tribal governments must jointly designate, by resolution or by letters of support, the area for which a habitat project list is to be developed and the lead entity that is to be responsible for submitting the habitat project list. No project included on a habitat project list shall be considered mandatory in nature and no private landowner may be forced or coerced into participation in any respect. The lead entity may be a county, city, conservation district, special district, tribal government, regional recovery organization, or other entity.

(b) The lead entity shall establish a committee that consists of representative interests of counties, cities, conservation districts, tribes, environmental groups, business interests, landowners, citizens, volunteer groups, regional fish enhancement groups, and other habitat interests. The purpose of the committee is to provide a citizen-based evaluation of the projects proposed to promote salmon habitat.

(c) The committee shall compile a list of habitat projects, establish priorities for individual projects, define the sequence for project implementation, and submit these activities as the habitat project list. The committee shall also identify potential federal, state, local, and private funding sources.

(2) The area covered by the habitat project list must be based, at a minimum, on a WRIA, combination of WRIs, or any other

area as agreed to by the counties, cities, and tribes in resolutions or in letters of support meeting the requirements of this subsection. Preference will be given to projects in an area that contain a salmon species that is listed or proposed for listing under the federal endangered species act.

(3) The lead entity shall submit the habitat project list to the salmon recovery funding board in accordance with procedures adopted by the board.

(4) The recreation and conservation office shall administer funding to support the functions of lead entities.

(5) ((A)) Except as provided in subsection (6) of this section, a landowner whose land is used for a habitat project that is included on a habitat project list, and who has received notice from the project sponsor that the conditions of this section have been met, or a regional fisheries enhancement group authorized under RCW 77.95.060 performing habitat restoration activities under this chapter, may not be held civilly liable for any property damages resulting from the habitat project regardless of whether or not the project was funded by the salmon recovery funding board. This subsection is subject to the following conditions:

(a) The project was designed by a licensed professional engineer (PE) or a licensed geologist (LG, LEG, or LHG) with experience in riverine restoration;

(b) The project is designed to withstand ((one hundred)) 100 year floods;

(c) The project is not located within one-quarter mile of an established downstream boat launch;

(d) The project is designed to allow adequate response time for in-river boaters to safely evade in-stream structures; and

(e) If the project includes large wood placement, each individual root wad and each log larger than ten feet long and one foot in diameter must be visibly tagged with a unique numerical identifier that will withstand typical river conditions for at least three years.

(6) A regional fisheries enhancement group performing habitat restoration activities under this chapter may not be held civilly liable for any property damage resulting from a habitat project performed subject to the conditions specified under subsection (5) of this section unless the damage is due to acts or omissions constituting gross negligence or willful or wanton misconduct."

On page 1, line 2 of the title, after "groups;" strike the remainder of the title and insert "and amending RCW 77.85.050."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Agriculture, Water, Natural Resources & Parks to House Bill No. 1775.

The motion by Senator Salomon carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Salomon, the rules were suspended, House Bill No. 1775 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Salomon and Rivers spoke in favor of passage of the bill.

Senators MacEwen and Wagoner spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1775.

ROLL CALL

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The Secretary called the roll on the final passage of House Bill No. 1775 and the bill passed the Senate by the following vote: Yeas, 31; Nays, 18; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Braun, Cleveland, Conway, Dhingra, Frame, Hawkins, Hunt, Keiser, Kuderer, Lias, Lovelett, Lovick, MacEwen, Mullet, Nguyen, Nobles, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Shewmake, Stanford, Trudeau, Valdez, Van De Wege, Wellman and Wilson, C.

Voting nay: Senators Boehnke, Dozier, Fortunato, Gildon, Hasegawa, Holy, Kauffman, King, McCune, Muzzall, Padden, Schoesler, Short, Torres, Wagoner, Warnick, Wilson, J. and Wilson, L.

HOUSE BILL NO. 1775, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1213, by House Committee on Environment & Energy (originally sponsored by Ybarra, Fitzgibbon, Ramel, Doglio and Macri)

Concerning compliance with labeling requirements for wipes.

The measure was read the second time.

MOTION

On motion of Senator MacEwen, the rules were suspended, Substitute House Bill No. 1213 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators MacEwen, Nguyen and Braun spoke in favor of passage of the bill.

MOTION

On motion of Senator Nobles, Senator Lias was excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1213.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1213 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

Excused: Senator Lias

SUBSTITUTE HOUSE BILL NO. 1213, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1742, by Representative Wylie

Concerning nontax statutes administered by the department of revenue.

The measure was read the second time.

MOTION

On motion of Senator Dhingra, the rules were suspended, House Bill No. 1742 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Dhingra spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1742.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1742 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

Excused: Senator Lias

HOUSE BILL NO. 1742, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 1639, by House Committee on Appropriations (originally sponsored by Lekanoff, Ramel, Gregerson and Santos)

Concerning the Billy Frank Jr. national statutory hall selection committee.

The measure was read the second time.

MOTION

Senator Hunt moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. 2021 c 20 s 3 (uncodified) is amended to read as follows:

(1) The Billy Frank Jr. national statutory hall selection committee is established to represent the state in the duties set forth under subsection (3) of this section.

(2)(a) The committee shall consist of the following members:

(i) ~~((The governor or the governor's designee;~~

~~((ii)))~~ The lieutenant governor;

~~((iii))~~ The speaker of the house of representatives;

~~(iv) The minority leader of both the senate and house of~~

representatives;

~~(v) Two members~~) (ii) One member from each of the two largest caucuses in the house of representatives, appointed by the speaker of the house and the minority leader;

(iii) One member from each of the two largest caucuses in the senate, appointed by the majority leader and the minority leader;

(iv) One member who represents the western Washington treaty tribes, appointed by the governor. The governor shall solicit from the northwest Indian fisheries commission a list of at least three nominees representing the western Washington treaty tribes and, in making the appointment, shall consider the list of nominees submitted;

~~((vi) One member representing an environmental, conservation, or environmental justice nonprofit organization, appointed by the governor;~~

~~(vii))~~ (v) One member from Billy Frank Jr.'s family, appointed by the governor;

~~((viii) One member from the Washington state legacy project, created under RCW 43.07.363;~~

~~(ix))~~ (vi) One member from the division of archives and records management, established under RCW 40.14.020;

~~((x))~~ (vii) One member from the Washington state historical society; and

~~((xi) One member from the Washington state department of archaeology and historic preservation; and~~

~~(xii))~~ (viii) One member from the Washington state arts commission.

(b) The members described in (a) of this subsection shall select ~~(a chair)~~ three cochairs of the committee.

(3) Upon the approval of the request under section 2, chapter 20, Laws of 2021 by the joint committee on the library of congress, the governor shall convene the committee, and the committee shall:

(a) Enter into an agreement with the architect of the United States capitol pursuant to 2 U.S.C. Sec. 2132 to carry out the replacement of the statues as described in chapter 20, Laws of 2021;

(b) Select and contract with a sculptor to design and carve or cast a statue of Billy Frank Jr., and design and fabricate its pedestal, to be placed in the national statutory hall collection;

(c) ~~(Ensure)~~ Support and oversee the design and creation of the statue of Billy Frank Jr., and ensure that the statue designed and created under (b) of this subsection complies with the conditions and restrictions set forth under 2 U.S.C. Sec. 2131;

(d) Support and oversee all communications, public relations, outreach, and educational materials related to the design, creation, and unveiling of the statue. The committee may enter into an agreement with a qualified communications firm or organization as necessary to accomplish this task;

(e) Arrange, in coordination with the sculptor and the department of enterprise services, for a duplicate cast of the statue to be created and installed at the legislative building on the capitol campus in Olympia;

(f) Arrange, in coordination with the architect of the United States capitol, for the removal and transportation of the Marcus Whitman statue to Washington, and arrange for an unveiling ceremony at the relocation site as selected in accordance with section 4, chapter 20, Laws of 2021;

~~((e))~~ (g) Arrange for the transportation and placement of the Billy Frank Jr. statue in the national statutory hall, in coordination with the architect of the United States capitol;

~~((f))~~ (h) Arrange for one or more ceremonies to celebrate the unveiling of the Billy Frank Jr. statues in the national statutory hall and on the capitol campus. The ceremonies may take place in Washington state, the United States capitol, or both; and

~~((g))~~ (i) Perform all other matters and things necessary to carry out the purpose and provisions of this section.

(4) The committee shall enter into an agreement with the Nisqually tribe, of which Billy Frank Jr. was a member, to provide cultural competency to the committee as it carries out its duties under this section, and to any state agencies involved in implementation of this section. The tribe shall be compensated for its services under this subsection.

(5) The committee and the Washington state historical society may solicit and accept gifts, grants, or endowments from public and private sources that are made in trust or otherwise for the use and benefit of the purposes of the committee in carrying out chapter 20, Laws of 2021. The committee may spend gifts, grants, or endowments or income from public or private sources according to their terms. All receipts from gifts, grants, and endowments received pursuant to this subsection must be deposited in the Billy Frank Jr. national statutory hall collection fund established under RCW 43.08.800.

~~((5) No general fund resources may be expended to implement this section.)~~

(6) The implementation of this section shall first be funded through moneys in the Billy Frank Jr. national statutory hall collection fund. Any additional funding necessary may be provided from the state general fund. Any funds remaining in the Billy Frank Jr. national statutory hall collection fund upon completion of the tasks described under chapter 20, Laws of 2021, must be granted to the Washington state historical society.

(7) The Washington state arts commission may submit expenses for reimbursement to the committee for providing administrative support to the committee, coordinating and overseeing artist selection, and managing procurements.

(8) For the purposes of this section, "committee" means the Billy Frank Jr. national statutory hall selection committee.

Sec. 2. RCW 43.79A.040 and 2022 c 244 s 3, 2022 c 206 s 8, 2022 c 183 s 16, and 2022 c 162 s 6 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

(2) All income received from investment of the treasurer's trust fund must be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments must occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer must distribute the earnings credited to the investment income account to the state general fund except under (b), (c), and (d) of this subsection.

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Gina Grant Bull memorial legislative page scholarship account, the Rosa Franklin legislative internship program scholarship account, the Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a

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better life experience program account, the Washington career and college pathways innovation challenge program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the behavioral health loan repayment program account, the Billy Frank Jr. national statutory hall collection fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county ~~((enhanced))~~ 911 excise tax account, the county road administration board emergency loan account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the energy facility site evaluation council account, the fair fund, the family and medical leave insurance account, the fish and wildlife federal lands revolving account, the natural resources federal lands revolving account, the food animal veterinarian conditional scholarship account, the forest health revolving account, the fruit and vegetable inspection account, the educator conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the Washington history day account, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the low-income home rehabilitation revolving loan program account, the multiagency permitting team account, the northeast Washington wolf-livestock management account, the produce railcar pool account, the public use general aviation airport loan revolving account, the regional transportation investment district account, the rural rehabilitation account, the Washington sexual assault kit account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state library-archives building account, the reduced cigarette ignition propensity account, the center for deaf and hard of hearing youth account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, the school employees' benefits board insurance reserve fund, the public employees' and retirees' insurance account, the school employees' insurance account, the long-term services and supports trust account, the radiation perpetual maintenance fund, the Indian health improvement reinvestment account, the department of licensing tuition recovery trust fund, the student achievement council tuition recovery trust fund, the tuition recovery trust fund, the Washington student loan account, the industrial insurance premium refund account, the mobile home park relocation fund, the natural resources deposit fund, the Washington state health insurance pool account, the federal forest revolving account, and the library operations account.

(c) The following accounts and funds must receive 80 percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advance right-of-way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

Sec. 3. RCW 1.16.050 and 2021 c 295 s 2 are each amended to read as follows:

(1) The following are state legal holidays:

(a) Sunday;

(b) The first day of January, commonly called New Year's Day;

(c) The third Monday of January, celebrated as the anniversary of the birth of Martin Luther King, Jr.;

(d) The third Monday of February, to be known as Presidents' Day and celebrated as the anniversary of the births of Abraham Lincoln and George Washington;

(e) The last Monday of May, commonly known as Memorial Day;

(f) The nineteenth day of June, recognized as Juneteenth, a day of remembrance for the day the African slaves learned of their freedom;

(g) The fourth day of July, the anniversary of the Declaration of Independence;

(h) The first Monday in September, to be known as Labor Day;

(i) The eleventh day of November, to be known as Veterans' Day;

(j) The fourth Thursday in November, to be known as Thanksgiving Day;

(k) The Friday immediately following the fourth Thursday in November, to be known as Native American Heritage Day; and

(l) The twenty-fifth day of December, commonly called Christmas Day.

(2) Employees of the state and its political subdivisions, except employees of school districts and except those nonclassified employees of institutions of higher education who hold appointments or are employed under contracts to perform services for periods of less than twelve consecutive months, are entitled to one paid holiday per calendar year in addition to those specified in this section. Each employee of the state or its political subdivisions may select the day on which the employee desires to take the additional holiday provided for in this section after consultation with the employer pursuant to guidelines to be promulgated by rule of the appropriate personnel authority, or in the case of local government by ordinance or resolution of the legislative authority.

(3) Employees of the state and its political subdivisions, including employees of school districts and those nonclassified employees of institutions of higher education who hold appointments or are employed under contracts to perform services for periods of less than twelve consecutive months, are entitled to two unpaid holidays per calendar year for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization. This includes employees of public institutions of higher education, including community colleges, technical colleges, and workforce training programs. The employee may select the days on which the employee desires to take the two unpaid holidays after consultation with the employer pursuant to guidelines to be promulgated by rule of the appropriate personnel authority, or in the case of local government by ordinance or resolution of the legislative authority. If an employee prefers to take the two

unpaid holidays on specific days for a reason of faith or conscience, or an organized activity conducted under the auspices of a religious denomination, church, or religious organization, the employer must allow the employee to do so unless the employee's absence would impose an undue hardship on the employer or the employee is necessary to maintain public safety. Undue hardship shall have the meaning established in rule by the office of financial management under RCW 43.41.109.

(4) If any of the state legal holidays specified in this section are also federal legal holidays but observed on different dates, only the state legal holidays are recognized as a paid legal holiday for employees of the state and its political subdivisions. However, for port districts and the law enforcement and public transit employees of municipal corporations, either the federal or the state legal holiday is recognized as a paid legal holiday, but in no case may both holidays be recognized as a paid legal holiday for employees.

(5) Whenever any state legal holiday:

(a) Other than Sunday, falls upon a Sunday, the following Monday is the legal holiday; or

(b) Falls upon a Saturday, the preceding Friday is the legal holiday.

(6) Nothing in this section may be construed to have the effect of adding or deleting the number of paid holidays provided for in an agreement between employees and employers of political subdivisions of the state or as established by ordinance or resolution of the local government legislative authority.

(7) The legislature declares that the following days are recognized as provided in this subsection, but may not be considered legal holidays for any purpose:

(a) The thirteenth day of January, recognized as Korean-American day;

(b) The twelfth day of October, recognized as Columbus day;

(c) The ninth day of April, recognized as former prisoner of war recognition day;

(d) The twenty-sixth day of January, recognized as Washington army and air national guard day;

(e) The seventh day of August, recognized as purple heart recipient recognition day;

(f) The second Sunday in October, recognized as Washington state children's day;

(g) The sixteenth day of April, recognized as Mother Joseph day;

(h) The fourth day of September, recognized as Marcus Whitman day;

(i) The seventh day of December, recognized as Pearl Harbor remembrance day;

(j) The twenty-seventh day of July, recognized as national Korean war veterans armistice day;

(k) The nineteenth day of February, recognized as civil liberties day of remembrance;

(l) The thirtieth day of March, recognized as welcome home Vietnam veterans day;

(m) The eleventh day of January, recognized as human trafficking awareness day;

(n) The thirty-first day of March, recognized as Cesar Chavez day;

(o) The tenth day of April, recognized as Dolores Huerta day;

(p) The fourth Saturday of September, recognized as public lands day; ~~((and))~~

(q) The eighteenth day of December, recognized as blood donor day; and

(r) The ninth day of March, recognized as Billy Frank Jr. day.

NEW SECTION. Sec. 4. A new section is added to chapter 42.52 RCW to read as follows:

This chapter does not prohibit the members of the Billy Frank Jr. national statutory hall selection committee, members of the legislature, when outside the period in which solicitation of contributions is prohibited by RCW 42.17A.560, or employees of the Washington state historical society from soliciting contributions for the purposes established in chapter 20, Laws of 2021, and for deposit into the Billy Frank Jr. national statutory hall collection fund created in RCW 43.08.800.

NEW SECTION. Sec. 5. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2023, in the omnibus appropriations act, this act is null and void."

On page 1, line 2 of the title, after "committee;" strike the remainder of the title and insert "amending RCW 1.16.050; amending 2021 c 20 s 3 (uncodified); reenacting and amending RCW 43.79A.040; adding a new section to chapter 42.52 RCW; and creating a new section."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Second Substitute House Bill No. 1639.

The motion by Senator Hunt carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Hunt, the rules were suspended, Second Substitute House Bill No. 1639 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hunt, Wilson, J. and Kauffman spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 1639.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 1639 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

Excused: Senator Liias

SECOND SUBSTITUTE HOUSE BILL NO. 1639, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

PERSONAL PRIVILEGE

Senator Hunt: "Thank you. In honor of the bill, I just thought it was appropriate to point out that today is the birthday of Willy Frank, the Chair of the Nisqually Tribe, and the son of Billy Frank, Jr. Very appropriate I think."

REMARKS BY THE PRESIDENT

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President Heck: "Happy Birthday Mr. Chairman."

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 1470, by House Committee on Appropriations (originally sponsored by Ortiz-Self, Chopp, Simmons, Santos, Ryu, Orwall, Chapman, Gregerson, Doglio, Peterson, Ramel, Macri, Ormsby, Berg, Leavitt, Bateman, Morgan and Fey)

Concerning private detention facilities.

The measure was read the second time.

MOTION

Senator Wilson, C. moved that the following committee striking amendment by the Committee on Human Services be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 42.56.475 and 2022 c 272 s 1 are each amended to read as follows:

(1) The following information or records created or maintained by the department of corrections or a private detention facility is exempt from public inspection and copying under this chapter:

(a) Body scanner images from any system designed to detect and visualize contraband hidden in body cavities or beneath clothing, including backscatter X-ray, millimeter wave, and transmission X-ray systems;

(b) The following information and records created or maintained pursuant to the federal prison rape elimination act, 34 U.S.C. Sec. 30301 et seq., and its regulations:

- (i) Risk assessments, risk indicators, and monitoring plans;
- (ii) Reports of sexual abuse or sexual harassment, as defined under 28 C.F.R. 115.6;
- (iii) Records of open prison rape elimination act investigations; and

(iv) The identities of individuals other than department of corrections or private detention facility staff, contractors, and volunteers, in closed prison rape elimination act investigation reports and related investigative materials; however, the identity of an accused individual is not exempt if the allegation is determined to have been substantiated; and

(c) Health information in records other than an incarcerated individual's or detained individual's medical, mental health, or dental files.

(2) The exemption of information or records described under subsection (1)(b) and (c) of this section does not apply to requests by the incarcerated individual or detained individual who is the subject of the information, a requestor with the written permission of the incarcerated individual or detained individual who is the subject of the information, or a personal representative of an incarcerated individual or detained individual who is the subject of the information. In response to such requests, the department of corrections or private detention facility may withhold information revealing the identity of other incarcerated or detained individuals.

(3) An agency refusing, in whole or in part, inspection of a public record containing information listed in subsection (1)(c) of this section may cite to subsection (1)(c) of this section, without further explanation, when providing the brief explanation required by RCW 42.56.210(3), and shall also identify the number of pages withheld, if any pages are withheld in their entirety.

(4) For purposes of this section:

(a) "Health information" means any information that identifies or can readily be associated with the identity of an incarcerated individual or detained individual and directly relates to the following: Medical, mental health, or dental diagnoses or conditions; medical, mental health, or dental services, treatments, or procedures, including requests for or complaints about such services, treatments, or procedures; transgender, intersex, nonbinary, or gender nonconforming status; sexual orientation; genital anatomy; or gender-affirming care or accommodations other than an incarcerated individual's or detained individual's preferred name, pronouns, and gender marker.

(b) The following information is not "health information" under this section: (i) Health care information subject to RCW 42.56.360(2) and chapter 70.02 RCW; and (ii) information related to injuries, other than injuries related to medical procedures or genital anatomy, contained in incident reports, infraction records, or use of force reports, prepared by department of corrections or private detention facility staff other than health care providers.

(c) "Incarcerated individual" has the same meaning as "inmate" under RCW 72.09.015 and includes currently or formerly incarcerated individuals.

(d) "Detained individual" means a person confined in a private detention facility.

(e) "Private detention facility" has the same meaning as in RCW 70.395.020.

(5) A private detention facility operating pursuant to a contract with a state or local agency is subject to the requirements of this chapter.

NEW SECTION. **Sec. 2.** A new section is added to chapter 70.395 RCW to read as follows:

(1) The department of health shall adopt rules as may be necessary to effectuate the intent and purposes of this section in order to ensure private detention facilities comply with measurable standards providing sanitary, hygienic, and safe conditions for detained persons. The department of health rules shall include that:

(a) A detained person should have a safe, clean, and comfortable environment that allows a detained person to use the person's personal belongings to the extent possible;

(b) Living areas, including areas used for sleeping, recreation, dining, telecommunications, visitation, and bathrooms, must be cleaned and sanitized regularly;

(c) A private detention facility must provide laundry facilities, equipment, handling, and processes for linen and laundered items that are clean and in good repair, adequate to meet the needs of detained persons, and maintained according to the manufacturer's instructions. Laundry and linen must be handled, cleaned, and stored according to acceptable methods of infection control including preventing contamination from other sources. Separate areas for handling clean laundry and soiled laundry must be provided and laundry rooms and areas must be ventilated to the exterior;

(d) Basic personal hygiene items must be provided to a detained person regularly at no cost;

(e) A private detention facility shall provide a nutritious and balanced diet, including fresh fruits and vegetables, and shall recognize a detained person's need for a special diet. A private detention facility must follow proper food handling and hygiene practices. A private detention facility must provide at least three meals per day, at no cost, and at reasonable hours;

(f) Safe indoor air quality must be maintained;

(g) The private detention facility must have both heating and air conditioning equipment that can be adjusted by room or area. Rooms used by a detained person must be able to maintain

interior temperatures between 65 degrees Fahrenheit and 78 degrees Fahrenheit year-round. Excessive odors and moisture must be prevented in the building; and

(h) A private detention facility must implement and maintain an infection control program that prevents the transmission of infections and communicable disease among detained persons, staff, and visitors.

(2) The office of the attorney general may enforce violations of this section on its own initiative or in response to complaints or violations.

NEW SECTION. Sec. 3. A new section is added to chapter 70.395 RCW to read as follows:

(1) The department of health shall:

(a) Conduct routine, unannounced inspections of private detention facilities including, but not limited to, inspection of food service and food handling, sanitation and hygiene, and nutrition as provided in (c) of this subsection;

(b) Conduct investigations of complaints received relating to any private detention facility located within the state;

(c) Regularly review the list of food items provided to detained persons to ensure the specific nutrition and calorie needs of each detained person are met, including any needs related to medical requirements, food allergies, or religious dietary restrictions;

(d) Test water used for drinking and bathing and air quality every six months at private detention facilities both inside and outside of the facility; and

(e) Post inspection results on its website and in a conspicuous place viewable by detained persons and visitors to private detention facilities. Results should be posted in English and in languages spoken by detainees, to the extent practicable.

(2) The department of health may delegate food safety inspections to the local health jurisdiction, where the local health jurisdiction is in the county where the private detention facility is located, to conduct inspections pursuant to regulations.

(3) The department of health shall adopt rules as may be necessary to effectuate the intent and purposes of this section in order to ensure private detention facilities allow regular inspections and comply with measurable standards providing sanitary, hygienic, and safe conditions for detained persons.

(4) The department of labor and industries shall conduct routine, unannounced inspections of workplace conditions at private detention facilities, including work undertaken by detained persons.

(5) The office of the attorney general may enforce violations of this section on its own initiative or in response to complaints or violations.

NEW SECTION. Sec. 4. A new section is added to chapter 70.395 RCW to read as follows:

(1) This section does not apply to private detention facilities operating pursuant to a valid contract that was in effect prior to January 1, 2023, for the duration of that contract, not to include any extensions or modifications made to, or authorized by, that contract.

(2) A private detention facility operating pursuant to a contract or agreement with a federal, state, or local government shall comply with the following:

(a) A detained person, upon admission to a private detention facility, must be issued new clothing and new footwear for both indoor and outdoor use and for protection against cold and heat. Clothing issued must be regularly laundered and replaced at no cost once no longer hygienic or serviceable;

(b) Any food items in the commissary must be available at reasonable prices taking into account the income and financial circumstances of detained persons;

(c) Telecommunications services must be provided free of

charge to detained persons and any communication, whether initiated or received through such a service, must be free of charge to the detained person initiating or receiving the communication. Each detained person must be eligible to use these telecommunications services for at least 60 minutes on each day of the person's detention. Private detention facilities must not use the provision of telecommunications services or any other communication service to supplant in-person contact visits any detained person may be eligible to receive;

(d) In-person visitation must be available daily. Visitation rooms must allow for the presence of children and personal contact between visiting persons and detained persons may not be restricted. A detained person may receive reading and writing materials during visitation;

(e) Solitary confinement is prohibited;

(f) Televisions must be available and accessible to a detained person at no cost. The private detention facility shall make every effort to make television programming available in the language of the detained person;

(g) Handheld radios must be provided to a detained person at no cost;

(h) A detained person may invite persons to the private detention facility to provide legal education, know your rights presentations, and other similar programming;

(i) Computer and internet access must be available and accessible to a detained person at no cost;

(j) A law library must be available and accessible;

(k) Communication from the private detention facility to a detained person, either in writing or verbally, must be delivered in the primary language of the detained person;

(l) Sexual violence and harassment grievances must be responded to immediately by culturally competent professionals on-site and reported to local law enforcement in the county where the private detention facility is located;

(m) Mental health evaluations should occur at intake and periodically, at least once a week. Culturally competent mental health therapy must be available and free;

(n) Requested medical care and attention must be provided without delay, including the provision of requested medical accommodations;

(o) Rooms used by a detained person for sleeping must have access to windows, natural light, and natural air circulation. Subject to safety limitations, sleeping rooms must include adjustable curtains, shades, blinds, or the equivalent installed at the windows for visual privacy and that are shatterproof, screened, or of the security type as determined by the private detention facility needs; and

(p) A private detention facility must be equipped to respond to natural and human-made emergencies, including earthquakes, lahar threats, tsunami, and industrial accidents. A private detention facility must be earthquake resistant. A private detention facility shall develop emergency operation and continuity of operations plans and provide those plans to the local emergency management department. A private detention facility must stock all necessary personal protective equipment in case of disease outbreaks consistent with large numbers of people detained in close contact to one another.

(3) The office of the attorney general may enforce violations of this section on its own initiative or in response to complaints or violations.

NEW SECTION. Sec. 5. A new section is added to chapter 70.395 RCW to read as follows:

(1) A detained person aggrieved by a violation of this chapter has a right of action in superior court and may recover for each violation as follows:

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(a) Against any person who negligently violates a provision of this chapter, \$1,000, or actual damages, whichever is greater, for each violation;

(b) Against any person who intentionally or recklessly violates a provision of this chapter, \$10,000, or actual damages, whichever is greater, for each violation;

(c) Reasonable attorneys' fees and costs if the detained person is the prevailing party; and

(d) Other relief, including an injunction, as the court may deem appropriate. Injunctive relief may be issued without bond in the discretion of the court, notwithstanding any other requirement imposed by statute.

(2) Any action under this chapter is barred unless the action is commenced within three years after the cause of action accrues.

(3) For the purposes of this section, "person" means an owner, operator, contractor, subcontractor, or employee of a private detention facility.

(4) The state and its agencies are not liable for a violation of this chapter.

NEW SECTION. Sec. 6. A new section is added to chapter 70.395 RCW to read as follows:

(1) Any person who fails to comply with this chapter may be subject to a civil penalty in an amount of not more than \$1,000 per violation per day.

(2) Subject to the availability of amounts appropriated for this specific purpose, the secretary of the department of health may adopt by rule a penalty matrix that establishes procedures for civil penalties assessed under this chapter.

(3) Each violation is a separate and distinct offense. The department of health shall impose the civil penalty in accordance with chapter 34.05 RCW. Moneys collected under this section must be deposited into the state general fund.

(4) If the civil penalty is not paid to the department of health within 15 days after receipt of notice, the office of the attorney general may bring an action to recover the penalty in the name of the state of Washington in the superior court of Thurston county or in the county where the private detention facility is located. In all such actions, the procedure and rules of evidence are the same as in ordinary civil actions. All penalties recovered by the attorney general under this chapter must be paid into the Washington state attorney general humane detention account created in section 7 of this act.

(5) For the purposes of this section, "person" means an owner, operator, contractor, subcontractor, or employee of a private detention facility.

(6) The state and its agencies are not liable for a violation of this chapter.

NEW SECTION. Sec. 7. A new section is added to chapter 70.395 RCW to read as follows:

The Washington state attorney general humane detention account is created in the custody of the state treasurer. All receipts from civil penalties under section 6 of this act must be deposited in the account. Only the attorney general or the attorney general's designee may authorize expenditures from the account. Moneys in the account must be used exclusively for the costs associated with the attorney general's enforcement of the provisions of this chapter governing the recovery of civil penalties. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Sec. 8. RCW 70.395.010 and 2021 c 30 s 1 are each amended to read as follows:

(1) The legislature finds that all people confined in prisons and detention facilities in Washington deserve basic health care, nutrition, and safety. As held in *United States v. California*, 921 F.3d 865, 886 (9th Cir. 2019), states possess "the general

authority to ensure the health and welfare of inmates and detainees in facilities within its borders." States have broad authority to enforce generally applicable health and safety laws against contractors operating private detention facilities within the state. The ninth circuit reinforced this authority in *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 750 (9th Cir. 2022), stating "F:\Journal\2023 Journal\Journal2023\LegDay093\p.docprivate contractors do not stand on the same footing as the federal government, so states can impose many laws on federal contractors that they could not apply to the federal government itself."

(2) The legislature finds that profit motives lead private prisons and detention facilities to cut operational costs, including the provision of food, health care, and rehabilitative services, because their primary fiduciary duty is to maximize shareholder profits. This is in stark contrast to the interests of the state to ensure the health, safety, and welfare of Washingtonians, including all inmates and detainees within Washington's borders.

(3) The legislature finds that people confined in for-profit prisons and detention facilities have experienced abuses and have been confined in dangerous and unsanitary conditions. Safety risks and abuses in private prisons and detention facilities at the local, state, and federal level have been consistently and repeatedly documented. The United States department of justice office of the inspector general found in 2016 that privately operated prisons "incurred more safety and security incidents per capita than comparable BOP [federal bureau of prisons] institutions." The office of inspector general additionally found that privately operated prisons had ("higher rates of inmate on-inmate and inmate on staff assaults, as well as") higher rates of staff uses of force and that people detained in private prisons submitted more safety and security related grievances, including those regarding the quality of food.(⁽²⁾)

(4) The legislature finds that private prison operators have cut costs by reducing essential security and health care staffing. The sentencing project, a national research and advocacy organization, found in 2012 that private prison staff earn an average of five thousand dollars less than staff at publicly run facilities and receive almost 60 hours less training. The office of inspector general also found that people confined in private facilities often failed to receive necessary medical care and that one private prison went without a full-time physician for eight months. People confined within private detention facilities are subjected to prolonged periods of confinement, inadequate nutrition, medical and mental health access issues, and arbitrary and improper visitation and communication restrictions. In 2018, the sentencing project, a national research and advocacy organization, found that private prisons offer lower quality services and have higher staff turnover rates compared to publicly operated facilities. The office of inspector general also found that people confined in private facilities often failed to receive necessary medical care.

(5) The legislature finds that private prisons and detention centers are less accountable for what happens inside those facilities than state-run facilities, as they are not subject to the freedom of information act under 5 U.S.C. Sec. 552 or the Washington public records act under chapter 42.56 RCW.

(6) The legislature finds that at least 22 other states have stopped confining people in private for-profit facilities.

(7) Therefore, it is the intent of the legislature to prohibit the use of private, for-profit prisons and detention facilities in the state, and to set minimum standards for the conditions of confinement within private detention facilities in the state and to require the inspection and review of those facilities by appropriate state or local agencies to ensure public health and safety.

Sec. 9. RCW 70.395.020 and 2021 c 30 s 2 are each amended to read as follows:

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

(1) "Basic personal hygiene items" means items used to promote or preserve a detained person's health and contribute to the prevention of disease or infection, including soap, toothbrush and toothpaste, shampoo and conditioner, lotion, nail clippers, comb, towels, and menstrual products.

(2) "Culturally competent" includes: Knowledge of a detained person's cultural histories and contexts, as well as family norms and values in different cultures; knowledge and skills in accessing community resources and community outreach; and skills in adapting services and treatment to a detained person's experiences and identifying cultural contexts for individuals.

(3) "Detained person" means a person confined in a private detention facility.

(4) "Detention facility" means any facility in which persons are incarcerated or otherwise involuntarily confined for purposes including prior to trial or sentencing, fulfilling the terms of a sentence imposed by a court, or for other judicial or administrative processes or proceedings.

~~((2))~~ (5) "Fresh fruits and vegetables" means any unprocessed fruits or vegetables, not including any processed, canned, frozen, or dehydrated fruits or vegetables, or any fruits or vegetables infected or infested with insects or other contaminants.

(6)(a) "Personal protective equipment" means equipment worn to minimize exposure to hazards that cause serious injuries and illness, which may result from contact with chemical, radiological, physical, electrical, mechanical, or other hazards.

(b) Personal protective equipment may include items such as gloves, safety glasses and shoes, earplugs or muffs, hard hats, respirators, or coveralls, vests, and full body suits.

(7) "Private detention facility" means a detention facility that is operated by a private, nongovernmental for-profit entity and operating pursuant to a contract or agreement with a federal, state, or local governmental entity.

(8) "Solitary confinement" means the confinement of a detained person alone in a cell or similarly confined holding or living space for 20 hours or more per day under circumstances other than a partial or facility wide lockdown.

(9) "Telecommunications services" means phone calls or other voice communication services, video communications, and email services.

NEW SECTION. Sec. 10. Sections 2 through 6 of this act do not apply to a facility that is:

(1) Providing rehabilitative, counseling, treatment, mental health, educational, or medical services to juveniles who are subject to Title 13 RCW, or similarly applicable federal law;

(2) Providing evaluation and treatment or forensic services to a person who has been civilly detained or is subject to an order of commitment by a court pursuant to chapter 10.77, 71.05, 71.09, or 71.34 RCW, or similarly applicable federal law, including facilities regulated under chapters 70.41, 71.12, and 71.24 RCW;

(3) Used for the quarantine or isolation of persons for public health reasons pursuant to RCW 43.20.050, or similarly applicable federal law;

(4) Used for work release under chapter 72.65 RCW, or similarly applicable federal law;

(5) Used for extraordinary medical placement;

(6) Used for residential substance use disorder treatment; or

(7) Owned and operated by federally recognized tribes and contracting with a government.

NEW SECTION. Sec. 11. 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 takes effect immediately.

NEW SECTION. Sec. 12. This act shall be construed liberally for the accomplishment of the purposes thereof.

NEW SECTION. Sec. 13. 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. 14. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2023, in the omnibus appropriations act, this act is null and void."

On page 1, line 1 of the title, after "facilities;" strike the remainder of the title and insert "amending RCW 42.56.475, 70.395.010, and 70.395.020; adding new sections to chapter 70.395 RCW; creating new sections; prescribing penalties; and declaring an emergency."

MOTION

Senator Wagoner moved that the following amendment no. 0406 by Senator Wagoner be adopted:

On page 3, line 6, after "(1)" strike "The" and insert "Except as provided in subsection (2) of this section, the"

On page 4, line 7, after "(2)" insert "For a private detention facility operating pursuant to a valid contract with a federal governmental entity, the rules adopted under this section may not exceed federal requirements or federal standards that apply to the operations, responsibilities, and conditions at the private detention facility.

(3)"

On page 4, line 34, after "(3)" strike "The" and insert "(a) Except as provided in this subsection, the"

On page 4, after line 38, insert the following:

"(b) For a private detention facility operating pursuant to a valid contract with a federal governmental entity, the rules adopted under this section may not exceed federal requirements or federal standards that apply to the operations, responsibilities, and conditions at the private detention facility."

Senator Wagoner spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Saldaña spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0406 by Senator Wagoner on page 3, line 6 to Second Substitute House Bill No. 1470.

The motion by Senator Wagoner failed and amendment no. 0406 was not adopted by voice vote.

MOTION

Senator Boehnke moved that the following amendment no. 0415 by Senator Boehnke be adopted:

Beginning on page 7, line 4, strike all of sections 5 through 7

Renumber the remaining sections consecutively and correct any internal references accordingly.

On page 12, line 22, after "sections;" strike "prescribing penalties;"

Senators Boehnke and Wilson, J. spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Wilson, C. spoke against adoption of the amendment

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to the committee striking amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0415 by Senator Boehnke on page 7, line 4 to Second Substitute House Bill No. 1470.

The motion by Senator Boehnke failed and amendment no. 0415 was not adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Human Services to Second Substitute House Bill No. 1470.

The motion by Senator Wilson, C. carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Wilson, C., the rules were suspended, Second Substitute House Bill No. 1470 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Wilson, C., Trudeau and Kuderer spoke in favor of passage of the bill.

Senators Padden, Boehnke and Wilson, J. spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 1470.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 1470 and the bill passed the Senate by the following vote: Yeas, 29; Nays, 20; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Cleveland, Conway, Dhingra, Frame, Hasegawa, Hunt, Kauffman, Keiser, Kuderer, Lias, Lovelett, Lovick, Mullet, Nguyen, Nobles, Pedersen, Randall, Robinson, Rolfes, Saldaña, Salomon, Shewmake, Stanford, Trudeau, Valdez, Van De Wege, Wellman and Wilson, C.

Voting nay: Senators Boehnke, Braun, Dozier, Fortunato, Gildon, Hawkins, Holy, King, MacEwen, McCune, Muzzall, Padden, Rivers, Schoesler, Short, Torres, Wagoner, Warnick, Wilson, J. and Wilson, L.

SECOND SUBSTITUTE HOUSE BILL NO. 1470, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1783, by House Committee on Appropriations (originally sponsored by Sandlin, Maycumber, Couture, Chapman, Dent, Eslick and Volz)

Supporting economic development in distressed areas through hiring of grant writers.

The measure was read the second time.

MOTION

Senator Stanford moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** The legislature finds that access

to economic development assistance from government and philanthropic sources typically requires careful and skilled writing of grant applications. The legislature finds that trained and skilled grant writers are scarce, and particularly difficult to find in distressed areas with higher rates of unemployment that need economic development assistance. Therefore, the legislature intends to provide the department of commerce with the authority and resources necessary to ensure each county associate development organization can recruit and retain a grant writer.

NEW SECTION. Sec. 2. A new section is added to chapter 43.330 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, by July 1, 2024, the department shall establish a grant program to support associate development organizations in the recruiting, hiring, and retention of grant writers. The department must award grants on an annual basis and must prioritize grants for distressed areas as defined under RCW 43.168.020.

(2) Associate development organizations must apply for the grant program in a manner to be determined by the department.

(3) Associate development organizations that receive awards under this section must provide information on the use of the funds, including a description of the associate development organization's recruiting and hiring efforts and, if applicable, the number and types of grants applied for by the grant writers funded by the state, in their annual reports to the department required under RCW 43.330.082.

(4) Beginning December 31, 2026, the department must include information on grant award funding and use in its reports to the legislature on associate development organizations contracts required under RCW 43.330.082.

(5) The department shall adopt rules to implement this section."

On page 1, line 2 of this title, after "writers;" strike the remainder of the title and insert "adding a new section to chapter 43.330 RCW; and creating a new section."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Substitute House Bill No. 1783.

The motion by Senator Stanford carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Stanford, the rules were suspended, Substitute House Bill No. 1783 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Stanford and Dozier spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1783.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1783 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford,

Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

SUBSTITUTE HOUSE BILL NO. 1783, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 1028, by House Committee on Appropriations (originally sponsored by Orwall, Mosbrucker, Ryu, Simmons, Goodman, Reed, Lekanoff, Pollet, Callan, Doglio, Macri, Caldier, Reeves, Wylie, Gregerson, Davis, Ormsby and Fosse)

Supporting crime victims and witnesses by promoting victim-centered, trauma-informed responses in the legal system.

The measure was read the second time.

MOTION

Senator Dhingra moved that the following committee striking amendment by the Committee on Law & Justice be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 43.10 RCW to read as follows:

(1)(a) The sexual assault forensic examination best practices advisory group is established within the office of the attorney general for the purpose of reviewing best practice models for managing all aspects of sexual assault investigations and for reducing the number of untested sexual assault kits in Washington state.

(i) The caucus leaders from the senate shall appoint one member from each of the two largest caucuses of the senate.

(ii) The caucus leaders from the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(iii) The attorney general, in consultation with the legislative members of the advisory group, shall appoint:

(A) One member representing each of the following:

(I) The Washington state patrol;

(II) The Washington association of sheriffs and police chiefs;

(III) The Washington association of prosecuting attorneys;

(IV) The Washington defender association or the Washington association of criminal defense lawyers;

(V) The Washington association of cities;

(VI) The Washington association of county officials;

(VII) The Washington coalition of sexual assault programs;

(VIII) The office of crime victims advocacy;

(IX) The Washington state hospital association;

(X) The office of the attorney general; and

(XI) The criminal justice training commission;

(B) Two members representing survivors of sexual assault;

(C) One member who is a sexual assault nurse examiner;

(D) Two members who are law enforcement officers, one from a rural area and one from an urban area of the state;

(E) One member who is a prosecuting attorney serving in a county in a rural area of the state; and

(F) Two members who are community-based advocates, one from a rural area and one from an urban area of the state.

(b) When appointing members under (a)(iii)(D) of this subsection, the office of the attorney general shall solicit

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recommendations from statewide labor organizations representing law enforcement officers.

(2) The duties of the advisory group include, but are not limited to:

(a) Researching the best practice models both in state and from other states for collaborative responses to victims of sexual assault from the point the sexual assault kit is collected to the conclusion of the investigation and prosecution of a case, and providing recommendations regarding any existing gaps in Washington and resources that may be necessary to address those gaps;

(b) Researching and making recommendations on opportunities to increase access to, and availability of, critical sexual assault nurse examiner services;

(c) Monitoring the testing of the backlog of sexual assault kits and the supply chain and distribution of sexual assault kits;

(d) Monitoring implementation of state and federal legislative changes;

(e) Collaborating with the legislature, state agencies, medical facilities, and local governments to implement reforms pursuant to federal grant requirements; and

(f) Making recommendations for institutional reforms necessary to prevent sexual assault and improve the experiences of sexual assault survivors in the criminal justice system.

(3) The office of the attorney general shall administer and provide staff support to the advisory group.

(4) Legislative members of the advisory group must be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(5) The advisory group must meet no less than twice annually.

(6) The advisory group shall report its findings and recommendations to the appropriate committees of the legislature and the governor by December 15th of each year.

(7) This section expires July 1, 2026.

NEW SECTION. Sec. 2. A new section is added to chapter 43.101 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the commission shall administer a grant program for establishing a statewide resource prosecutor for sexual assault cases.

(2) The grant recipient must be a statewide organization or association representing prosecuting attorneys. The grant recipient shall hire a resource prosecutor for the following purposes:

(a) To provide technical assistance and research to prosecutors for prosecuting sexual assault cases;

(b) To provide additional training and resources to prosecutors to support a trauma-informed, victim-centered approach to prosecuting sexual assault cases;

(c) To meet regularly with law enforcement agencies and prosecutors to explain legal issues and prosecutorial approaches to sexual assault cases and provide and receive feedback to improve case outcomes;

(d) To consult with the commission, the office of the attorney general, and the sexual assault forensic examination best practices advisory group under section 1 of this act with respect to developing and implementing best practices for prosecuting sexual assault cases across the state; and

(e) To comply with other requirements established by the commission under this section.

(3) The commission may, in consultation with the sexual assault forensic examination best practices advisory group under section 1 of this act, establish additional appropriate conditions

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for any grant awarded under this section. The commission may adopt necessary policies and procedures to implement and administer the grant program, including monitoring the use of grant funds and compliance with the grant requirements.

Sec. 3. RCW 43.101.272 and 2019 c 93 s 5 are each amended to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the commission shall provide ongoing specialized, intensive, and integrative training for persons responsible for investigating sexual assault ~~((eases))~~ and other gender-based violence involving adult victims, and the highest ranking supervisors and commanders overseeing sexual assault and other gender-based violence investigations. The training must be based on a victim-centered, trauma-informed approach to responding to sexual assault. Among other subjects, the training must include content on the neurobiology of trauma and trauma-informed interviewing, counseling, and investigative techniques.

(2) The training must: Be based on research-based practices and standards; offer participants an opportunity to practice interview skills and receive feedback from instructors; minimize the trauma of all persons who are interviewed during abuse investigations; provide methods of reducing the number of investigative interviews necessary whenever possible; assure, to the extent possible, that investigative interviews are thorough, objective, and complete; recognize needs of special populations; recognize the nature and consequences of victimization; require investigative interviews to be conducted in a manner most likely to permit the interviewed persons the maximum emotional comfort under the circumstances; address record retention and retrieval; address documentation of investigative interviews; and educate investigators on the best practices for notifying victims of the results of forensic analysis of sexual assault kits and other significant events in the investigative process, including for active investigations and cold cases.

(3) In developing the training, the commission shall seek advice from the Washington association of sheriffs and police chiefs, the Washington coalition of sexual assault programs, and experts on sexual assault, gender-based violence, and the neurobiology of trauma. The commission shall consult with the Washington association of prosecuting attorneys in an effort to design training containing consistent elements for all professionals engaged in interviewing and interacting with sexual assault victims in the criminal justice system.

(4) ~~((The commission shall develop the training and begin offering it by July 1, 2018.))~~ Officers assigned to regularly investigate sexual assault and other gender-based violence involving adult victims and the highest ranking supervisors and commanders overseeing those investigations shall complete the training within one year of being assigned ~~((or by July 1, 2020, whichever is later)).~~

Sec. 4. RCW 43.101.276 and 2017 c 290 s 5 are each amended to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the commission shall develop peace officer training on a victim-centered, trauma-informed approach to interacting with victims and responding to ~~((sexual assault))~~ calls involving gender-based violence. The curriculum must: Be ~~((designed for commissioned patrol officers not regularly assigned to investigate sexual assault cases; be))~~ designed for deployment and use within individual law enforcement agencies; include features allowing for it to be used in different environments, which may include multimedia or video components; and allow for law enforcement agencies to host it in small segments at different times over several days or weeks, including roll calls. The training must include components on

available resources for victims including, but not limited to, material on and references to community-based victim advocates.

(2) In developing the training, the commission shall seek advice from the Washington association of sheriffs and police chiefs, the Washington coalition of sexual assault programs, and experts on sexual assault, gender-based violence, and the neurobiology of trauma.

(3) ~~((Beginning in 2018, all law enforcement agencies shall annually host the training for commissioned peace officers. All law enforcement agencies shall, to the extent feasible, consult with and feature local community-based victim advocates during the training.))~~ All peace officers shall complete the training under this section at least once every three years.

Sec. 5. RCW 43.101.278 and 2021 c 118 s 3 are each amended to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the commission shall conduct an annual case review program. The program must review case files from law enforcement agencies and prosecuting attorneys selected by the commission in order to identify changes to training and investigatory practices necessary to optimize outcomes in sexual assault investigations and prosecutions involving adult victims. The program must include:

(a) An evaluation of whether current training and practices foster a trauma-informed, victim-centered approach to victim interviews and that identifies best practices and current gaps in training and assesses the integration of the community resiliency model;

(b) A comparison of cases involving investigators and interviewers who have participated in training to cases involving investigators and interviewers who have not participated in training;

(c) A comparison of cases involving prosecutors who have participated in the training described in section 6 of this act to cases involving prosecutors who have not participated in such training;

~~((d))~~ (d) Randomly selected cases for a systematic review to assess whether current practices conform to national best practices for a multidisciplinary approach to investigating and prosecuting sexual assault cases and interacting with survivors; and

~~((e))~~ (e) An analysis of the impact that race and ethnicity have on sexual assault case outcomes.

(2) The case review program may review and access files, including all reports and recordings, pertaining to closed cases involving allegations of adult sexual assault only. Any law enforcement agency or prosecuting attorney selected for the program by the commission shall make requested case files and other documents available to the commission, provided that the case files are not linked to ongoing, open investigations and that redactions may be made where appropriate and necessary. Agencies and prosecuting attorneys shall include available information on the race and ethnicity of all sexual assault victims in the relevant case files provided to the commission. Case files and other documents must be made available to the commission according to appropriate deadlines established by the commission in consultation with the agency or prosecuting attorney.

(3) If a law enforcement agency has not participated in the training under RCW 43.101.272 ~~((by July 1, 2022))~~ or 43.101.276 within the previous 24 months, the commission may prioritize the agency for selection to participate in the program under this section.

(4) In designing and conducting the program, the commission shall consult and collaborate with experts in trauma-informed and victim-centered training, experts in sexual assault investigations and prosecutions, victim advocates, and other stakeholders

identified by the commission. The commission may form a multidisciplinary working group for the purpose of carrying out the requirements of this section.

(5) The commission shall submit a report with a summary of its work to the governor and the appropriate committees of the legislature by December 1st of each year.

NEW SECTION. Sec. 6. A new section is added to chapter 43.101 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the commission shall, in partnership with the special resource prosecutor under section 2 of this act, develop and conduct specialized, intensive, and integrative training for persons responsible for prosecuting sexual assault cases involving adult victims.

(2) The training must:

(a) Use a victim-centered, trauma-informed approach to prosecuting sexual assaults including, but not limited to, the following goals: Recognizing the nature and consequences of victimization; prioritizing the safety and well-being of victims; and recognizing the needs of special populations;

(b) Include content on the neurobiology of trauma and trauma-informed interviewing, counseling, investigative, and prosecution techniques;

(c) Offer participants an opportunity to practice interview and trial skills, including receiving feedback from instructors;

(d) Share best practices for communicating with victims throughout the criminal justice process;

(e) Include additional content relevant to and informed by best practices for improving outcomes in sexual assault prosecutions, as deemed appropriate by the commission;

(f) Take into account the training under RCW 43.101.272 in order to provide consistent and complimentary training for investigators and prosecutors;

(g) Be designed to qualify for some continuing legal education credits through the Washington state bar association; and

(h) Be offered at least once per calendar year and be deployed in different locations across the state, or through some other broadly accessible means, in order to improve access to the training for prosecutors serving in small offices or rural areas.

Sec. 7. RCW 43.43.754 and 2021 c 215 s 149 are each amended to read as follows:

(1) A biological sample must be collected for purposes of DNA identification analysis from:

(a) Every adult or juvenile individual convicted of a felony, or adjudicated of an offense which if committed by an adult would be a felony, or any of the following crimes (or equivalent juvenile offenses):

(i) Assault in the fourth degree where domestic violence as defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041, 9.94A.030);

(ii) Assault in the fourth degree with sexual motivation (RCW 9A.36.041, 9.94A.835);

(iii) Communication with a minor for immoral purposes (RCW 9.68A.090);

(iv) Custodial sexual misconduct in the second degree (RCW 9A.44.170);

(v) Failure to register (chapter 9A.44 RCW);

(vi) Harassment (RCW 9A.46.020);

(vii) Patronizing a prostitute (RCW 9A.88.110);

(viii) Sexual misconduct with a minor in the second degree (RCW 9A.44.096);

(ix) Stalking (RCW 9A.46.110);

(x) Indecent exposure (RCW 9A.88.010);

(xi) Violation of a sexual assault protection order granted under chapter 7.105 RCW or former chapter 7.90 RCW; and

(b) Every adult or juvenile individual who is required to register under RCW 9A.44.130.

(2)(a) A municipal jurisdiction may also submit any biological sample to the laboratory services bureau of the Washington state patrol for purposes of DNA identification analysis when:

(i) The sample was collected from a defendant upon conviction for a municipal offense where the underlying ordinance does not adopt the relevant state statute by reference but the offense is otherwise equivalent to an offense in subsection (1)(a) of this section;

(ii) The equivalent offense in subsection (1)(a) of this section was an offense for which collection of a biological sample was required under this section at the time of the conviction; and

(iii) The sample was collected on or after June 12, 2008, and before January 1, 2020.

(b) When submitting a biological sample under this subsection, the municipal jurisdiction must include a signed affidavit from the municipal prosecuting authority of the jurisdiction in which the conviction occurred specifying the state crime to which the municipal offense is equivalent.

(3) Law enforcement may submit to the forensic laboratory services bureau of the Washington state patrol, for purposes of DNA identification analysis, any lawfully obtained biological sample within its control from a deceased offender who was previously convicted of an offense under subsection (1)(a) of this section, regardless of the date of conviction.

(4) If the Washington state patrol crime laboratory already has a DNA sample from an individual for a qualifying offense, a subsequent submission is not required to be submitted.

(5) Biological samples shall be collected in the following manner:

(a)(i)(A) For persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense, who do not serve a term of confinement in a department of corrections facility or a department of children, youth, and families facility, and are serving a term of confinement in a city or county jail facility, the city or county jail facility shall be responsible for obtaining the biological samples prior to the person's release from confinement.

(B) Each city and county jail facility must adopt and implement a policy that collects biological samples from persons convicted of an offense listed in subsection (1)(a) of this section as soon as practicable during the person's term of confinement.

(ii) If the biological sample is not collected prior to the person's release from confinement, the responsible city or county jail facility shall notify the sentencing court within three business days of the person's release that it has released the person without collecting the person's biological sample, and provide the reason for releasing the person without collecting a biological sample. Within 10 days of receiving notice of the person's release, the sentencing court shall schedule a compliance hearing. The jail shall serve or cause to be served notice to the person of the compliance hearing and shall file proof of service with the sentencing court. A representative of the jail shall attend the compliance hearing and obtain the person's biological sample at the hearing. The court may, in its discretion, require the jail to pay attorneys' fees and court costs associated with scheduling and attending the compliance hearing.

(b) The local police department or sheriff's office shall be responsible for obtaining the biological samples for:

(i) Persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense, who do not serve a term of confinement in a department of corrections facility, department of children, youth, and families facility, or a city or county jail facility; and

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(ii) Persons who are required to register under RCW 9A.44.130.

(c)(i) For persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense, who are serving or who are to serve a term of confinement in a department of corrections facility or a department of children, youth, and families facility, the facility holding the person shall be responsible for obtaining the biological samples as part of the intake process. If the facility did not collect the biological sample during the intake process, then the facility shall collect the biological sample as soon as is practicable prior to the person's release from confinement. For those persons incarcerated before June 12, 2008, who have not yet had a biological sample collected, priority shall be given to those persons who will be released the soonest.

(ii) If the biological sample is not collected prior to the person's release from confinement, the responsible department of corrections facility or department of children, youth, and families facility shall notify the sentencing court within three business days of the person's release that it has released the person without collecting the person's biological sample. Within 10 days of receiving notice of the person's release, the sentencing court shall schedule a compliance hearing. The responsible department of corrections facility or department of children, youth, and families facility shall serve or cause to be served notice to the person of the compliance hearing and shall file proof of service with the sentencing court. A representative of the responsible department of corrections facility or department of children, youth, and families facility shall attend the compliance hearing and obtain the person's biological sample at the hearing. The court may, in its discretion, require the responsible department of corrections facility or department of children, youth, and families facility to pay attorneys' fees and court costs associated with scheduling and attending the compliance hearing.

(d) For persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense, who will not serve a term of confinement, the court shall: Order the person to ~~((report to the local police department or sheriff's office as provided under subsection (5)(b)(i) of this section within a reasonable period of time established by the court in order to provide a biological sample))~~ be administratively booked at a city or county jail facility for the sole purpose of providing a biological sample; or if the local police department or sheriff's office has a protocol for collecting the biological sample in the courtroom, order the person to immediately provide the biological sample to the local police department or sheriff's office before leaving the presence of the court. The court must further inform the person that refusal to provide a biological sample is a gross misdemeanor under this section.

(e) For persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense, the court shall create and implement a biological sample collection protocol. The court shall order the biological samples at the time of sentencing. The court shall inform the person that refusal to provide a biological sample is a gross misdemeanor under this section. If the biological sample is not collected at the time of sentencing, then the biological sample shall be collected pursuant to (a) through (d) of this subsection (5), and the court shall schedule a compliance hearing within 10 days of the sentencing to ensure that the biological sample has been collected.

(6) Any biological sample taken pursuant to RCW 43.43.752 through 43.43.758 may be retained by the forensic laboratory services bureau, and shall be used solely for the purpose of

providing DNA or other tests for identification analysis and prosecution of a criminal offense or for the identification of human remains or missing persons. Nothing in this section prohibits the submission of results derived from the biological samples to the federal bureau of investigation combined DNA index system.

(7) The forensic laboratory services bureau of the Washington state patrol is responsible for testing performed on all biological samples that are collected under this section, to the extent allowed by funding available for this purpose. Known duplicate samples may be excluded from testing unless testing is deemed necessary or advisable by the director.

(8) This section applies to:

(a) All adults and juveniles to whom this section applied prior to June 12, 2008;

(b) All adults and juveniles to whom this section did not apply prior to June 12, 2008, who:

(i) Are convicted on or after June 12, 2008, of an offense listed in subsection (1)(a) of this section on the date of conviction; or

(ii) Were convicted prior to June 12, 2008, of an offense listed in subsection (1)(a) of this section and are still incarcerated on or after June 12, 2008;

(c) All adults and juveniles who are required to register under RCW 9A.44.130 on or after June 12, 2008, whether convicted before, on, or after June 12, 2008; and

(d) All samples submitted under subsections (2) and (3) of this section.

(9) This section creates no rights in a third person. No cause of action may be brought based upon the noncollection or nonanalysis or the delayed collection or analysis of a biological sample authorized to be taken under RCW 43.43.752 through 43.43.758.

(10) The detention, arrest, or conviction of a person based upon a database match or database information is not invalidated if it is determined that the sample was obtained or placed in the database by mistake, or if the conviction or juvenile adjudication that resulted in the collection of the biological sample was subsequently vacated or otherwise altered in any future proceeding including but not limited to posttrial or postfact-finding motions, appeals, or collateral attacks. No cause of action may be brought against the state based upon the analysis of a biological sample authorized to be taken pursuant to a municipal ordinance if the conviction or adjudication that resulted in the collection of the biological sample was subsequently vacated or otherwise altered in any future proceeding including, but not limited to, posttrial or postfact-finding motions, appeals, or collateral attacks.

(11) A person commits the crime of refusal to provide DNA if the person willfully refuses to comply with a legal request for a DNA sample as required under this section. The refusal to provide DNA is a gross misdemeanor.

Sec. 8. RCW 9A.04.080 and 2022 c 282 s 4 are each amended to read as follows:

(1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section.

(a) The following offenses may be prosecuted at any time after their commission:

(i) Murder;

(ii) Homicide by abuse;

(iii) Arson if a death results;

(iv) Vehicular homicide;

(v) Vehicular assault if a death results;

(vi) Hit-and-run injury-accident if a death results (RCW 46.52.020(4));

(vii) Rape in the first degree (RCW 9A.44.040) if the victim is

under the age of sixteen;

(viii) Rape in the second degree (RCW 9A.44.050) if the victim is under the age of sixteen;

(ix) Rape of a child in the first degree (RCW 9A.44.073);

(x) Rape of a child in the second degree (RCW 9A.44.076);

(xi) Rape of a child in the third degree (RCW 9A.44.079);

(xii) Sexual misconduct with a minor in the first degree (RCW 9A.44.093);

(xiii) Custodial sexual misconduct in the first degree (RCW 9A.44.160);

(xiv) Child molestation in the first degree (RCW 9A.44.083);

(xv) Child molestation in the second degree (RCW 9A.44.086);

(xvi) Child molestation in the third degree (RCW 9A.44.089);

and

(xvii) Sexual exploitation of a minor (RCW 9.68A.040).

(b) Except as provided in (a) of this subsection, the following offenses may not be prosecuted more than twenty years after its commission:

(i) Rape in the first degree (RCW 9A.44.040);

(ii) Rape in the second degree (RCW 9A.44.050); or

(iii) Indecent liberties (RCW 9A.44.100).

(c) The following offenses may not be prosecuted more than ten years after its commission:

(i) Any felony committed by a public officer if the commission is in connection with the duties of his or her office or constitutes a breach of his or her public duty or a violation of the oath of office;

(ii) Arson if no death results;

(iii) Rape in the third degree (RCW 9A.44.060);

(iv) Attempted murder; or

(v) Trafficking under RCW 9A.40.100.

(d) A violation of any offense listed in this subsection (1)(d) may be prosecuted up to ten years after its commission or, if committed against a victim under the age of eighteen, up to the victim's thirtieth birthday, whichever is later:

(i) RCW 9.68A.100 (commercial sexual abuse of a minor);

(ii) RCW 9.68A.101 (promoting commercial sexual abuse of a minor);

(iii) RCW 9.68A.102 (promoting travel for commercial sexual abuse of a minor); or

(iv) RCW 9A.64.020 (incest).

(e) The following offenses may not be prosecuted more than six years after its commission or discovery, whichever occurs later:

(i) Violations of RCW 9A.82.060 or 9A.82.080;

(ii) Any felony violation of chapter 9A.83 RCW;

(iii) Any felony violation of chapter 9.35 RCW;

(iv) Theft in the first or second degree under chapter 9A.56 RCW when accomplished by color or aid of deception;

(v) Theft from a vulnerable adult under RCW 9A.56.400;

(vi) Trafficking in stolen property in the first or second degree under chapter 9A.82 RCW in which the stolen property is a motor vehicle or major component part of a motor vehicle as defined in RCW 46.80.010; or

(vii) Violations of RCW 82.32.290 (2)(a)(iii) or (4).

(f) The following offenses may not be prosecuted more than five years after its commission: Any class C felony under chapter 74.09, 82.36, or 82.38 RCW.

(g) Bigamy may not be prosecuted more than three years after the time specified in RCW 9A.64.010.

(h) A violation of RCW 9A.56.030 may not be prosecuted more than three years after the discovery of the offense when the victim is a tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

(i) No other felony may be prosecuted more than three years after its commission; except that in a prosecution under RCW

9A.44.115, if the person who was viewed, photographed, or filmed did not realize at the time that he or she was being viewed, photographed, or filmed, the prosecution must be commenced within two years of the time the person who was viewed or in the photograph or film first learns that he or she was viewed, photographed, or filmed.

(j) No gross misdemeanor may be prosecuted more than two years after its commission.

(k) No misdemeanor may be prosecuted more than one year after its commission.

(2) The periods of limitation prescribed in subsection (1) of this section do not run during any time when the person charged is not usually and publicly resident within this state.

(3) In any prosecution for a sex offense as defined in RCW 9.94A.030, the periods of limitation prescribed in subsection (1) of this section run from the date of commission or (~~two~~) four years from the date on which the identity of the suspect is conclusively established by deoxyribonucleic acid testing or by photograph as defined in RCW 9.68A.011, whichever is later.

(4) If, before the end of a period of limitation prescribed in subsection (1) of this section, an indictment has been found or a complaint or an information has been filed, and the indictment, complaint, or information is set aside, then the period of limitation is extended by a period equal to the length of time from the finding or filing to the setting aside.

NEW SECTION. Sec. 9. A new section is added to chapter 70.02 RCW to read as follows:

A disclosure authorization to a health care provider or health care facility authorizing disclosure of information to law enforcement regarding a forensic examination performed for the purposes of gathering evidence for possible prosecution of a criminal offense must be valid until the end of all related criminal proceedings or a later event selected by the provider, facility, patient, or patient's representative, unless the patient or patient's representative requests a different expiration date or event for the disclosure authorization.

Sec. 10. RCW 9A.44.020 and 2013 c 302 s 7 are each amended to read as follows:

(1) In order to convict a person of any crime defined in this chapter it shall not be necessary that the testimony of the alleged victim be corroborated.

(2) Evidence of the victim's past sexual behavior including but not limited to the victim's marital history(~~(+)~~); divorce history(~~(+)~~); general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards; or, unless it is related to the alleged offense, social media account, including any text, image, video, or picture, which depict sexual content, sexual history, nudity or partial nudity, intimate sexual activity, communications about sexual activity, communications about sex, sexual fantasies, and other information that appeals to a prurient interest is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as provided in subsection (3) of this section, but when the perpetrator and the victim have engaged in sexual intercourse with each other in the past, and when the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense.

(3) In any prosecution for the crime of rape, trafficking pursuant to RCW 9A.40.100, or any of the offenses in chapter 9.68A RCW, or for an attempt to commit, or an assault with an intent to commit any such crime evidence of the victim's past sexual behavior including but not limited to the victim's marital behavior(~~(+)~~); divorce history(~~(+)~~); general reputation for promiscuity, nonchastity, or sexual mores contrary to community

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standards; or, unless it is related to the alleged offense, social media account, including any text, image, video, or picture, which depict sexual content, sexual history, nudity or partial nudity, intimate sexual activity, communications about sexual activity, communications about sex, sexual fantasies, and other information that appeals to a prurient interest is not admissible if offered to attack the credibility of the victim and is admissible on the issue of consent, except where prohibited in the underlying criminal offense, only pursuant to the following procedure:

(a) A written pretrial motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the past sexual behavior of the victim proposed to be presented and its relevancy on the issue of the consent of the victim.

(b) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.

(c) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the court.

(d) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the defendant regarding the past sexual behavior of the victim is relevant to the issue of the victim's consent; is not inadmissible because its probative value is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice; and that its exclusion would result in denial of substantial justice to the defendant; the court shall make an order stating what evidence may be introduced by the defendant, which order may include the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(4) Nothing in this section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior when the prosecution presents evidence in its case in chief tending to prove the nature of the victim's past sexual behavior, but the court may require a hearing pursuant to subsection (3) of this section concerning such evidence.

Sec. 11. RCW 7.69.030 and 2022 c 229 s 1 are each amended to read as follows:

(1) There shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crimes have the following rights, which apply to any adult or juvenile criminal (court and/or juvenile court) proceeding and any civil commitment proceeding under chapter 71.09 RCW:

((4)) (a) With respect to victims of violent or sex crimes, to receive, at the time of reporting the crime to law enforcement officials, a written statement of the rights of crime victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county;

((2)) (b) To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim, survivor, or witness is involved;

((3)) (c) To be notified by the party who issued the subpoena that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;

((4)) (d) To receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;

((5)) (e) To be informed of the procedure to be followed to apply for and receive any witness fees to which they are entitled;

((6)) (f) To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants;

((7)) (g) To have any stolen or other personal property expeditiously returned by law enforcement agencies or the superior court when no longer needed as evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken;

((8)) (h) To be provided with appropriate employer intercession services to ensure that employers of victims, survivors of victims, and witnesses of crime will cooperate with the criminal justice process or the civil commitment process under chapter 71.09 RCW in order to minimize an employee's loss of pay and other benefits resulting from court appearance;

((9)) (i) To access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance. Victims of domestic violence, sexual assault, or stalking, as defined in RCW 49.76.020, shall be notified of their right to reasonable leave from employment under chapter 49.76 RCW;

((10)) (j) With respect to victims of violent and sex crimes, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the crime victim;

((11)) (k) With respect to victims and survivors of victims, to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified;

((12)) (l) With respect to victims and survivors of victims in any felony case ((1)), any case involving domestic violence, or any final determination under chapter 71.09 RCW, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing or disposition hearing upon request by a victim or survivor;

((13)) (m) To submit a victim impact statement or report to the court, with the assistance of the prosecuting attorney if requested, which shall be included in all presentence reports and permanently included in the files and records accompanying the offender committed to the custody of a state agency or institution;

((14)) (n) With respect to victims and survivors of victims in any felony case or any case involving domestic violence, to present a statement, personally or by representation, at the sentencing hearing; and

((15)) (o) With respect to victims and survivors of victims, to entry of an order of restitution by the court in all felony cases, even when the offender is sentenced to confinement, unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment.

(2) If a victim, survivor of a victim, or witness of a crime is denied a right under this section, the person may seek an order directing compliance by the relevant party or parties by filing a

petition in the superior court in the county in which the crime occurred and providing notice of the petition to the relevant party or parties. Compliance with the right is the sole available remedy. The court shall expedite consideration of a petition filed under this subsection.

NEW SECTION. Sec. 12. Section 4 of this act takes effect July 1, 2024.

NEW SECTION. Sec. 13. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2023, in the omnibus appropriations act, this act is null and void."

On page 1, line 3 of the title, after "system;" strike the remainder of the title and insert "amending RCW 43.101.272, 43.101.276, 43.101.278, 43.43.754, 9A.04.080, 9A.44.020, and 7.69.030; adding a new section to chapter 43.10 RCW; adding new sections to chapter 43.101 RCW; adding a new section to chapter 70.02 RCW; creating a new section; providing an effective date; and providing an expiration date."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Law & Justice to Second Substitute House Bill No. 1028.

The motion by Senator Dhingra carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Dhingra, the rules were suspended, Second Substitute House Bill No. 1028 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Dhingra and Padden spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 1028.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 1028 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Liias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

SECOND SUBSTITUTE HOUSE BILL NO. 1028, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1562, by House Committee on Civil Rights & Judiciary (originally sponsored by Thai, Lekanoff, Taylor, Berry, Ryu, Reed, Kloba, Entenman, Walen, Doglio, Davis, Wylie, Ramel, Ormsby, Pollet and Duerr)

Reducing the risks of lethality and other harm associated with gun violence, gender-based violence, and other types of violence.

The measure was read the second time.

MOTION

Senator Dhingra moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

NEW SECTION. Sec. 1. (1) The legislature finds that gun violence is a multifaceted public health problem that includes suicide, homicide, intimate partner violence, community violence, mass violence, nonfatal gunshot injuries and threats, with community violence and mass violence often committed by those with a history of domestic violence. National data indicates that in 2021, approximately 20,996 Americans died by firearm homicide and that 81 percent of all homicides are committed with a firearm. According to United States centers for disease control and prevention data, gun homicide disproportionately impacts people of color, especially Black males ages 15 to 34, who are 20 times more likely to die by gun violence than white males in the same age group. Black, Indigenous, and Latinx women are at higher risk for intimate partner violence-related homicide, and disparities in homicide rates are especially pronounced among women between 18 and 29 years of age. Nearly 60 percent of intimate partner violence-related homicides involve firearms.

(2) When perpetrators of intimate partner violence, including physical violence, sexual abuse, stalking, and psychological aggression of a current or former intimate partner, have access to firearms, women are especially at risk of serious or deadly harm. When an abusive partner or former partner owns or has access to a firearm, the likelihood of intimate partner homicide increases by a factor of five. Women in the United States are 21 times more likely to be killed with a gun than women in other high-income countries. There are about 4,500,000 women in America who have been threatened with a gun and nearly 1,000,000 women who have been shot or shot at by an intimate partner. Perpetrators of intimate partner violence who have access to firearms also use them to coerce, control, and intimidate their partners.

(3) Many who seek protection from harm through the civil legal system, and obtain a protection order and an order to surrender and prohibit weapons, may not wish to engage the criminal legal system or to have the threat or violence they have experienced be prosecuted. According to the national intimate partner and sexual violence survey, more than one in two non-Hispanic Black women, American Indian, or Alaskan Native women, three in five multiracial non-Hispanic women, and two in five Hispanic women have been a victim of physical violence, rape, and/or stalking by a partner in their lifetime. But they are far less likely to report the crimes, due to distrust of the criminal legal system, intergenerational trauma, fear of police interaction, and concern about over incarceration. For many, the threat of violence continues over a long period of time, making it critical that access to firearms is appropriately limited when there are ongoing indicators of risk as reflected by a protection order, an order to surrender and prohibit weapons, or violations of these orders.

(4) An extensive body of research has identified specific risk factors that increase the likelihood of individuals engaging in future violence, including gun violence, and presenting further risk to public safety. The strongest predictor of future violence is prior violent behavior, including perpetration of domestic violence and violent misdemeanors. Other particularly strong risk factors for future violence include recent violation of a domestic violence protection order or other protection order; frequent risky alcohol use or certain types of controlled substance use; and

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cruelty to animals. Unlawful or reckless use, display, or brandishing of a firearm and recent acquisition of firearms, ammunition, or other deadly weapons are also risk factors for future violence, as is access to firearms in general. Multiple research studies have also shown that easy access to firearms by the general public increases risk of death by both homicide and suicide. Individuals returning from incarceration are a vulnerable population for whom these risks may be compounded. Furthermore, homicide and suicide (by any means) are leading causes of death for returning residents after they are released from prison, especially soon after release. Research provides important guidance regarding events that should result in temporary prohibition of firearm rights so that the laws regarding firearm possession and the restoration of firearm rights are grounded in risk assessment data to help protect public health and safety while upholding individual liberty. These changes are not intended to punish, but to provide a regulatory framework to help ensure the safety of those with a heightened risk of experiencing gun violence.

(5) The laws requiring certain individuals who are subject to protection orders, no-contact orders, or restraining orders to immediately relinquish dangerous weapons and concealed pistol licenses, and be prohibited from possessing or purchasing firearms, have been strengthened in recent years to help better address the risks that access to firearms by those individuals poses for survivors and their children. The legislature finds that similarly strengthening the laws regarding unlawful possession and restoration of firearm rights will protect these survivors, and their families and communities, from added risk of harm, and include their personal knowledge regarding possible violations of firearm prohibitions in the restoration petition process.

(6) The legislature also finds it would be helpful to refine statutory language that was at issue in the Washington state supreme court's decision in *State v. Dennis*, 191 Wn.2d 169 (2018). In that decision, the court held that absent more specific language in RCW 9.41.040 regarding the five-year waiting period before a person may petition to have the person's firearm rights restored, the requisite waiting period may include any conviction-free period of five or more consecutive years, even if a person had been convicted of a new crime within the five years immediately preceding the person's filing of a petition for restoration of firearm rights. The legislature intends to clarify that a person may not petition to have the person's firearm rights restored if the person has been convicted of a new prohibiting crime within the specified number of consecutive years immediately preceding the person's filing of a petition.

(7) The legislature also finds that it is important to recognize and remove barriers for individuals who have demonstrated that they have safely reintegrated into their communities.

Sec. 2. RCW 9.41.010 and 2022 c 105 s 2 and 2022 c 104 s 2 are each reenacted and amended to read as follows:

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

(1) "Antique firearm" means a firearm or replica of a firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, including any matchlock, flintlock, percussion cap, or similar type of ignition system and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(2) "Assemble" means to fit together component parts.

(3) "Barrel length" means the distance from the bolt face of a closed action down the length of the axis of the bore to the crown

of the muzzle, or in the case of a barrel with attachments to the end of any legal device permanently attached to the end of the muzzle.

(4) "Bump-fire stock" means a butt stock designed to be attached to a semiautomatic firearm with the effect of increasing the rate of fire achievable with the semiautomatic firearm to that of a fully automatic firearm by using the energy from the recoil of the firearm to generate reciprocating action that facilitates repeated activation of the trigger.

(5) "Crime of violence" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, burglary in the second degree, residential burglary, and robbery in the second degree;

(b) Any conviction for a felony offense in effect at any time prior to June 6, 1996, which is comparable to a felony classified as a crime of violence in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a crime of violence under (a) or (b) of this subsection.

(6) "Curio or relic" has the same meaning as provided in 27 C.F.R. Sec. 478.11.

(7) "Dealer" means a person engaged in the business of selling firearms at wholesale or retail who has, or is required to have, a federal firearms license under 18 U.S.C. Sec. 923(a). A person who does not have, and is not required to have, a federal firearms license under 18 U.S.C. Sec. 923(a), is not a dealer if that person makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of his or her personal collection of firearms.

(8) "Distribute" means to give out, provide, make available, or deliver a firearm or large capacity magazine to any person in this state, with or without consideration, whether the distributor is in-state or out-of-state. "Distribute" includes, but is not limited to, filling orders placed in this state, online or otherwise. "Distribute" also includes causing a firearm or large capacity magazine to be delivered in this state.

(9) "Family or household member" has the same meaning as in RCW 7.105.010.

(10) "Federal firearms dealer" means a licensed dealer as defined in 18 U.S.C. Sec. 921(a)(11).

(11) "Federal firearms importer" means a licensed importer as defined in 18 U.S.C. Sec. 921(a)(9).

(12) "Federal firearms manufacturer" means a licensed manufacturer as defined in 18 U.S.C. Sec. 921(a)(10).

(13) "Felony" means any felony offense under the laws of this state or any federal or out-of-state offense comparable to a felony offense under the laws of this state.

(14) "Felony firearm offender" means a person who has previously been convicted or found not guilty by reason of insanity in this state of any felony firearm offense. A person is not a felony firearm offender under this chapter if any and all qualifying offenses have been the subject of an expungement, pardon, annulment, certificate, or rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(15) "Felony firearm offense" means:

(a) Any felony offense that is a violation of this chapter;

- (b) A violation of RCW 9A.36.045;
- (c) A violation of RCW 9A.56.300;
- (d) A violation of RCW 9A.56.310;
- (e) Any felony offense if the offender was armed with a firearm in the commission of the offense.

(16) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. For the purposes of RCW 9.41.040, "firearm" also includes frames and receivers. "Firearm" does not include a flare gun or other pyrotechnic visual distress signaling device, or a powder-actuated tool or other device designed solely to be used for construction purposes.

(17)(a) "Frame or receiver" means a part of a firearm that, when the complete firearm is assembled, is visible from the exterior and provides housing or a structure designed to hold or integrate one or more fire control components, even if pins or other attachments are required to connect the fire control components. Any such part identified with a serial number shall be presumed, absent an official determination by the bureau of alcohol, tobacco, firearms, and explosives or other reliable evidence to the contrary, to be a frame or receiver.

(b) For purposes of this subsection, "fire control component" means a component necessary for the firearm to initiate, complete, or continue the firing sequence, including any of the following: Hammer, bolt, bolt carrier, breechblock, cylinder, trigger mechanism, firing pin, striker, or slide rails.

(18) "Gun" has the same meaning as firearm.

(19) "Import" means to move, transport, or receive an item from a place outside the territorial limits of the state of Washington to a place inside the territorial limits of the state of Washington. "Import" does not mean situations where an individual possesses a large capacity magazine when departing from, and returning to, Washington state, so long as the individual is returning to Washington in possession of the same large capacity magazine the individual transported out of state.

(20) "Intimate partner" has the same meaning as provided in RCW 7.105.010.

(21) "Large capacity magazine" means an ammunition feeding device with the capacity to accept more than 10 rounds of ammunition, or any conversion kit, part, or combination of parts, from which such a device can be assembled if those parts are in possession of or under the control of the same person, but shall not be construed to include any of the following:

(a) An ammunition feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds of ammunition;

(b) A 22 caliber tube ammunition feeding device; or

(c) A tubular magazine that is contained in a lever-action firearm.

(22) "Law enforcement officer" includes a general authority Washington peace officer as defined in RCW 10.93.020, or a specially commissioned Washington peace officer as defined in RCW 10.93.020. "Law enforcement officer" also includes a limited authority Washington peace officer as defined in RCW 10.93.020 if such officer is duly authorized by his or her employer to carry a concealed pistol.

(23) "Lawful permanent resident" has the same meaning afforded a person "lawfully admitted for permanent residence" in 8 U.S.C. Sec. 1101(a)(20).

(24) "Licensed collector" means a person who is federally licensed under 18 U.S.C. Sec. 923(b).

(25) "Licensed dealer" means a person who is federally licensed under 18 U.S.C. Sec. 923(a).

(26) "Loaded" means:

(a) There is a cartridge in the chamber of the firearm;

(b) Cartridges are in a clip that is locked in place in the firearm;

(c) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver;

(d) There is a cartridge in the tube or magazine that is inserted in the action; or

(e) There is a ball in the barrel and the firearm is capped or primed if the firearm is a muzzle loader.

(27) "Machine gun" means any firearm known as a machine gun, mechanical rifle, submachine gun, or any other mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into the firearm, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second.

(28) "Manufacture" means, with respect to a firearm or large capacity magazine, the fabrication, making, formation, production, or construction of a firearm or large capacity magazine, by manual labor or by machinery.

(29) "Nonimmigrant alien" means a person defined as such in 8 U.S.C. Sec. 1101(a)(15).

(30) "Person" means any individual, corporation, company, association, firm, partnership, club, organization, society, joint stock company, or other legal entity.

(31) "Pistol" means any firearm with a barrel less than 16 inches in length, or is designed to be held and fired by the use of a single hand.

(32) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(33) "Sale" and "sell" mean the actual approval of the delivery of a firearm in consideration of payment or promise of payment.

(34) "Secure gun storage" means:

(a) A locked box, gun safe, or other secure locked storage space that is designed to prevent unauthorized use or discharge of a firearm; and

(b) The act of keeping an unloaded firearm stored by such means.

(35)(a) "Semiautomatic assault rifle" means any rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

(b) "Semiautomatic assault rifle" does not include antique firearms, any firearm that has been made permanently inoperable, or any firearm that is manually operated by bolt, pump, lever, or slide action.

(36) "Serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

(a) Any crime of violence;

(b) Any felony violation of the uniform controlled substances act, chapter 69.50 RCW, that is classified as a class B felony or that has a maximum term of imprisonment of at least 10 years;

(c) Child molestation in the second degree;

(d) Incest when committed against a child under age 14;

(e) Indecent liberties;

(f) Leading organized crime;

(g) Promoting prostitution in the first degree;

(h) Rape in the third degree;

(i) Drive-by shooting;

(j) Sexual exploitation;

(k) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating

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liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(l) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(m) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under RCW 9.94A.030;

(n) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

(o) Any felony offense in effect at any time prior to June 6, 1996, that is comparable to a serious offense, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious offense; ~~((#))~~

(p) Any felony conviction under RCW 9.41.115; or

(q) Any felony charged under RCW 46.61.502(6) or 46.61.504(6).

(37) "Short-barreled rifle" means a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle by any means of modification if such modified weapon has an overall length of less than 26 inches.

(38) "Short-barreled shotgun" means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun by any means of modification if such modified weapon has an overall length of less than 26 inches.

(39) "Shotgun" means a weapon with one or more barrels, designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(40) "Transfer" means the intended delivery of a firearm to another person without consideration of payment or promise of payment including, but not limited to, gifts and loans. "Transfer" does not include the delivery of a firearm owned or leased by an entity licensed or qualified to do business in the state of Washington to, or return of such a firearm by, any of that entity's employees or agents, defined to include volunteers participating in an honor guard, for lawful purposes in the ordinary course of business.

(41) "Undetectable firearm" means any firearm that is not as detectable as 3.7 ounces of 17-4 PH stainless steel by walk-through metal detectors or magnetometers commonly used at airports or any firearm where the barrel, the slide or cylinder, or the frame or receiver of the firearm would not generate an image that accurately depicts the shape of the part when examined by the types of X-ray machines commonly used at airports.

(42)(a) "Unfinished frame or receiver" means a frame or receiver that is partially complete, disassembled, or inoperable, that: (i) Has reached a stage in manufacture where it may readily be completed, assembled, converted, or restored to a functional state; or (ii) is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once finished or completed, including without limitation products marketed or sold to the public as an 80 percent frame or receiver or unfinished frame or receiver.

(b) For purposes of this subsection:

(i) "Readily" means a process that is fairly or reasonably efficient, quick, and easy, but not necessarily the most efficient, speedy, or easy process. Factors relevant in making this determination, with no single one controlling, include the following: (A) Time, i.e., how long it takes to finish the process; (B) ease, i.e., how difficult it is to do so; (C) expertise, i.e., what knowledge and skills are required; (D) equipment, i.e., what tools

are required; (E) availability, i.e., whether additional parts are required, and how easily they can be obtained; (F) expense, i.e., how much it costs; (G) scope, i.e., the extent to which the subject of the process must be changed to finish it; and (H) feasibility, i.e., whether the process would damage or destroy the subject of the process, or cause it to malfunction.

(ii) "Partially complete," as it modifies frame or receiver, means a forging, casting, printing, extrusion, machined body, or similar article that has reached a stage in manufacture where it is clearly identifiable as an unfinished component part of a firearm.

(43) "Unlicensed person" means any person who is not a licensed dealer under this chapter.

(44) "Untraceable firearm" means any firearm manufactured after July 1, 2019, that is not an antique firearm and that cannot be traced by law enforcement by means of a serial number affixed to the firearm by a federal firearms manufacturer, federal firearms importer, or federal firearms dealer in compliance with all federal laws and regulations.

(45) "Conviction" or "convicted" means, whether in an adult court or adjudicated in a juvenile court, that a plea of guilty has been accepted or a verdict of guilty has been filed, or a finding of guilt has been entered, notwithstanding the pendency of any future proceedings including, but not limited to, sentencing or disposition, posttrial or post-fact-finding motions, and appeals. "Conviction" includes a dismissal entered after a period of probation, suspension, or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state.

(46) "Domestic violence" has the same meaning as provided in RCW 10.99.020.

(47) "Sex offense" has the same meaning as provided in RCW 9.94A.030.

Sec. 3. RCW 9.41.040 and 2022 c 268 s 28 are each amended to read as follows:

(1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, accesses, has in ~~((his or her))~~ the person's custody, control, or possession, ~~((or has in his or her control))~~ or receives any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense ~~((as defined in this chapter)).~~

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, accesses, has in ~~((his or her))~~ the person's custody, control, or possession, ~~((or has in his or her control))~~ or receives any firearm:

(i) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of ~~((any))~~:

(A) Any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section ~~((, or any))~~;

(B) Any of the following crimes when committed by one family or household member against another or by one intimate partner against another, as those terms are defined by the statutes in effect at the time of the commission of the crime, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 10.99.040 or any of the former RCW 26.50.060, 26.50.070, and 26.50.130);

~~((ii) After having previously been convicted or found not~~

~~guilty by reason of insanity in this state or elsewhere of) (C) Harassment when committed by one family or household member against another or by one intimate partner against another, as those terms are defined by the statutes in effect at the time of the commission of the crime, committed on or after June 7, 2018;~~

~~((iii) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of a) (D) Any of the following misdemeanor or gross misdemeanor crimes not included under (a)(i) (B) or (C) of this subsection, committed on or after the effective date of this section: Domestic violence (RCW 10.99.020); stalking; cyberstalking; cyber harassment, excluding cyber harassment committed solely pursuant to the element set forth in RCW 9A.90.120(1)(a)(i); harassment; aiming or discharging a firearm (RCW 9.41.230); unlawful carrying or handling of a firearm (RCW 9.41.270); animal cruelty in the second degree committed under RCW 16.52.207(1); or any prior offense as defined in RCW 46.61.5055(14) if committed within seven years of a conviction for any other prior offense under RCW 46.61.5055;~~

~~(E) A violation of the provisions of a protection order under chapter 7.105 RCW restraining the person or excluding the person from a residence, when committed by one family or household member against another or by one intimate partner against another, committed on or after July 1, 2022; or~~

~~((iv)) (F) A violation of the provisions of an order to surrender and prohibit weapons, an extreme risk protection order, or the provisions of any other protection order or no-contact order not included under (a)(i) (B) or (E) of this subsection restraining the person or excluding the person from a residence, committed on or after the effective date of this section;~~

~~(ii) During any period of time that the person is subject to a ((court order)) protection order, no-contact order, or restraining order by a court issued under chapter 7.105, 9A.40, 9A.44, 9A.46, 9A.88, 10.99, 26.09, 26.26A, or 26.26B RCW or any of the former chapters 7.90, 7.92, 10.14, and 26.50 RCW that:~~

~~(A) Was issued after a hearing for which the person received actual notice, and at which the person had an opportunity to participate, whether the court then issues a full order or reissues a temporary order. If the court enters an agreed order by the parties without a hearing, such an order meets the requirements of this subsection;~~

~~(B) Restrains the person from harassing, stalking, or threatening the person protected under the order or child of the person or protected person, or others identified in the order, or engaging in other conduct that would place the protected person in reasonable fear of bodily injury to the protected person or child or others identified in the order; and~~

~~(C) Includes a finding that the person represents a credible threat to the physical safety of the protected person or child or others identified in the order, or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the protected person or child or other persons that would reasonably be expected to cause bodily injury; or~~

~~(II) Includes an order under RCW 9.41.800 requiring the person to surrender all firearms and prohibiting the person from accessing, having in his or her custody or control, possessing, purchasing, receiving, or attempting to purchase or receive, firearms;~~

~~((v)) (iii) After having previously been involuntarily committed based on a mental disorder under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;~~

~~((vi)) (iv) After dismissal of criminal charges based on~~

incompetency to stand trial under RCW 10.77.088 when the court has made a finding indicating that the defendant has a history of one or more violent acts, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

~~((vii)) (v) If the person is under 18 years of age, except as provided in RCW 9.41.042; and/or~~

~~((viii)) (vi) If the person is free on bond or personal recognizance pending trial ((, appeal, or sentencing)) for a serious offense as defined in RCW 9.41.010.~~

~~(b) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.~~

~~(3) ((Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted," whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including, but not limited to, sentencing or disposition, post trial or post fact finding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension, or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state.)) A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.~~

~~(4)((a)) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity. ((Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least 20 years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:~~

~~(i) Under RCW 9.41.047; and/or~~

~~(ii)(A) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or~~

~~(B) If the conviction or finding of not guilty by reason of insanity was for a nonfelony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under~~

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~~RCW 9.94A.525 and the individual has completed all conditions of the sentence.~~

~~(b) An individual may petition a court of record to have his or her right to possess a firearm restored under (a) of this subsection only at:~~

~~(i) The court of record that ordered the petitioner's prohibition on possession of a firearm; or~~

~~(ii) The superior court in the county in which the petitioner resides.)~~

(5) In addition to any other penalty provided for by law, if a person under the age of 18 years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within 24 hours and the person's privilege to drive shall be revoked under RCW 46.20.265, unless the offense is the juvenile's first offense in violation of this section and has not committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.52, 69.41, or 69.50 RCW.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense.

(8) A person may petition to restore the right to possess a firearm as provided in section 4 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 9.41 RCW to read as follows:

(1) A person who is prohibited from possession of a firearm under RCW 9.41.040 may not petition a court to have the person's right to possess a firearm restored if the person has been convicted or found not guilty by reason of insanity of: A felony sex offense; a class A felony; or a felony offense with a maximum sentence of at least 20 years.

(2) A person who is prohibited from possession of a firearm under RCW 9.41.040, and is not disqualified from petitioning for restoration of firearm rights under subsection (1) of this section or required to petition as provided for in RCW 9.41.047, may petition a superior court to have the person's right to possess a firearm restored.

(a) The person must have, for the period of consecutive years as specified below immediately preceding the filing of the petition, been in the community without being convicted or found not guilty by reason of insanity of any crime that prohibits the possession of a firearm, as follows:

(i) Five years for a conviction or finding of not guilty by reason of insanity for any felony offense, or any of the following gross misdemeanor or misdemeanor offenses:

(A) Domestic violence (RCW 10.99.020);

(B) Stalking;

(C) Cyberstalking;

(D) Cyber harassment, excluding cyber harassment committed solely pursuant to the element set forth in RCW 9A.90.120(1)(a)(i);

(E) Harassment;

(F) Aiming or discharging a firearm (RCW 9.41.230);

(G) Unlawful carrying or handling of a firearm (RCW 9.41.270);

(H) Animal cruelty in the second degree committed under RCW 16.52.207(1);

(I) Prior offense as defined by RCW 46.61.5055; or

(J) Violation of the provisions of an order to surrender and prohibit weapons, an extreme risk protection order, or the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence; and

(ii) Three years for a conviction or finding of not guilty by reason of insanity for one or more nonfelony crimes not covered in (a)(i) of this subsection.

(b) The person petitioning for firearm rights to be restored must also meet the following requirements:

(i) Has no pending charges for any felony, gross misdemeanor, or misdemeanor crime at the time the petition is filed or during the petition process;

(ii) Has completed all sentencing conditions, other than nonrestitution fines and fees, for each felony, gross misdemeanor, or misdemeanor conviction on which the prohibition was based, including all court-ordered treatment. The court shall waive the requirement of this subsection (2)(b)(ii) if the petitioner provides verification from the sentencing court that relevant court records are no longer available, or attests to the unavailability of relevant records from other entities;

(iii) Has no prior felony convictions that would count as part of an offender score under RCW 9.94A.525 and has no out-of-state conviction for an offense which would disqualify the person from purchasing or possessing a firearm in the state of conviction. This determination shall be the responsibility of, and conducted by, the prosecuting attorney. An individual shall not be precluded from filing a petition to restore their firearm rights on the basis that they cannot verify whether they are disqualified from purchasing or possessing a firearm in the state of conviction; and

(iv) Has been determined by law enforcement based on available records and information as not subject to any other prohibition on possessing a firearm at the time the petition for the restoration of firearm rights is filed or during the petition process, and would be able to pass a background check to purchase a firearm if the petition to restore firearm rights is granted.

(3) The process for petitioning for restoration of firearm rights is as follows:

(a) The person must file a petition in a superior court in a county that entered any prohibition.

(b) At the time of filing the petition, the person must serve the prosecuting attorney in the county where the petition is filed with the petition.

(c) Upon receipt of service of the petition, the prosecuting attorney must take reasonable steps to notify the listed victim of a prohibiting crime and any person who previously obtained a full protection order or no-contact order against the person petitioning for restoration of firearm rights, if those persons have requested notification, of the procedure to provide a sworn written statement regarding the existence of any additional facts or information that they may have relevant to whether the person petitioning for restoration of firearm rights meets the requirements for restoration set forth in this section.

(d) The prosecuting attorney must verify in writing to the court that the prosecuting attorney has reviewed the relevant records, including written verification from Washington state patrol that Washington state patrol has conducted a records check of all civil and criminal records relevant to the prohibitors in RCW 9.41.040, and based on that information, whether there is sufficient

evidence to determine that the person petitioning for restoration of firearm rights meets all the requirements set forth in RCW 9.41.040 and in this section to petition for and to be granted restoration of firearm rights.

(e) The court may set a hearing on the petition if the court determines additional information is necessary to determine whether the person meets the requirements for restoration of firearm rights.

(f) The court shall grant the petition only if the court finds that the person petitioning for restoration of firearm rights meets the requirements set forth in this section.

(g) The prosecuting attorney shall notify any victim who requests notification of the court's decision.

(4) When a person's right to possess a firearm has been restored under this section, the court shall forward, within three judicial days after entry of the restoration order, notification that the person's right to possess a firearm has been restored to the Washington state patrol with a copy of the person's driver's license or identicaid, or comparable identification such as the person's name, address, and date of birth.

(5) By December 30, 2023, the administrative office of the courts shall develop and distribute standard forms for petitions and orders issued under this section and RCW 9.41.047, and update protection order and no-contact order forms to allow victims to opt out of the notification provided for in this section if they do not wish to be notified at the time of a petition for firearm rights restoration. Beginning January 1, 2024, courts shall use the standard forms for petitions and orders under this section and RCW 9.41.047, and the updated protection order and no-contact order forms.

(6) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470, or combination of units of local government and its employees as provided in RCW 36.28A.010, are immune from civil liability for good faith conduct in the performance of the official's, employee's, or agency's duties under this section.

Sec. 5. RCW 9.41.047 and 2020 c 302 s 60 are each amended to read as follows:

(1)(a) At the time a person is convicted or found not guilty by reason of insanity of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW for ((mental health)) treatment for a mental disorder, or at the time that charges are dismissed based on incompetency to stand trial under RCW 10.77.088 and the court makes a finding that the person has a history of one or more violent acts, the ((convicting or committing court, or) court ((that dismisses charges,)) shall notify the person, orally and in writing, that the person must immediately surrender all firearms and any concealed pistol license and that the person may not possess a firearm unless ((his or her)) the person's right to do so is restored by ((a) the superior court ((of record. For purposes of this section a convicting court includes a court in which a person has been found not guilty by reason of insanity)) that issued the order.

(b) The court shall forward within three judicial days after conviction, finding of not guilty by reason of insanity, entry of the commitment order, or dismissal of charges, a copy of the person's driver's license or identicaid, or comparable information such as ((their)) the person's name, address, and date of birth, along with the date of conviction or commitment, or date charges are dismissed, to the department of licensing. When a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW, for ((mental health)) treatment for a mental disorder, or when a person's charges are dismissed based on incompetency to stand trial under

RCW 10.77.088 and the court makes a finding that the person has a history of one or more violent acts, the court also shall forward, within three judicial days after entry of the commitment order, or dismissal of charges, a copy of the person's driver's license, or comparable information, along with the date of commitment or date charges are dismissed, to the national instant criminal background check system index, denied persons file, created by the federal Brady handgun violence prevention act (P.L. 103-159) and to the Washington state patrol. The petitioning party shall provide the court with the information required. If more than one commitment order is entered under one cause number, only one notification to the department of licensing and the national instant criminal background check system is required.

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the ((convicted or committed)) person ((, or the person whose charges are dismissed based on incompetency to stand trial,)) has a concealed pistol license. If the person ((does have)) has a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for ((mental health)) treatment for a mental disorder under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, or by reason of having been detained under RCW 71.05.150 or 71.05.153, or because the person's charges were dismissed based on incompetency to stand trial under RCW 10.77.088 and the court made a finding that the person has a history of one or more violent acts, may, upon discharge, petition the superior court to have his or her right to possess a firearm restored, except that a person found not guilty by reason of insanity may not petition for restoration of the right to possess a firearm until one year after discharge.

(b) The petition must be brought in the superior court that ordered the involuntary commitment or dismissed the charges based on incompetency to stand trial or the superior court of the county in which the petitioner resides.

(c) Except as provided in (d) and (e) of this subsection, ((the court shall restore the petitioner's right to possess a firearm)) firearm rights shall be restored if the ((petitioner)) person petitioning for restoration of firearm rights proves by a preponderance of the evidence that:

(i) The ((petitioner)) person petitioning for restoration of firearm rights is no longer required to participate in court-ordered inpatient or outpatient treatment;

(ii) The ((petitioner)) person petitioning for restoration of firearm rights has successfully managed the condition related to the commitment or detention or incompetency;

(iii) The ((petitioner)) person petitioning for restoration of firearm rights no longer presents a substantial danger to ((himself or herself,)) self or to the public; and

(iv) The symptoms related to the commitment or detention or incompetency are not reasonably likely to recur.

(d) If a preponderance of the evidence in the record supports a finding that the person petitioning ((the court)) for restoration of firearm rights has engaged in violence and that it is more likely than not that the person will engage in violence after ((his or her)) the person's right to possess a firearm is restored, the person petitioning for restoration of firearm rights shall bear the burden of proving by clear, cogent, and convincing evidence that ((he or she)) the person does not present a substantial danger to the safety of others.

(e) If the ((petitioner)) person seeking restoration of firearm rights seeks restoration after having been detained under RCW

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71.05.150 or 71.05.153, the state shall bear the burden of proof to show, by a preponderance of the evidence, that the ~~((petitioner))~~ person does not meet the restoration criteria in (c) of this subsection.

(f) When a person's right to possess a firearm has been restored under this subsection, the court shall forward, within three judicial days after entry of the restoration order, notification that the person's right to possess a firearm has been restored to the department of licensing with a copy of the person's driver's license or identicaid, or comparable identification such as ~~((their))~~ the person's name, address, and date of birth, the health care authority, and the national instant criminal background check system index, denied persons file. In the case of a person whose right to possess a firearm has been suspended for six months as provided in RCW 71.05.182, the department of licensing shall forward notification of the restoration order to the licensing authority, which, upon receipt of such notification, shall immediately lift the suspension, restoring the license.

(4) No person who has been found not guilty by reason of insanity may petition a court for restoration of the right to possess a firearm unless the person meets the requirements for the restoration of the right to possess a firearm under ~~((RCW 9.41.040(4)))~~ section 4 of this act.

NEW SECTION. Sec. 6. 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.

CONFORMING AMENDMENTS TO CORRECT CITATIONS

Sec. 7. RCW 9.41.042 and 2022 c 268 s 33 are each amended to read as follows:

RCW 9.41.040(2)(a)~~((viii))~~ (v) shall not apply to any person under the age of eighteen years who is:

(1) In attendance at a hunter's safety course or a firearms safety course;

(2) Engaging in practice in the use of a firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located or any other area where the discharge of a firearm is not prohibited;

(3) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by an organized group that uses firearms as a part of the performance;

(4) Hunting or trapping under a valid license issued to the person under Title 77 RCW;

(5) In an area where the discharge of a firearm is permitted, is not trespassing, and the person either: (a) Is at least fourteen years of age, has been issued a hunter safety certificate, and is using a lawful firearm other than a pistol; or (b) is under the supervision of a parent, guardian, or other adult approved for the purpose by the parent or guardian;

(6) Traveling with any unloaded firearm in the person's possession to or from any activity described in subsection (1), (2), (3), (4), or (5) of this section;

(7) On real property under the control of his or her parent, other relative, or legal guardian and who has the permission of the parent or legal guardian to possess a firearm;

(8) At his or her residence and who, with the permission of his or her parent or legal guardian, possesses a firearm for the purpose of exercising the rights specified in RCW 9A.16.020(3); or

(9) Is a member of the armed forces of the United States, national guard, or organized reserves, when on duty.

Sec. 8. RCW 13.40.0357 and 2022 c 268 s 37 and 2022 c 16 s 9 are each reenacted and amended to read as follows:

DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BALLJUMP, CONSPIRACY, OR SOLICITATION
Arson and Malicious Mischief		
A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D
D	Malicious Mischief 3 (9A.48.090)	E
E	Tampering with Fire Alarm Apparatus (9.40.100)	E
E	Tampering with Fire Alarm Apparatus with Intent to Commit Arson (9.40.105)	E
A	Possession of Incendiary Device (9.40.120)	B+
Assault and Other Crimes Involving Physical Harm		
A	Assault 1 (9A.36.011)	B+
B+	Assault 2 (9A.36.021)	C+
C+	Assault 3 (9A.36.031)	D+
D+	Assault 4 (9A.36.041)	E
B+	Drive-By Shooting (9A.36.045) committed at age 15 or under	C+
A++	Drive-By Shooting (9A.36.045) committed at age 16 or 17	A
D+	Reckless Endangerment (9A.36.050)	E
C+	Promoting Suicide Attempt (9A.36.060)	D+
D+	Coercion (9A.36.070)	E
C+	Custodial Assault (9A.36.100)	D+
Burglary and Trespass		
B+	Burglary 1 (9A.52.020) committed at age 15 or under	C+
A-	Burglary 1 (9A.52.020) committed at age 16 or 17	B+
B	Residential Burglary (9A.52.025)	C
B	Burglary 2 (9A.52.030)	C
D	Burglary Tools (Possession of) (9A.52.060)	E
D	Criminal Trespass 1 (9A.52.070)	E
E	Criminal Trespass 2 (9A.52.080)	E
C	Mineral Trespass (78.44.330)	C
C	Vehicle Prowling 1 (9A.52.095)	D
D	Vehicle Prowling 2 (9A.52.100)	E
Drugs		
E	Possession/Consumption of Alcohol (66.44.270)	E
C	Illegally Obtaining Legend Drug (69.41.020)	D
C+	Sale, Delivery, Possession of Legend Drug with Intent to Sell (69.41.030(2)(a))	D+
E	Possession of Legend Drug (69.41.030(2)(b))	E
B+	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.401(2) (a) or (b))	B+
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(2)(c))	C
E	Possession of Cannabis <40 grams (69.50.4014)	E

C	Fraudulently Obtaining Controlled Substance (69.50.403)	C	through age 17	
C+	Sale of Controlled Substance for Profit (69.50.410)	C+	C+ Rape 3 (9A.44.060)	D+
E	Unlawful Inhalation (9.47A.020)	E	B++ Rape of a Child 1 (9A.44.073) committed at age 14 or under	B+
B	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Counterfeit Substances (69.50.4011(2) (a) or (b))	B	A- Rape of a Child 1 (9A.44.073) committed at age 15	B+
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances (69.50.4011(2) (c), (d), or (e))	C	B+ Rape of a Child 2 (9A.44.076)	C+
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4013)	C	B Incest 1 (9A.64.020(1))	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4012)	C	C Incest 2 (9A.64.020(2))	D
			D+ Indecent Exposure (Victim <14) (9A.88.010)	E
			E Indecent Exposure (Victim 14 or over) (9A.88.010)	E
			B+ Promoting Prostitution 1 (9A.88.070)	C+
			C+ Promoting Prostitution 2 (9A.88.080)	D+
			E O & A (Prostitution) (9A.88.030)	E
			B+ Indecent Liberties (9A.44.100)	C+
			B++ Child Molestation 1 (9A.44.083) committed at age 14 or under	B+
			A- Child Molestation 1 (9A.44.083) committed at age 15 through age 17	B+
B	Theft of Firearm (9A.56.300)	C	B Child Molestation 2 (9A.44.086)	C+
B	Possession of Stolen Firearm (9A.56.310)	C	C Failure to Register as a Sex Offender (9A.44.132)	D
E	Carrying Loaded Pistol Without Permit (9.41.050)	E		
C	Possession of Firearms by Minor (<18) (9.41.040(2)(a)((vii)) (v))	C	Theft, Robbery, Extortion, and Forgery	
D+	Possession of Dangerous Weapon (9.41.250)	E	B Theft 1 (9A.56.030)	C
D	Intimidating Another Person by use of Weapon (9.41.270)	E	C Theft 2 (9A.56.040)	D
			D Theft 3 (9A.56.050)	E
			B Theft of Livestock 1 and 2 (9A.56.080 and 9A.56.083)	C
			C Forgery (9A.60.020)	D
			A Robbery 1 (9A.56.200) committed at age 15 or under	B+
A+	Murder 1 (9A.32.030)	A	A++ Robbery 1 (9A.56.200) committed at age 16 or 17	A
A+	Murder 2 (9A.32.050)	B+	B+ Robbery 2 (9A.56.210)	C+
B+	Manslaughter 1 (9A.32.060)	C+	B+ Extortion 1 (9A.56.120)	C+
C+	Manslaughter 2 (9A.32.070)	D+	C+ Extortion 2 (9A.56.130)	D+
B+	Vehicular Homicide (46.61.520)	C+	C Identity Theft 1 (9.35.020(2))	D
			D Identity Theft 2 (9.35.020(3))	E
			D Improperly Obtaining Financial Information (9.35.010)	E
			B Possession of a Stolen Vehicle (9A.56.068)	C
			B Possession of Stolen Property 1 (9A.56.150)	C
			C Possession of Stolen Property 2 (9A.56.160)	D
			D Possession of Stolen Property 3 (9A.56.170)	E
			B Taking Motor Vehicle Without Permission 1 (9A.56.070)	C
			C Taking Motor Vehicle Without Permission 2 (9A.56.075)	D
			B Theft of a Motor Vehicle (9A.56.065)	C
			Motor Vehicle Related Crimes	
			E Driving Without a License (46.20.005)	E
			B+ Hit and Run - Death (46.52.020(4)(a))	C+
			C Hit and Run - Injury (46.52.020(4)(b))	D
			D Hit and Run-Attended (46.52.020(5))	E
			E Hit and Run-Unattended (46.52.010)	E
			C Vehicular Assault (46.61.522)	D
			C Attempting to Elude Pursuing Police Vehicle (46.61.024)	D
			E Reckless Driving (46.61.500)	E
A	Rape 1 (9A.44.040)	B+		
B++	Rape 2 (9A.44.050) committed at age 14 or under	B+		
A-	Rape 2 (9A.44.050) committed at age 15	B+		

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D	Driving While Under the Influence (46.61.502 and 46.61.504)	E
B+	Felony Driving While Under the Influence (46.61.502(6))	B
B+	Felony Physical Control of a Vehicle While Under the Influence (46.61.504(6))	B
Other		
B	Animal Cruelty 1 (16.52.205)	C
B	Bomb Threat (9.61.160)	C
C	Escape 1 ¹ (9A.76.110)	C
C	Escape 2 ¹ (9A.76.120)	C
D	Escape 3 (9A.76.130)	E
E	Obscene, Harassing, Etc., Phone Calls (9.61.230)	E
A	Other Offense Equivalent to an Adult Class A Felony	B+
B	Other Offense Equivalent to an Adult Class B Felony	C
C	Other Offense Equivalent to an Adult Class C Felony	D
D	Other Offense Equivalent to an Adult Gross Misdemeanor	E
E	Other Offense Equivalent to an Adult Misdemeanor	E
V	Violation of Order of Restitution, Community Supervision, or Confinement (13.40.200) ²	V

		B+	15-36	15-36	52-65	80-100	103-129
			wee ks	wee ks	wee ks	wee ks	wee ks
	CURRENT OFFENSE	B	LS	LS	15-36	15-36	52-65
					wee ks	wee ks	wee ks
	CATEGORY	C+	LS	LS	LS	15-36	15-36
						wee ks	wee ks
		C	LS	LS	LS	LS	15-36
							wee ks
		D+	LS	LS	LS	LS	LS
		D	LS	LS	LS	LS	LS
		E	LS	LS	LS	LS	LS
	PRIOR		0	1	2	3	4 or more
	ADJUDICATIONS						e

¹Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses and the standard range is established as follows:

- 1st escape or attempted escape during 12-month period - 28 days confinement
- 2nd escape or attempted escape during 12-month period - 8 weeks confinement
- 3rd and subsequent escape or attempted escape during 12-month period - 12 weeks confinement

²If the court finds that a respondent has violated terms of an order, it may impose a penalty of up to 30 days of confinement.

JUVENILE SENTENCING STANDARDS

This schedule must be used for juvenile offenders. The court may select sentencing option A, B, C, or D.

OPTION A
JUVENILE OFFENDER
SENTENCING GRID
STANDARD RANGE

A+	129 to 260 weeks for all category A++ offenses				
A+	180 weeks to age 21 for all category A+ offenses				
A	103-129 weeks for all category A offenses				
A-	30-40	52-65	80-100	103-129	103-129
	wee ks	wee ks	wee ks	wee ks	wee ks
B+	15-36	52-65	80-100	103-129	103-129
	wee ks	wee ks	wee ks	wee ks	wee ks

NOTE: References in the grid to days or weeks mean periods of confinement. "LS" means "local sanctions" as defined in RCW 13.40.020.

- (1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.
- (2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.
- (3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.
- (4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.
- (5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

OR
OPTION B

SUSPENDED DISPOSITION ALTERNATIVE

- (1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. The treatment programs provided to the offender must be either research-based best practice programs as identified by the Washington state institute for public policy or the joint legislative audit and review committee, or for chemical dependency treatment programs or services, they must be evidence-based or research-based best practice programs. For the purposes of this subsection:
 - (a) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous

populations demonstrating that the program or practice is effective for the population; and

(b) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

(3) An offender is ineligible for the suspended disposition option under this section if the offender:

- (a) Is adjudicated of an A+ or A++ offense;
- (b) Is fourteen years of age or older and is adjudicated of one or more of the following offenses:
 - (i) A class A offense, or an attempt, conspiracy, or solicitation to commit a class A offense;
 - (ii) Manslaughter in the first degree (RCW 9A.32.060);
 - (iii) Assault in the second degree (RCW 9A.36.021), extortion in the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW 9A.40.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW 46.61.520), hit and run death (RCW 46.52.020(4)(a)), or manslaughter 2 (RCW 9A.32.070); or
 - (iv) Violation of the uniform controlled substances act (RCW 69.50.401(2) (a) and (b)), when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon;
- (c) Is ordered to serve a disposition for a firearm violation under RCW 13.40.193;
- (d) Is adjudicated of a sex offense as defined in RCW 9.94A.030; or
- (e) Has a prior option B disposition.

OR

OPTION C

**CHEMICAL DEPENDENCY/MENTAL HEALTH
DISPOSITION ALTERNATIVE**

If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed a B++ or B+ offense, the court may impose a disposition under RCW 13.40.160(4) and 13.40.165.

OR

OPTION D

MANIFEST INJUSTICE

If the court determines that a disposition under option A, B, or C would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW 13.40.160(2).

Sec. 9. RCW 13.40.160 and 2022 c 268 s 38 are each amended to read as follows:

- (1) The standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357.
- (a) When the court sentences an offender to a local sanction as provided in RCW 13.40.0357 option A, the court shall impose a determinate disposition within the standard ranges, except as provided in subsection (2), (3), (4), (5), or (6) of this section. The disposition may be comprised of one or more local sanctions.
- (b) When the court sentences an offender to a standard range as provided in RCW 13.40.0357 option A that includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement, except as provided in subsection (2), (3), (4), (5), or (6) of this section.
- (2) If the court concludes, and enters reasons for its conclusion,

that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option D of RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

(3) If a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court may impose the special sex offender disposition alternative under RCW 13.40.162.

(4) If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose the disposition alternative under RCW 13.40.165.

(5) If a juvenile is subject to a commitment of 15 to 65 weeks of confinement, the court may impose the disposition alternative under RCW 13.40.167.

(6) When the offender is subject to a standard range commitment of 15 to 36 weeks and is ineligible for a suspended disposition alternative, a manifest injustice disposition below the standard range, special sex offender disposition alternative, chemical dependency disposition alternative, or mental health disposition alternative, the court in a county with a pilot program under RCW 13.40.169 may impose the disposition alternative under RCW 13.40.169.

(7) RCW 13.40.193 shall govern the disposition of any juvenile adjudicated of possessing a firearm in violation of RCW 9.41.040(2)(a)(~~(vii)~~) (v) or any crime in which a special finding is entered that the juvenile was armed with a firearm.

(8) RCW 13.40.308 shall govern the disposition of any juvenile adjudicated of theft of a motor vehicle as defined under RCW 9A.56.065, possession of a stolen motor vehicle as defined under RCW 9A.56.068, taking a motor vehicle without permission in the first degree under RCW 9A.56.070, and taking a motor vehicle without permission in the second degree under RCW 9A.56.075.

(9) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(10) Except as provided under subsection (3), (4), (5), or (6) of this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the court shall not suspend or defer the imposition or the execution of the disposition.

(11) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

Sec. 10. RCW 13.40.193 and 2022 c 268 s 39 are each amended to read as follows:

- (1) If a respondent is found to have been in possession of a firearm in violation of RCW 9.41.040(2)(a)(~~(vii)~~) (v), the court shall impose a minimum disposition of ten days of confinement. If the offender's standard range of disposition for the offense as indicated in RCW 13.40.0357 is more than thirty days of confinement, the court shall commit the offender to the

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department for the standard range disposition. The offender shall not be released until the offender has served a minimum of ten days in confinement.

(2)(a) If a respondent is found to have been in possession of a firearm in violation of RCW 9.41.040, the disposition must include a requirement that the respondent participate in a qualifying program as described in (b) of this subsection, when available, unless the court makes a written finding based on the outcome of the juvenile court risk assessment that participation in a qualifying program would not be appropriate.

(b) For purposes of this section, "qualifying program" means an aggression replacement training program, a functional family therapy program, or another program applicable to the juvenile firearm offender population that has been identified as evidence-based or research-based and cost-beneficial in the current list prepared at the direction of the legislature by the Washington state institute for public policy.

(3) If the court finds that the respondent or an accomplice was armed with a firearm, the court shall determine the standard range disposition for the offense pursuant to RCW 13.40.160. If the offender or an accomplice was armed with a firearm when the offender committed any felony other than possession of a machine gun or bump-fire stock, possession of a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, or use of a machine gun or bump-fire stock in a felony, the following periods of total confinement must be added to the sentence: (a) Except for (b) of this subsection, for a class A felony, six months; for a class B felony, four months; and for a class C felony, two months; (b) for any violent offense as defined in RCW 9.94A.030, committed by a respondent who is sixteen or seventeen years old at the time of the offense, a period of twelve months. The additional time shall be imposed regardless of the offense's juvenile disposition offense category as designated in RCW 13.40.0357.

(4)(a) If the court finds that the respondent who is sixteen or seventeen years old and committed the offense of robbery in the first degree, drive-by shooting, rape of a child in the first degree, burglary in the first degree, or any violent offense as defined in RCW 9.94A.030 and was armed with a firearm, and the court finds that the respondent's participation was related to membership in a criminal street gang or advancing the benefit, aggrandizement, gain, profit, or other advantage for a criminal street gang, a period of three months total confinement must be added to the sentence. The additional time must be imposed regardless of the offense's juvenile disposition offense category as designated in RCW 13.40.0357 and must be served consecutively with any other sentencing enhancement.

(b) For the purposes of this section, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(5) When a disposition under this section would effectuate a manifest injustice, the court may impose another disposition. When a judge finds a manifest injustice and imposes a disposition of confinement exceeding thirty days, the court shall commit the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. When a judge finds a manifest injustice and imposes a disposition of

confinement less than thirty days, the disposition shall be comprised of confinement or community supervision or both.

(6) Any term of confinement ordered pursuant to this section shall run consecutively to any term of confinement imposed in the same disposition for other offenses.

Sec. 11. RCW 13.40.265 and 2022 c 268 s 40 are each amended to read as follows:

(1) If a juvenile thirteen years of age or older is found by juvenile court to have committed an offense while armed with a firearm or an offense that is a violation of RCW 9.41.040(2)(a)(~~(vii)~~) (v) or 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, unless the offense is the juvenile's first offense while armed with a firearm, first unlawful possession of a firearm offense, or first offense in violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.

(2) Except as otherwise provided in subsection (3) of this section, 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.

(3) 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.

Sec. 12. RCW 70.02.230 and 2022 c 268 s 43 are each amended to read as follows:

(1) The fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies may not be disclosed except as provided in this section, RCW 70.02.050, 71.05.445, 74.09.295, 70.02.210, 70.02.240, 70.02.250, 70.02.260, and 70.02.265, or pursuant to a valid authorization under RCW 70.02.030.

(2) Information and records related to mental health services, other than those obtained through treatment under chapter 71.34 RCW, may be disclosed:

(a) In communications between qualified professional persons to meet the requirements of chapter 71.05 RCW, including Indian health care providers, in the provision of services or appropriate referrals, or in the course of guardianship proceedings if provided to a professional person:

- (i) Employed by the facility;
- (ii) Who has medical responsibility for the patient's care;
- (iii) Who is a designated crisis responder;
- (iv) Who is providing services under chapter 71.24 RCW;
- (v) Who is employed by a state or local correctional facility where the person is confined or supervised; or
- (vi) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW;

(b) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside;

(c)(i) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such a designation;

(ii) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(A) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(B) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator;

(d)(i) To the courts, including tribal courts, as necessary to the administration of chapter 71.05 RCW or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW.

(ii) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(iii) Disclosure under this subsection is mandatory for the purpose of the federal health insurance portability and accountability act;

(e)(i) When a mental health professional or designated crisis responder is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional or designated crisis responder shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. The written report must be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(f) To the attorney of the detained person;

(g) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2), 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information must be disclosed only after giving notice to the committed person and the person's counsel;

(h)(i) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(i)(i) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act;

(j) To the persons designated in RCW 71.05.425 for the purposes described in those sections;

(k) By a care coordinator under RCW 71.05.585 or 10.77.175 assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.05 or 10.77 RCW;

(l) Upon the death of a person. The person's next of kin, personal representative, guardian, or conservator, if any, must be notified. Next of kin who are of legal age and competent must be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient are governed by RCW 70.02.140;

(m) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient;

(n) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)((~~+~~)) (iii). The extent of information that may be released is limited as follows:

(i) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(ii) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)((~~+~~)) (iii);

(iii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(o) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of the disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee;

(p) Pursuant to lawful order of a court, including a tribal court;

(q) To qualified staff members of the department, to the authority, to behavioral health administrative services organizations, to managed care organizations, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility;

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(r) Within the mental health service agency or Indian health care provider facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties;

(s) Within the department and the authority as necessary to coordinate treatment for mental illness, developmental disabilities, or substance use disorder of persons who are under the supervision of the department;

(t) Between the department of social and health services, the department of children, youth, and families, and the health care authority as necessary to coordinate treatment for mental illness, developmental disabilities, or substance use disorder of persons who are under the supervision of the department of social and health services or the department of children, youth, and families;

(u) To a licensed physician or psychiatric advanced registered nurse practitioner who has determined that the life or health of the person is in danger and that treatment without the information and records related to mental health services could be injurious to the patient's health. Disclosure must be limited to the portions of the records necessary to meet the medical emergency;

(v)(i) Consistent with the requirements of the federal health insurance portability and accountability act, to:

(A) A health care provider, including an Indian health care provider, who is providing care to a patient, or to whom a patient has been referred for evaluation or treatment; or

(B) Any other person who is working in a care coordinator role for a health care facility, health care provider, or Indian health care provider, or is under an agreement pursuant to the federal health insurance portability and accountability act with a health care facility or a health care provider and requires the information and records to assure coordinated care and treatment of that patient.

(ii) A person authorized to use or disclose information and records related to mental health services under this subsection (2)(v) must take appropriate steps to protect the information and records relating to mental health services.

(iii) Psychotherapy notes may not be released without authorization of the patient who is the subject of the request for release of information;

(w) To administrative and office support staff designated to obtain medical records for those licensed professionals listed in (v) of this subsection;

(x) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one evaluation and treatment facility to another. The release of records under this subsection is limited to the information and records related to mental health services required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record;

(y) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW;

(z) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the

name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information must notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information;

(aa) To all current treating providers, including Indian health care providers, of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. For purposes of coordinating health care, the department or the authority may release without written authorization of the patient, information acquired for billing and collection purposes as described in RCW 70.02.050(1)(d). The department, or the authority, if applicable, shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. Neither the department nor the authority may release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client;

(bb)(i) To the secretary of social and health services and the director of the health care authority for either program evaluation or research, or both so long as the secretary or director, where applicable, adopts rules for the conduct of the evaluation or research, or both. Such rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/"

(ii) Nothing in this chapter may be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary, or director, where applicable;

(cc) To any person if the conditions in RCW 70.02.205 are met;

(dd) To the secretary of health for the purposes of the maternal mortality review panel established in RCW 70.54.450; or

(ee) To a tribe or Indian health care provider to carry out the requirements of RCW 71.05.150(6).

(3) Whenever federal law or federal regulations restrict the release of information contained in the information and records related to mental health services of any patient who receives treatment for a substance use disorder, the department or the authority may restrict the release of the information as necessary to comply with federal law and regulations.

(4) Civil liability and immunity for the release of information about a particular person who is committed to the department of social and health services or the authority under RCW

71.05.280(3) and 71.05.320(4)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(5) The fact of admission to a provider of mental health services, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to chapter 71.05 RCW are not admissible as evidence in any legal proceeding outside that chapter without the written authorization of the person who was the subject of the proceeding except as provided in RCW 70.02.260, in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(4)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to chapter 71.05 RCW must be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

(6)(a) Except as provided in RCW 4.24.550, any person may bring an action against an individual who has willfully released confidential information or records concerning him or her in violation of the provisions of this section, for the greater of the following amounts:

- (i) One thousand dollars; or
- (ii) Three times the amount of actual damages sustained, if any.

(b) It is not a prerequisite to recovery under this subsection that the plaintiff suffered or was threatened with special, as contrasted with general, damages.

(c) Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this section, and may in the same action seek damages as provided in this subsection.

(d) The court may award to the plaintiff, should he or she prevail in any action authorized by this subsection, reasonable attorney fees in addition to those otherwise provided by law.

(e) If an action is brought under this subsection, no action may be brought under RCW 70.02.170.

Sec. 13. RCW 70.02.240 and 2022 c 268 s 44 are each amended to read as follows:

The fact of admission and all information and records related to mental health services obtained through inpatient or outpatient treatment of a minor under chapter 71.34 RCW must be kept confidential, except as authorized by this section or under RCW 70.02.050, 70.02.210, 70.02.230, 70.02.250, 70.02.260, and 70.02.265. Confidential information under this section may be disclosed only:

(1) In communications between mental health professionals to meet the requirements of chapter 71.34 RCW, in the provision of services to the minor, or in making appropriate referrals;

(2) In the course of guardianship or dependency proceedings;

(3) To the minor, the minor's parent, including those acting as a parent as defined in RCW 71.34.020 for purposes of family-initiated treatment, and the minor's attorney, subject to RCW 13.50.100;

(4) To the courts as necessary to administer chapter 71.34 RCW;

(5) By a care coordinator under RCW 71.34.755 or 10.77.175 assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.34 or 10.77 RCW;

(6) By a care coordinator under RCW 71.34.755 assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.34 RCW;

(7) To law enforcement officers or public health officers as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address must be disclosed upon request;

(8) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

(9) To the secretary of social and health services and the director of the health care authority for assistance in data collection and program evaluation or research so long as the secretary or director, where applicable, adopts rules for the conduct of such evaluation and research. The rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding minors who have received services in a manner such that the minor is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law.

/s/";

(10) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

(11) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

(12) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

(13) Upon the death of a minor, to the minor's next of kin;

(14) To a facility in which the minor resides or will reside;

(15) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)((+)) (iii). The

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extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)((+)) (iii);

(c) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(16) This section may not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the director of the health care authority or the secretary of the department of social and health services, where applicable. The fact of admission and all information obtained pursuant to chapter 71.34 RCW are not admissible as evidence in any legal proceeding outside chapter 71.34 RCW, except guardianship or dependency, without the written consent of the minor or the minor's parent;

(17) For the purpose of a correctional facility participating in the postinstitutional medical assistance system supporting the expedited medical determinations and medical suspensions as provided in RCW 74.09.555 and 74.09.295;

(18) Pursuant to a lawful order of a court."

On page 1, line 4 of the title, after "rights;" strike the remainder of the title and insert "amending RCW 9.41.040, 9.41.047, 9.41.042, 13.40.160, 13.40.193, 13.40.265, 70.02.230, and 70.02.240; reenacting and amending RCW 9.41.010 and 13.40.0357; adding a new section to chapter 9.41 RCW; and creating a new section."

MOTION

Senator Padden moved that the following amendment no. 0412 by Senator Padden be adopted:

Beginning on page 1, line 3, strike all of section 1 and insert the following:

"NEW SECTION. Sec. 1. (1) The legislature finds that unlawful possession of a firearm is a useful tool to keep firearms out of the hands of people intent on using firearms unlawfully to cause harm to others, especially to intimate partners and family members. Reasonable efforts should be made to ensure that victims, survivors, and witnesses of crimes have the ability to receive notice regarding the perpetrators ability to access firearms and to be fully informed of a change in their case. Prohibitions on possessing firearms should only follow conviction of a crime that shows a person has given up their constitutional right by showing a propensity to unlawful behavior by committing serious crimes. Additionally, caution should be taken to ensure that victims and those in fear of being victims of violence should have the ability to access protection and to defend themselves. The rights preserved to the people in the constitutional Bill of Rights should be thoughtfully and carefully preserved and, when they are abused, should be removed with equal thought and preservation.

(2) For crimes that logically lead to violence, especially domestic violence, such as stalking and harassment and assault, the legislature finds that there should be a process to ensure that the person convicted of a crime has taken the opportunity to be rehabilitated and to no longer be a threat before a restoration of

rights to possess firearms. The legislature finds that there should be appropriate checks and balances and processes in place to ensure that a person who has their rights restored is no longer a threat. The legislature finds that those who have fully participated in the criminal justice system and have shown a desire to act as responsible members of society should have the opportunity to have their rights restored."

Senator Padden spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Dhingra spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0412 by Senator Padden on page 1, line 3 to Substitute House Bill No. 1562.

The motion by Senator Padden failed and amendment no. 0412 was not adopted by voice vote.

MOTION

Senator McCune moved that the following amendment no. 0410 by Senator McCune be adopted:

On page 2, line 25, after "order;" insert "and"

On page 2, beginning on line 26, after "substance use" strike "; and cruelty to animals"

On page 12, beginning on line 21, after "RCW 9.41.270;" strike all material through "16.52.207(1);" on line 22

Beginning on page 16, line 38, after "(H)" strike all material through "(I)" on page 17, line 1

Reletter the remaining subsection consecutively and correct any internal references accordingly.

Senator McCune spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Dhingra spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0410 by Senator McCune on page 2, line 25 to Substitute House Bill No. 1562.

The motion by Senator McCune failed and amendment no. 0410 was not adopted by voice vote.

MOTION

Senator Padden moved that the following amendment no. 413 by Senator Padden be adopted:

On page 12, line 17, after "stalking;" strike "cyberstalking;"

On page 16, beginning on line 32, after "(C)" strike all material through "(D)" on line 33

Reletter the remaining subsections consecutively and correct any internal references accordingly.

Senator Padden spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Dhingra spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of amendment no. 413 by Senator Padden on page 12, line 17 to Substitute House Bill No. 1562.

The motion by Senator Padden failed and amendment no. 413 was not adopted by voice vote.

MOTION

Senator Padden moved that the following amendment no. 0414 by Senator Padden be adopted:

On page 12, beginning on line 17, after "cyberstalking;" strike all material through "9A.90.120(1)(a)(i);" on line 19

On page 16, beginning on line 33, after "(D)" strike all material through "(E)" on line 35

Reletter the remaining subsections consecutively and correct any internal references accordingly.

Senator Padden spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Dhingra spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0414 by Senator Padden on page 12, line 17 to Substitute House Bill No. 1562.

The motion by Senator Padden failed and amendment no. 0414 was not adopted by voice vote.

MOTION

Senator Wagoner moved that the following amendment no. 0411 by Senator Wagoner be adopted:

On page 12, line 21, after "(RCW 9.41.270);" insert "or"

On page 12, beginning on line 22, after "16.52.207(1);" strike all material through "46.61.5055;" on line 24

On page 16, line 39, after "16.52.207(1);" insert "or"

On page 17, beginning on line 1, after "(I)" strike all material through "(J)" on line 2

Senator Wagoner spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Dhingra spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0411 by Senator Wagoner on page 12, line 21 to Substitute House Bill No. 1562.

The motion by Senator Wagoner failed and amendment no. 0411 was not adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Substitute House Bill No. 1562.

The motion by Senator Dhingra carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Dhingra, the rules were suspended, Substitute House Bill No. 1562 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Dhingra spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1562 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1562 as amended by the Senate and the bill passed

the Senate by the following vote: Yeas, 28; Nays, 21; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Cleveland, Conway, Dhingra, Frame, Hasegawa, Hunt, Kauffman, Keiser, Kuderer, Lias, Lovelett, Lovick, Mullet, Nguyen, Nobles, Pedersen, Randall, Robinson, Rolfes, Saldaña, Salomon, Stanford, Trudeau, Valdez, Van De Wege, Wellman and Wilson, C.

Voting nay: Senators Boehnke, Braun, Dozier, Fortunato, Gildon, Hawkins, Holy, King, MacEwen, McCune, Muzzall, Padden, Rivers, Schoesler, Shewmake, Short, Torres, Wagoner, Warnick, Wilson, J. and Wilson, L.

SUBSTITUTE HOUSE BILL NO. 1562, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED HOUSE BILL NO. 1663, by Representatives Gohner and Steele

Allowing functionally consolidated port districts to adopt a unified levy.

The measure was read the second time.

MOTION

Senator Kauffman moved that the following amendment no. 0387 by Senator Kauffman be adopted:

On page 1, line 19, after "at" strike "special" and insert "general"

On page 1, line 21, after "The" strike "special" and insert "general"

On page 2, line 3, after "in the" strike "special" and insert "general"

On page 2, after line 9, insert the following:

"(2) The respective port districts are encouraged and authorized to share information with residents of each county, including mailed items to households, related to the ballot measure."

Reletter the remaining subsections consecutively and correct any internal references accordingly.

Senators Kauffman and Torres spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0387 by Senator Kauffman on page 1, line 19 to Engrossed House Bill No. 1663.

The motion by Senator Kauffman carried and amendment no. 0387 was adopted by voice vote.

MOTION

On motion of Senator Torres, the rules were suspended, Engrossed House Bill No. 1663 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Torres and Lovelett spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 1663.

ROLL CALL

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The Secretary called the roll on the final passage of Engrossed House Bill No. 1663 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Liias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

ENGROSSED HOUSE BILL NO. 1663, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1536, by Representatives Timmons, Harris, Bergquist, Ortiz-Self, Walen, Ramel, Morgan, Stonier, Gregerson, Ormsby and Paul

Clarifying requirements governing the withholding of high school diplomas.

The measure was read the second time.

MOTION

On motion of Senator Wellman, the rules were suspended, House Bill No. 1536 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Wellman spoke in favor of passage of the bill.
Senator Hawkins spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1536.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1536 and the bill passed the Senate by the following vote: Yeas, 28; Nays, 21; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Cleveland, Conway, Dhingra, Frame, Hasegawa, Hunt, Kauffman, Keiser, Kuderer, Liias, Lovelett, Lovick, Nguyen, Nobles, Pedersen, Randall, Robinson, Rolfes, Saldaña, Salomon, Shewmake, Stanford, Trudeau, Valdez, Van De Wege, Wellman and Wilson, C.

Voting nay: Senators Boehnke, Braun, Dozier, Fortunato, Gildon, Hawkins, Holy, King, MacEwen, McCune, Mullet, Muzzall, Padden, Rivers, Schoesler, Short, Torres, Wagoner, Warnick, Wilson, J. and Wilson, L.

HOUSE BILL NO. 1536, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1232, by Representatives Bergquist, Chambers, Entenman, Slatter, Paul, Ramos, Mena, Street, Riccelli, Pollet, Callan, Hackney, Thai, Reeves, Reed, Ortiz-Self, Kloba, Duerr, Doglio, Morgan, Ramel, Goodman, Tharinger,

Lekanoff, Gregerson and Santos

Enhancing the college bound scholarship program.

The measure was read the second time.

MOTION

On motion of Senator Holy, the rules were suspended, House Bill No. 1232 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Holy spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1232.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1232 and the bill passed the Senate by the following vote: Yeas, 39; Nays, 10; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Cleveland, Conway, Dhingra, Frame, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Liias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Shewmake, Stanford, Torres, Trudeau, Valdez, Van De Wege, Warnick, Wellman, Wilson, C. and Wilson, J.

Voting nay: Senators Boehnke, Braun, Dozier, Fortunato, Gildon, Padden, Schoesler, Short, Wagoner and Wilson, L.

HOUSE BILL NO. 1232, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1238, by House Committee on Appropriations (originally sponsored by Riccelli, Harris, Alvarado, Thai, Simmons, Senn, Rude, Reeves, Reed, Walen, Peterson, Ortiz-Self, Ormsby, Taylor, Leavitt, Fitzgibbon, Duerr, Doglio, Berry, Bateman, Morgan, Fey, Ramel, Goodman, Fosse, Pollet, Lekanoff, Macri, Chopp, Stonier, Gregerson and Santos)

Providing free school meals for all.

The measure was read the second time.

MOTION

Senator Wellman moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The legislature recognizes that adequate childhood nutrition is indispensable for proper intellectual, academic, and social development. However, many Washington families continue to face economic and other challenges that impact students' ability to consistently access nutritional meals that support their growth and well-being.

(2) The legislature has acknowledged the widespread but often concealed harms of childhood hunger by enacting legislation in recent years to address this issue. For example, in 2018, the legislature established a breakfast after the bell program in high-

needs schools, in 2021, the legislature eliminated lunch copays for qualifying students, and in 2022, the legislature expanded school participation in the federal community eligibility provision, a program that provides no-charge meals for all students at participating schools.

(3) These efforts and others have significantly increased student access to meals provided without charge, but the problems of food insecurity, with its lasting physiological and psychological harms, remain a reality for too many families, too many schools, and too many children.

(4) The legislature recognizes also that the myriad difficulties of the COVID-19 pandemic uniquely impacted school districts and food delivery systems. While the challenges of responding to the unprecedented disruptions of a global pandemic continue to reverberate in public schools, school districts, through hard work, federal approvals, and appropriate financial supports, successfully demonstrated their ability to provide meals without charge to all requesting students. However, federal provisions permitting meals to be served at no charge to all students during the school year have expired, so the task of broadly responding to student meal needs has returned to the states.

(5) Although childhood hunger persists, the legislature recognizes that the state and school districts have the needed infrastructure and ability to respond to the issue, including the potential to access or leverage federal funds that may become available for school meal programs. The legislature, therefore, intends to continue its multiyear effort to eliminate hunger and food insecurity within public schools by expanding the provision of meals without charge to the state's youngest K-12 students.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.235 RCW to read as follows:

(1)(a) In accordance with (b) and (c) of this subsection, beginning with the 2023-24 school year, each school district shall provide breakfast and lunch each school day to any student who requests a breakfast, lunch, or both. The school district must provide the meals at no charge to the student and without consideration of the student's eligibility for a federally reimbursed free or reduced-price meal. Meals provided under this section must be nutritiously adequate and qualify for federal reimbursement under the school lunch program or the school breakfast program, and students are not eligible for more than one meal in a meal service period.

(b) The requirements in (a) of this subsection apply to public schools in which:

(i) Educational services are provided to students in any of the grades of kindergarten through four; and

(ii) 30 percent or more of the enrolled students meet federal eligibility requirements for free or reduced-price lunches.

(c) The obligation to provide breakfast and lunch to students under this subsection (1):

(i) Begins in the 2023-24 school year for schools in which 40 percent or more of the enrolled students meet federal eligibility requirements for free or reduced-price lunches;

(ii) Begins in the 2024-25 school year for schools in which the percentage of enrolled students that meet federal eligibility requirements for free or reduced-price lunches is at least 30 percent and less than 40 percent; and

(iii) Does not apply to schools participating in the United States department of agriculture's community eligibility provision under RCW 28A.235.300 that have not completed the duration of the provision's four-year cycle.

(2) The office of the superintendent of public instruction shall reimburse school districts, subject to the requirements of subsection (1) of this section, on a per meal reimbursement basis for meals that are not already reimbursed at the United States

department of agriculture's free rate. The additional state reimbursement amount must be the difference between the United States department of agriculture's free rate and the United States department of agriculture's paid rate.

(3) School districts, in accordance with RCW 28A.235.160, may be exempted from the requirements of this section.

(4) To maximize federal funding, school districts must continue collecting free and reduced-price meal eligibility applications where applicable and run direct certification at least monthly in accordance with RCW 28A.235.280. School districts shall also annually monitor data for eligibility in the United States department of agriculture community eligibility provision and apply where eligible as required in RCW 28A.235.300.

(5) For the purposes of this section, the following definitions apply:

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

(b) "School breakfast program" has the same meaning as in RCW 28A.235.160.

(c) "School lunch program" has the same meaning as in RCW 28A.235.160.

(6) This section governs school operation and management under RCW 28A.710.040 and 28A.715.020, and applies to charter schools established under chapter 28A.710 RCW and state-tribal education compact schools established under chapter 28A.715 RCW to the same extent as it applies to school districts.

(7) The requirements in this section shall lapse if the federal reimbursement for any school breakfasts or lunches is eliminated.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.235 RCW to read as follows:

Public schools, as defined in RCW 28A.150.010, providing school meals to students are encouraged to buy Washington produced food whenever practicable and cost is comparable to non-Washington produced food.

Sec. 4. RCW 28A.235.160 and 2021 c 74 s 2 are each reenacted and amended to read as follows:

(1) For the purposes of this section:

(a) "Free or reduced-price lunch" means a lunch served by a school district participating in the national school lunch program to a student qualifying for national school lunch program benefits based on family size-income criteria.

(b) "Lunch copay" means the amount a student who qualifies for a reduced-price lunch is charged for a reduced-price lunch.

(c) "School breakfast program" means a program meeting federal requirements defined in 42 U.S.C. Sec. 1773.

(d) "School lunch program" means a meal program meeting the requirements defined ((by the superintendent of public instruction under subsection (2)(b) of this section)) in Title 42 U.S.C. Sec. 1751 et seq.

(e) "Severe-need school" means a school that qualifies for a severe-need school reimbursement rate from federal funds for school breakfasts served to children from low-income families.

(f) "Summer food service program" means a meal or snack program meeting the requirements defined by the superintendent of public instruction under subsection (4) of this section.

(2) School districts shall implement a school lunch program in each public school in the district in which educational services are provided to children in any of the grades of kindergarten through four and in which ((twenty-five)) 25 percent or more of the enrolled students qualify for a free or reduced-price lunch. In accordance with section 2 of this act, school districts shall provide meals at no charge to all requesting students at public schools that meet the criteria established in section 2(1) (b) and (c) of this act. In developing and implementing its school lunch program and school breakfast program, each school district may consult with

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an advisory committee including school staff, community members, and others appointed by the board of directors of the district.

((a) Applications to determine free or reduced-price lunch eligibility shall be distributed and collected for all households of children in schools containing any of the grades kindergarten through four and in which there are no United States department of agriculture child nutrition programs. The applications that are collected must be reviewed to determine eligibility for free or reduced-price lunches. Nothing in this section shall be construed to require completion or submission of the application by a parent or guardian.

(b) Using the most current available school data on free and reduced-price lunch eligibility, the superintendent of public instruction shall adopt a schedule for implementation of school lunch programs at each school required to offer such a program under subsection (2) of this section as follows:

(i) Schools not offering a school lunch program and in which twenty-five percent or more of the enrolled students are eligible for free or reduced-price lunch shall implement a school lunch program not later than the second day of school in the 2005-06 school year and in each school year thereafter.

(ii) The superintendent shall establish minimum standards defining the lunch meals to be served, and such standards must be sufficient to qualify the meals for any available federal reimbursement.

(iii) Nothing in this section shall be interpreted to prevent a school from implementing a school lunch program earlier than the school is required to do so.)

(3) To the extent funds are appropriated for this purpose, each school district shall implement a school breakfast program in each school where more than ((forty)) 40 percent of students eligible to participate in the school lunch program qualify for free or reduced-price meal reimbursement ((by the school year 2005-06)). Beginning in the 2023-24 school year and in accordance with section 2 of this act, school districts shall implement a breakfast program in each school providing meals at no charge to students. For the second year before the implementation of the district's school breakfast program, and for each subsequent school year, each school district shall submit data enabling the superintendent of public instruction to determine which schools within the district will qualify for this requirement. Schools where lunch programs start after the 2003-04 school year, where ((forty)) 30 percent of students qualify for free or reduced-price meals, must begin school breakfast programs the second year following the start of a lunch program.

(4) Each school district shall implement a summer food service program in each public school in the district in which a summer program of academic, enrichment, or remedial services is provided and in which 50 percent or more of the children enrolled in the school ((qualify)) meet federal eligibility requirements for free or reduced-price lunch. However, the superintendent of public instruction shall develop rules establishing criteria to permit an exemption for a school that can demonstrate availability of an adequate alternative summer feeding program. Sites providing meals should be open to all children in the area, unless a compelling case can be made to limit access to the program. The superintendent of public instruction shall adopt a definition of compelling case and a schedule for implementation as follows:

(a) Beginning the summer of 2005 if the school currently offers a school breakfast or lunch program; or

(b) Beginning the summer following the school year during which a school implements a school lunch program under ((subsection (2)(b) of)) this section.

(5) Schools not offering a breakfast or lunch program may

meet the meal service requirements of subsections (2)((b)) and (4) of this section through any of the following:

(a) Preparing the meals on-site;

(b) Receiving the meals from another school that participates in a United States department of agriculture child nutrition program; or

(c) Contracting with a nonschool entity that is a licensed food service establishment under RCW 69.07.010.

(6) Requirements that school districts have a school lunch, breakfast, or summer nutrition program under this section shall not create or imply any state funding obligation for these costs. The legislature does not intend to include these programs within the state's obligation for basic education funding under Article IX of the state Constitution.

(7) Beginning in the 2021-22 school year, school districts with school lunch programs must eliminate lunch copays for students in prekindergarten through 12th grade who qualify for reduced-price lunches, and the superintendent of public instruction must allocate funding for this purpose.

(8) The requirements in this section shall lapse if the federal reimbursement for any school breakfasts, lunches, or summer food service programs is eliminated.

(9) School districts may be exempted from the requirements of this section and section 2 of this act by showing good cause why they cannot comply with the office of the superintendent of public instruction to the extent that such exemption is not in conflict with federal or state law. The process and criteria by which school districts ((are)) may be exempted shall be developed by rule and revised if necessary by the office of the superintendent of public instruction in consultation with representatives of school directors, school food service, community-based organizations, and ((the Washington state PTA)) a state organization of parents and teachers.

Sec. 5. RCW 28A.150.260 and 2022 c 109 s 3 are each amended to read as follows:

The purpose of this section is to provide for the allocation of state funding that the legislature deems necessary to support school districts in offering the minimum instructional program of basic education under RCW 28A.150.220. The allocation shall be determined as follows:

(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula for the distribution of a basic education instructional allocation for each common school district.

(2)(a) The distribution formula under this section shall be for allocation purposes only. Except as may be required under subsections (4)(b) and (c), (5)(b), and (9) of this section, chapter 28A.155, 28A.165, 28A.180, or 28A.185 RCW, or federal laws and regulations, nothing in this section requires school districts to use basic education instructional funds to implement a particular instructional approach or service. Nothing in this section requires school districts to maintain a particular classroom teacher-to-student ratio or other staff-to-student ratio or to use allocated funds to pay for particular types or classifications of staff. Nothing in this section entitles an individual teacher to a particular teacher planning period.

(b) To promote transparency in state funding allocations, the superintendent of public instruction must report state per-pupil allocations for each school district for the general apportionment, special education, learning assistance, transitional bilingual, highly capable, and career and technical education programs. The superintendent must report this information in a user-friendly format on the main page of the office's website. School districts must include a link to the superintendent's per-pupil allocations report on the main page of the school district's website. In

addition, the budget documents published by the legislature for the enacted omnibus operating appropriations act must report statewide average per-pupil allocations for general apportionment and the categorical programs listed in this subsection.

(3)(a) To the extent the technical details of the formula have been adopted by the legislature and except when specifically provided as a school district allocation, the distribution formula for the basic education instructional allocation shall be based on minimum staffing and nonstaff costs the legislature deems necessary to support instruction and operations in prototypical schools serving high, middle, and elementary school students as provided in this section. The use of prototypical schools for the distribution formula does not constitute legislative intent that schools should be operated or structured in a similar fashion as the prototypes. Prototypical schools illustrate the level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs, such as class size, hours of instruction, and various categories of school staff. It is the intent that the funding allocations to school districts be adjusted from the school prototypes based on the actual number of annual average full-time equivalent students in each grade level at each school in the district and not based on the grade-level configuration of the school to the extent that data is available. The allocations shall be further adjusted from the school prototypes with minimum allocations for small schools and to reflect other factors identified in the omnibus appropriations act.

(b) For the purposes of this section, prototypical schools are defined as follows:

(i) A prototypical high school has ((six hundred)) 600 average annual full-time equivalent students in grades nine through ((twelve)) 12;

(ii) A prototypical middle school has ((four hundred thirty-two)) 432 average annual full-time equivalent students in grades seven and eight; and

(iii) A prototypical elementary school has ((four hundred)) 400 average annual full-time equivalent students in grades kindergarten through six.

(4)(a)(i) The minimum allocation for each level of prototypical school shall be based on the number of full-time equivalent classroom teachers needed to provide instruction over the minimum required annual instructional hours under RCW 28A.150.220 and provide at least one teacher planning period per school day, and based on the following general education average class size of full-time equivalent students per teacher:

General education average class size	
Grades K-3	17.00
Grade 4	27.00
Grades 5-6	27.00
Grades 7-8	28.53
Grades 9-12	28.74

(ii) The minimum class size allocation for each prototypical high school shall also provide for enhanced funding for class size reduction for two laboratory science classes within grades nine through ((twelve)) 12 per full-time equivalent high school student multiplied by a laboratory science course factor of 0.0833, based on the number of full-time equivalent classroom teachers needed to provide instruction over the minimum required annual instructional hours in RCW 28A.150.220, and providing at least one teacher planning period per school day:

Laboratory science average class size	
Grades 9-12	19.98

(b)(i) Beginning September 1, 2019, funding for average K-3

class sizes in this subsection (4) may be provided only to the extent of, and proportionate to, the school district's demonstrated actual class size in grades K-3, up to the funded class sizes.

(ii) The office of the superintendent of public instruction shall develop rules to implement this subsection (4)(b).

(c)(i) The minimum allocation for each prototypical middle and high school shall also provide for full-time equivalent classroom teachers based on the following number of full-time equivalent students per teacher in career and technical education:

Career and technical education average class size	
Approved career and technical education offered at the middle school and high school level	23.00
Skill center programs meeting the standards established by the office of the superintendent of public instruction	19.00

(ii) Funding allocated under this subsection (4)(c) is subject to RCW 28A.150.265.

(d) In addition, the omnibus appropriations act shall at a minimum specify:

(i) A high-poverty average class size in schools where more than ((fifty)) 50 percent of the students are eligible for free and reduced-price meals; and

(ii) A specialty average class size for advanced placement and international baccalaureate courses.

(5)(a) The minimum allocation for each level of prototypical school shall include allocations for the following types of staff in addition to classroom teachers:

	Elementary School	Middle School	High School
Principals, assistant principals, and other certificated building-level administrators	1.253	1.353	1.880
Teacher-librarians, a function that includes information literacy, technology, and media to support school library media programs	0.663	0.519	0.523
Teaching assistance, including any aspect of educational instructional services provided by classified employees	0.936	0.700	0.652
Office support and other noninstructional aides	2.012	2.325	3.269

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Custodians	1.657	1.942	2.965
Nurses	0.246	0.336	0.339
Social workers	0.132	0.033	0.052
Psychologists	0.046	0.009	0.021
Counselors	0.660	1.383	2.706
Classified staff providing student and staff safety	0.079	0.092	0.141
Parent involvement coordinators	0.0825	0.00	0.00

(b)(i) The superintendent may only allocate funding, up to the combined minimum allocations, for nurses, social workers, psychologists, counselors, classified staff providing student and staff safety, and parent involvement coordinators under (a) and (c) of this subsection to the extent of and proportionate to a school district's demonstrated actual ratios of: Full-time equivalent physical, social, and emotional support staff to full-time equivalent students.

(ii) The superintendent must adopt rules to implement this subsection (5)(b) and the rules must require school districts to prioritize funding allocated as required by (b)(i) of this subsection for physical, social, and emotional support staff who hold a valid educational staff associate certificate appropriate for the staff's role.

(iii) For the purposes of this subsection (5)(b), "physical, social, and emotional support staff" include nurses, social workers, psychologists, counselors, classified staff providing student and staff safety, parent involvement coordinators, and other school district employees and contractors who provide physical, social, and emotional support to students as defined by the superintendent.

(c) For the 2023-24 school year, in addition to the minimum allocation under (a) of this subsection, the following additional staffing units for each level of prototypical school will be provided:

	Elementary School	Middle School	High School
Nurses	0.170	0.276	0.243
Social workers	0.090	0.027	0.037
Psychologists	0.029	0.007	0.014
Counselors	0.167	0.167	0.176

(6)(a) The minimum staffing allocation for each school district to provide district-wide support services shall be allocated per one thousand annual average full-time equivalent students in grades K-12 as follows:

Staff per 1,000 K-12 students	
Technology	0.628
Facilities, maintenance, and grounds	1.813
Warehouse, laborers, and mechanics	0.332

(b) The minimum allocation of staff units for each school district to support certificated and classified staffing of central administration shall be 5.30 percent of the staff units generated

under subsections (4)(a) and (5) of this section and (a) of this subsection.

(7) The distribution formula shall include staffing allocations to school districts for career and technical education and skill center administrative and other school-level certificated staff, as specified in the omnibus appropriations act.

(8)(a) Except as provided in (b) of this subsection, the minimum allocation for each school district shall include allocations per annual average full-time equivalent student for the following materials, supplies, and operating costs as provided in the 2017-18 school year, after which the allocations shall be adjusted annually for inflation as specified in the omnibus appropriations act:

Per annual average full-time equivalent student in grades K-12	
Technology	\$130.76
Utilities and insurance	\$355.30
Curriculum and textbooks	\$140.39
Other supplies	\$278.05
Library materials	\$20.00
Instructional professional development for certificated and classified staff	\$21.71
Facilities maintenance	\$176.01
Security and central office administration	\$121.94

(b) In addition to the amounts provided in (a) of this subsection, beginning in the 2014-15 school year, the omnibus appropriations act shall provide the following minimum allocation for each annual average full-time equivalent student in grades nine through ((twelve)) 12 for the following materials, supplies, and operating costs, to be adjusted annually for inflation:

Per annual average full-time equivalent student in grades 9-12	
Technology	\$36.35
Curriculum and textbooks	\$39.02
Other supplies	\$77.28
Library materials	\$5.56
Instructional professional development for certificated and classified staff	\$6.04

(9) In addition to the amounts provided in subsection (8) of this section and subject to RCW 28A.150.265, the omnibus appropriations act shall provide an amount based on full-time equivalent student enrollment in each of the following:

(a) Exploratory career and technical education courses for students in grades seven through ((twelve)) 12;

(b) Preparatory career and technical education courses for students in grades nine through ((twelve)) 12 offered in a high school; and

(c) Preparatory career and technical education courses for students in grades ((eleven)) 11 and ((twelve)) 12 offered through a skill center.

(10) In addition to the allocations otherwise provided under this section, amounts shall be provided to support the following programs and services:

(a)(i) To provide supplemental instruction and services for students who are not meeting academic standards through the learning assistance program under RCW 28A.165.005 through 28A.165.065, allocations shall be based on the greater of either: The district percentage of students in kindergarten through grade ((twelve)) 12 who were eligible for free or reduced-price meals for the school year immediately preceding the district's participation, in whole or part, in the United States department of agriculture's community eligibility provision, or the district

percentage of students in grades K-12 who were eligible for free or reduced-price meals in the prior school year. The minimum allocation for the program shall, except as provided in (a)(iii) of this subsection, provide for each level of prototypical school resources to provide, on a statewide average, 2.3975 hours per week in extra instruction with a class size of ((fifteen)) 15 learning assistance program students per teacher.

(ii) In addition to funding allocated under (a)(i) of this subsection, to provide supplemental instruction and services for students who are not meeting academic standards in qualifying schools. A qualifying school, except as provided in (a)(iv) of this subsection, means a school in which the three-year rolling average of the prior year total annual average enrollment that qualifies for free or reduced-price meals equals or exceeds ((fifty)) 50 percent or more of its total annual average enrollment. A school continues to meet the definition of a qualifying school if the school: Participates in the United States department of agriculture's community eligibility provision; and met the definition of a qualifying school in the year immediately preceding their participation. The minimum allocation for this additional high poverty-based allocation must provide for each level of prototypical school resources to provide, on a statewide average, 1.1 hours per week in extra instruction with a class size of ((fifteen)) 15 learning assistance program students per teacher, under RCW 28A.165.055, school districts must distribute the high poverty-based allocation to the schools that generated the funding allocation.

(iii) For the 2024-25 and 2025-26 school years, allocations under (a)(i) of this subsection for school districts providing meals at no charge to students under section 2 of this act that are not participating, in whole or in part, in the United States department of agriculture's community eligibility provision shall be based on the school district percentage of students in grades K-12 who were eligible for free or reduced-price meals in school years 2019-20 through 2022-23 or the prior school year, whichever is greatest.

(iv) For the 2024-25 and 2025-26 school years, a school providing meals at no charge to students under section 2 of this act that is not participating in the department of agriculture's community eligibility provision continues to meet the definition of a qualifying school under (a)(ii) of this subsection if the school met the definition during one year of the 2019-20 through 2022-23 school years, or in the prior school year.

(b)(i) To provide supplemental instruction and services for students whose primary language is other than English, allocations shall be based on the head count number of students in each school who are eligible for and enrolled in the transitional bilingual instruction program under RCW 28A.180.010 through 28A.180.080. The minimum allocation for each level of prototypical school shall provide resources to provide, on a statewide average, 4.7780 hours per week in extra instruction for students in grades kindergarten through six and 6.7780 hours per week in extra instruction for students in grades seven through ((twelve)) 12, with ((fifteen)) 15 transitional bilingual instruction program students per teacher. Notwithstanding other provisions of this subsection (10), the actual per-student allocation may be scaled to provide a larger allocation for students needing more intensive intervention and a commensurate reduced allocation for students needing less intensive intervention, as detailed in the omnibus appropriations act.

(ii) To provide supplemental instruction and services for students who have exited the transitional bilingual program, allocations shall be based on the head count number of students in each school who have exited the transitional bilingual program within the previous two years based on their performance on the

English proficiency assessment and are eligible for and enrolled in the transitional bilingual instruction program under RCW 28A.180.040(1)(g). The minimum allocation for each prototypical school shall provide resources to provide, on a statewide average, 3.0 hours per week in extra instruction with ((fifteen)) 15 exited students per teacher.

(c) To provide additional allocations to support programs for highly capable students under RCW 28A.185.010 through 28A.185.030, allocations shall be based on 5.0 percent of each school district's full-time equivalent basic education enrollment. The minimum allocation for the programs shall provide resources to provide, on a statewide average, 2.1590 hours per week in extra instruction with fifteen highly capable program students per teacher.

(11) The allocations under subsections (4)(a), (5), (6), and (8) of this section shall be enhanced as provided under RCW 28A.150.390 on an excess cost basis to provide supplemental instructional resources for students with disabilities.

(12)(a) For the purposes of allocations for prototypical high schools and middle schools under subsections (4) and (10) of this section that are based on the percent of students in the school who are eligible for free and reduced-price meals, the actual percent of such students in a school shall be adjusted by a factor identified in the omnibus appropriations act to reflect underreporting of free and reduced-price meal eligibility among middle and high school students.

(b) Allocations or enhancements provided under subsections (4), (7), and (9) of this section for exploratory and preparatory career and technical education courses shall be provided only for courses approved by the office of the superintendent of public instruction under chapter 28A.700 RCW.

(13)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature.

(b) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect.

(c) The enrollment of any district shall be the annual average number of full-time equivalent students and part-time students as provided in RCW 28A.150.350, enrolled on the first school day of each month, including students who are in attendance pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district. The definition of full-time equivalent student shall be determined by rules of the superintendent of public instruction and shall be included as part of the superintendent's biennial budget request. The definition shall be based on the minimum instructional hour offerings required under RCW 28A.150.220. Any revision of the present definition shall not take effect until approved by the house ways and means committee and the senate ways and means committee.

(d) The office of financial management shall make a monthly review of the superintendent's reported full-time equivalent students in the common schools in conjunction with RCW 43.62.050.

Sec. 6. RCW 28A.150.260 and 2022 c 109 s 4 are each amended to read as follows:

The purpose of this section is to provide for the allocation of state funding that the legislature deems necessary to support school districts in offering the minimum instructional program of basic education under RCW 28A.150.220. The allocation shall be determined as follows:

(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula for the

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distribution of a basic education instructional allocation for each common school district.

(2)(a) The distribution formula under this section shall be for allocation purposes only. Except as may be required under subsections (4)(b) and (c), (5)(b), and (9) of this section, chapter 28A.155, 28A.165, 28A.180, or 28A.185 RCW, or federal laws and regulations, nothing in this section requires school districts to use basic education instructional funds to implement a particular instructional approach or service. Nothing in this section requires school districts to maintain a particular classroom teacher-to-student ratio or other staff-to-student ratio or to use allocated funds to pay for particular types or classifications of staff. Nothing in this section entitles an individual teacher to a particular teacher planning period.

(b) To promote transparency in state funding allocations, the superintendent of public instruction must report state per-pupil allocations for each school district for the general apportionment, special education, learning assistance, transitional bilingual, highly capable, and career and technical education programs. The superintendent must report this information in a user-friendly format on the main page of the office's website. School districts must include a link to the superintendent's per-pupil allocations report on the main page of the school district's website. In addition, the budget documents published by the legislature for the enacted omnibus operating appropriations act must report statewide average per-pupil allocations for general apportionment and the categorical programs listed in this subsection.

(3)(a) To the extent the technical details of the formula have been adopted by the legislature and except when specifically provided as a school district allocation, the distribution formula for the basic education instructional allocation shall be based on minimum staffing and nonstaff costs the legislature deems necessary to support instruction and operations in prototypical schools serving high, middle, and elementary school students as provided in this section. The use of prototypical schools for the distribution formula does not constitute legislative intent that schools should be operated or structured in a similar fashion as the prototypes. Prototypical schools illustrate the level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs, such as class size, hours of instruction, and various categories of school staff. It is the intent that the funding allocations to school districts be adjusted from the school prototypes based on the actual number of annual average full-time equivalent students in each grade level at each school in the district and not based on the grade-level configuration of the school to the extent that data is available. The allocations shall be further adjusted from the school prototypes with minimum allocations for small schools and to reflect other factors identified in the omnibus appropriations act.

(b) For the purposes of this section, prototypical schools are defined as follows:

(i) A prototypical high school has ((six hundred)) 600 average annual full-time equivalent students in grades nine through ((twelve)) 12;

(ii) A prototypical middle school has ((four hundred thirty-two)) 432 average annual full-time equivalent students in grades seven and eight; and

(iii) A prototypical elementary school has ((four hundred)) 400 average annual full-time equivalent students in grades kindergarten through six.

(4)(a)(i) The minimum allocation for each level of prototypical school shall be based on the number of full-time equivalent classroom teachers needed to provide instruction over the minimum required annual instructional hours under RCW

28A.150.220 and provide at least one teacher planning period per school day, and based on the following general education average class size of full-time equivalent students per teacher:

General education	
average class size	
Grades K-3	17.00
Grade 4	27.00
Grades 5-6	27.00
Grades 7-8	28.53
Grades 9-12	28.74

(ii) The minimum class size allocation for each prototypical high school shall also provide for enhanced funding for class size reduction for two laboratory science classes within grades nine through ((twelve)) 12 per full-time equivalent high school student multiplied by a laboratory science course factor of 0.0833, based on the number of full-time equivalent classroom teachers needed to provide instruction over the minimum required annual instructional hours in RCW 28A.150.220, and providing at least one teacher planning period per school day:

Laboratory science	
average class size	
Grades 9-12	19.98

(b)(i) Beginning September 1, 2019, funding for average K-3 class sizes in this subsection (4) may be provided only to the extent of, and proportionate to, the school district's demonstrated actual class size in grades K-3, up to the funded class sizes.

(ii) The office of the superintendent of public instruction shall develop rules to implement this subsection (4)(b).

(c)(i) The minimum allocation for each prototypical middle and high school shall also provide for full-time equivalent classroom teachers based on the following number of full-time equivalent students per teacher in career and technical education:

Career and technical	
education average	
class size	
Approved career and technical education offered at the middle school and high school level	23.00
Skill center programs meeting the standards established by the office of the superintendent of public instruction	19.00

(ii) Funding allocated under this subsection (4)(c) is subject to RCW 28A.150.265.

(d) In addition, the omnibus appropriations act shall at a minimum specify:

(i) A high-poverty average class size in schools where more than ((fifty)) 50 percent of the students are eligible for free and reduced-price meals; and

(ii) A specialty average class size for advanced placement and international baccalaureate courses.

(5)(a) The minimum allocation for each level of prototypical school shall include allocations for the following types of staff in addition to classroom teachers:

	Elementary School	Middle School	High School
Principals, assistant principals, and other certificated building-level administrators	1.253	1.353	1.880
Teacher-librarians, a function that	0.663	0.519	0.523

includes information literacy, technology, and media to support school library media programs			
Teaching assistance, including any aspect of educational instructional services provided by classified employees	0.936	0.700	0.652
Office support and other noninstructional aides	2.012	2.325	3.269
Custodians	1.657	1.942	2.965
Nurses	0.585	0.888	0.824
Social workers	0.311	0.088	0.127
Psychologists	0.104	0.024	0.049
Counselors	0.993	1.716	3.039
Classified staff providing student and staff safety	0.079	0.092	0.141
Parent involvement coordinators	0.0825	0.00	0.00

(b)(i) The superintendent may only allocate funding, up to the combined minimum allocations, for nurses, social workers, psychologists, counselors, classified staff providing student and staff safety, and parent involvement coordinators under (a) of this subsection to the extent of and proportionate to a school district's demonstrated actual ratios of: Full-time equivalent physical, social, and emotional support staff to full-time equivalent students.

(ii) The superintendent must adopt rules to implement this subsection (5)(b) and the rules must require school districts to prioritize funding allocated as required by (b)(i) of this subsection for physical, social, and emotional support staff who hold a valid educational staff associate certificate appropriate for the staff's role.

(iii) For the purposes of this subsection (5)(b), "physical, social, and emotional support staff" include nurses, social workers, psychologists, counselors, classified staff providing student and staff safety, parent involvement coordinators, and other school district employees and contractors who provide physical, social, and emotional support to students as defined by the superintendent.

(6)(a) The minimum staffing allocation for each school district to provide district-wide support services shall be allocated per one

thousand annual average full-time equivalent students in grades K-12 as follows:

- Staff per 1,000 K-12 students
- Technology 0.628
- Facilities, maintenance, and grounds 1.813
- Warehouse, laborers, and mechanics 0.332

(b) The minimum allocation of staff units for each school district to support certificated and classified staffing of central administration shall be 5.30 percent of the staff units generated under subsections (4)(a) and (5) of this section and (a) of this subsection.

(7) The distribution formula shall include staffing allocations to school districts for career and technical education and skill center administrative and other school-level certificated staff, as specified in the omnibus appropriations act.

(8)(a) Except as provided in (b) of this subsection, the minimum allocation for each school district shall include allocations per annual average full-time equivalent student for the following materials, supplies, and operating costs as provided in the 2017-18 school year, after which the allocations shall be adjusted annually for inflation as specified in the omnibus appropriations act:

- Per annual average full-time equivalent student in grades K-12
- Technology \$130.76
- Utilities and insurance \$355.30
- Curriculum and textbooks \$140.39
- Other supplies \$278.05
- Library materials \$20.00
- Instructional professional development for certificated and classified staff \$21.71
- Facilities maintenance \$176.01
- Security and central office administration \$121.94

(b) In addition to the amounts provided in (a) of this subsection, beginning in the 2014-15 school year, the omnibus appropriations act shall provide the following minimum allocation for each annual average full-time equivalent student in grades nine through ((twelve)) 12 for the following materials, supplies, and operating costs, to be adjusted annually for inflation:

- Per annual average full-time equivalent student in grades 9-12
- Technology \$36.35
- Curriculum and textbooks \$39.02
- Other supplies \$77.28
- Library materials \$5.56
- Instructional professional development for certificated and classified staff \$6.04

(9) In addition to the amounts provided in subsection (8) of this section and subject to RCW 28A.150.265, the omnibus appropriations act shall provide an amount based on full-time equivalent student enrollment in each of the following:

- (a) Exploratory career and technical education courses for students in grades seven through ((twelve)) 12;
- (b) Preparatory career and technical education courses for students in grades nine through ((twelve)) 12 offered in a high school; and
- (c) Preparatory career and technical education courses for students in grades ((eleven)) 11 and ((twelve)) 12 offered through a skill center.

(10) In addition to the allocations otherwise provided under this section, amounts shall be provided to support the following

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programs and services:

(a)(i) To provide supplemental instruction and services for students who are not meeting academic standards through the learning assistance program under RCW 28A.165.005 through 28A.165.065, allocations shall be based on the greater of either: The district percentage of students in kindergarten through grade ((twelve)) 12 who were eligible for free or reduced-price meals for the school year immediately preceding the district's participation, in whole or part, in the United States department of agriculture's community eligibility provision, or the district percentage of students in grades K-12 who were eligible for free or reduced-price meals in the prior school year. The minimum allocation for the program shall, except as provided in (a)(iii) of this subsection, provide for each level of prototypical school resources to provide, on a statewide average, 2.3975 hours per week in extra instruction with a class size of ((fifteen)) 15 learning assistance program students per teacher.

(ii) In addition to funding allocated under (a)(i) of this subsection, to provide supplemental instruction and services for students who are not meeting academic standards in qualifying schools. A qualifying school, except as provided in (a)(iv) of this subsection, means a school in which the three-year rolling average of the prior year total annual average enrollment that qualifies for free or reduced-price meals equals or exceeds ((fifty)) 50 percent or more of its total annual average enrollment. A school continues to meet the definition of a qualifying school if the school: Participates in the United States department of agriculture's community eligibility provision; and met the definition of a qualifying school in the year immediately preceding their participation. The minimum allocation for this additional high poverty-based allocation must provide for each level of prototypical school resources to provide, on a statewide average, 1.1 hours per week in extra instruction with a class size of ((fifteen)) 15 learning assistance program students per teacher, under RCW 28A.165.055, school districts must distribute the high poverty-based allocation to the schools that generated the funding allocation.

(iii) For the 2024-25 and 2025-26 school years, allocations under (a)(i) of this subsection for school districts providing meals at no charge to students under section 2 of this act that are not participating, in whole or in part, in the United States department of agriculture's community eligibility provision shall be based on the school district percentage of students in grades K-12 who were eligible for free or reduced-price meals in school years 2019-20 through 2022-23 or the prior school year, whichever is greatest.

(iv) For the 2024-25 and 2025-26 school years, a school providing meals at no charge to students under section 2 of this act that is not participating in the department of agriculture's community eligibility provision continues to meet the definition of a qualifying school under (a)(ii) of this subsection if the school met the definition during one year of the 2019-20 through 2022-23 school years, or in the prior school year.

(b)(i) To provide supplemental instruction and services for students whose primary language is other than English, allocations shall be based on the head count number of students in each school who are eligible for and enrolled in the transitional bilingual instruction program under RCW 28A.180.010 through 28A.180.080. The minimum allocation for each level of prototypical school shall provide resources to provide, on a statewide average, 4.7780 hours per week in extra instruction for students in grades kindergarten through six and 6.7780 hours per week in extra instruction for students in grades seven through ((twelve)) 12, with ((fifteen)) 15 transitional bilingual instruction program students per teacher. Notwithstanding other provisions

of this subsection (10), the actual per-student allocation may be scaled to provide a larger allocation for students needing more intensive intervention and a commensurate reduced allocation for students needing less intensive intervention, as detailed in the omnibus appropriations act.

(ii) To provide supplemental instruction and services for students who have exited the transitional bilingual program, allocations shall be based on the head count number of students in each school who have exited the transitional bilingual program within the previous two years based on their performance on the English proficiency assessment and are eligible for and enrolled in the transitional bilingual instruction program under RCW 28A.180.040(1)(g). The minimum allocation for each prototypical school shall provide resources to provide, on a statewide average, 3.0 hours per week in extra instruction with ((fifteen)) 15 exited students per teacher.

(c) To provide additional allocations to support programs for highly capable students under RCW 28A.185.010 through 28A.185.030, allocations shall be based on 5.0 percent of each school district's full-time equivalent basic education enrollment. The minimum allocation for the programs shall provide resources to provide, on a statewide average, 2.1590 hours per week in extra instruction with fifteen highly capable program students per teacher.

(11) The allocations under subsections (4)(a), (5), (6), and (8) of this section shall be enhanced as provided under RCW 28A.150.390 on an excess cost basis to provide supplemental instructional resources for students with disabilities.

(12)(a) For the purposes of allocations for prototypical high schools and middle schools under subsections (4) and (10) of this section that are based on the percent of students in the school who are eligible for free and reduced-price meals, the actual percent of such students in a school shall be adjusted by a factor identified in the omnibus appropriations act to reflect underreporting of free and reduced-price meal eligibility among middle and high school students.

(b) Allocations or enhancements provided under subsections (4), (7), and (9) of this section for exploratory and preparatory career and technical education courses shall be provided only for courses approved by the office of the superintendent of public instruction under chapter 28A.700 RCW.

(13)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature.

(b) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect.

(c) The enrollment of any district shall be the annual average number of full-time equivalent students and part-time students as provided in RCW 28A.150.350, enrolled on the first school day of each month, including students who are in attendance pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district. The definition of full-time equivalent student shall be determined by rules of the superintendent of public instruction and shall be included as part of the superintendent's biennial budget request. The definition shall be based on the minimum instructional hour offerings required under RCW 28A.150.220. Any revision of the present definition shall not take effect until approved by the house ways and means committee and the senate ways and means committee.

(d) The office of financial management shall make a monthly review of the superintendent's reported full-time equivalent students in the common schools in conjunction with RCW

43.62.050.

Sec. 7. RCW 28A.405.415 and 2020 c 288 s 5 are each amended to read as follows:

(1) Certificated instructional staff who have attained certification from the national board for professional teaching standards shall receive a bonus each year in which they maintain the certification. The bonus shall be calculated as follows: The annual bonus shall be ((five thousand dollars)) \$5,000 in the 2007-08 school year. Thereafter, the annual bonus shall increase by inflation, except that the bonus shall not be increased during the 2013-14 and 2014-15 school years.

(2)(a) Certificated instructional staff who have attained certification from the national board for professional teaching standards shall be eligible for bonuses in addition to that provided by subsection (1) of this section if the individual is in an instructional assignment in a school in which at least ((seventy)) 70 percent of the students qualify for the free and reduced-price lunch program.

(b) An individual is eligible for bonuses authorized under this subsection (2) if he or she is in an instructional assignment in a school that meets the definition of high poverty school as defined in rule by the office of the superintendent of public instruction in the school year immediately preceding the school's participation in the United States department of agriculture's community eligibility provision.

(c) For the 2024-25 and 2025-26 school years, individuals are eligible for bonuses under this subsection if they are in an instructional assignment in a school providing meals at no charge to students under section 2 of this act that met the definition of high poverty school as defined in rule by the office of the superintendent of public instruction during the 2022-23 school year.

(3) The amount of the additional bonus under subsection (2) of this section for those meeting the qualifications of subsection (2) of this section is ((five thousand dollars)) \$5,000.

(4) The bonuses provided under this section are in addition to compensation received under a district's salary schedule adopted in accordance with RCW 28A.405.200 and shall not be included in calculations of a district's average salary and associated salary limitations under RCW 28A.400.200.

(5) The bonuses provided under this section shall be paid in a lump sum amount.

NEW SECTION. **Sec. 8.** RCW 28A.235.140 (School breakfast programs) and 1993 c 333 s 1 & 1989 c 239 s 2 are each repealed.

NEW SECTION. **Sec. 9.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2023, in the omnibus appropriations act, this act is null and void.

NEW SECTION. **Sec. 10.** Section 5 of this act expires September 1, 2024.

NEW SECTION. **Sec. 11.** Section 6 of this act takes effect September 1, 2024."

On page 1, line 1 of the title, after "all;" strike the remainder of the title and insert "amending RCW 28A.150.260, 28A.150.260, and 28A.405.415; reenacting and amending RCW 28A.235.160; adding new sections to chapter 28A.235 RCW; creating a new section; repealing RCW 28A.235.140; providing an effective date; and providing an expiration date."

MOTION

Senator Wellman moved that the following amendment no. 0417 by Senator Wellman be adopted:

On page 26, after line 20, insert the following:

"Sec. 8. RCW 28A.235.300 and 2022 c 7 s 1 are each amended to read as follows:

(1)(a) Except as provided otherwise by this section, each public school that has an identified student percentage of at least 40 percent ~~((or an identified student percentage of less than 40 percent if authorized by federal law,))~~ as determined annually by April 1st, must participate in the United States department of agriculture's community eligibility provision in the subsequent school year and throughout the duration of the community eligibility provision's four-year cycle.

(b) School districts, to the extent practicable, shall group public schools for purposes of maximizing the number of public schools eligible to participate in the community eligibility provision. Individual schools participating in a group may have less than 40 percent identified students, provided the average identified student percentage for the group is at least 40 percent.

(2) Public schools that, through an arrangement with a local entity, provide meals to all students and at no costs to the students are exempt from the requirements of this section.

(3) This section governs school operation and management under RCW 28A.710.040 and 28A.715.020, and applies to charter schools established under chapter 28A.710 RCW and state-tribal education compact schools established under chapter 28A.715 RCW to the same extent as it applies to public schools and school districts.

(4) For the purposes of this section, "identified student" means a student who is directly certified for free school meals based on the student's participation in other means-tested assistance programs, and students who are categorically eligible for free school meals without an application and not subject to income verification."

Re-number the remaining sections consecutively and correct any internal references accordingly.

On page 27, beginning on line 2, after "28A.150.260," strike "and 28A.405.415" and insert "28A.405.415, and 28A.235.300"

Senators Wellman and Hawkins spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0417 by Senator Wellman on page 26, after line 20 to the committee striking amendment.

The motion by Senator Wellman carried and amendment no. 0417 was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means as amended to Engrossed Second Substitute House Bill No. 1238.

The motion by Senator Wellman carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

On motion of Senator Wellman, the rules were suspended, Engrossed Second Substitute House Bill No. 1238 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Wellman, Hawkins, Muzzall and Nobles spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 1238 as amended by the Senate.

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ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 1238 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 44; Nays, 5; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Fortunato, Frame, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

Voting nay: Senators Dozier, Gildon, Padden, Schoesler and Wagoner

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1238, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 1491, by House Committee on Appropriations (originally sponsored by Orcutt, Chapman, Berry, Bronoske, Tharinger and Pollet)

Prohibiting unjustified employer searches of employee personal vehicles.

The measure was read the second time.

MOTION

Senator Keiser moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 49.44 RCW to read as follows:

(1) Except as provided in subsection (2) of this section:

(a) An employer or an employer's agent may not search the privately owned vehicles of employees located on the employer's parking lots or garages or located on the access road to the employer's parking lots or garages.

(b) An employee may possess any of the employee's private property within the employee's vehicle, unless possession of such property is otherwise prohibited by law.

(c) An employer must not require, as a condition of employment, that an employee or prospective employee waive the protections of (a) or (b) of this subsection.

(2) This section does not apply:

(a) To vehicles owned or leased by an employer;

(b) To lawful searches by law enforcement officers;

(c) When the employer requires or authorizes the employee to use the employee's personal vehicle for work-related activities and the employer needs to inspect the vehicle to ensure the vehicle is suited to conduct the work-related activities;

(d) When a reasonable person would believe that accessing vehicles of an employee is necessary to prevent an immediate threat to human health, life, or safety;

(e) When an employee consents to a search of his or her privately owned vehicle by the business owner, owner's agent, or a licensed private security guard based on probable cause that the

employee unlawfully possesses: (i) Employer property; or (ii) a controlled substance in violation of both federal law and the employer's written policy prohibiting drug use. The employee's consent must be given immediately prior to the search, and the employer may not require that the employee waive consent as a condition of employment. Upon consent, the employee has the right to select a witness to be present for the search;

(f) To security inspections of vehicles on state and federal military installations and facilities;

(g) To vehicles located on the premises of a state correctional institution, as defined in RCW 9.94.049; or

(h) To specific employer areas subject to searches under state or federal law.

(3) For purposes of this section, the terms "probable cause" and "private property" have their usual meaning under state and federal law.

(4) An employer may not take any adverse action against an employee for exercising any right under this section. An adverse action means any action taken or threatened by an employer against an employee for exercising the employee's rights under this section, and may include, but are not limited to:

(a) Denying the use of, or delaying, wages or other amounts owed to the employee;

(b) Terminating, suspending, demoting, or denying a promotion;

(c) Reducing the number of work hours for which the employee is scheduled;

(d) Altering the employee's preexisting work schedule;

(e) Reducing the employee's rate of pay; and

(f) Threatening to take, or taking, action based upon the immigration status of an employee or an employee's family member."

On page 1, line 2 of the title, after "vehicles;" strike the remainder of the title and insert "and adding a new section to chapter 49.44 RCW."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Second Substitute House Bill No. 1491.

The motion by Senator Keiser carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Keiser, the rules were suspended, Second Substitute House Bill No. 1491 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser and King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 1491 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 1491 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 45; Nays, 4; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lovick, MacEwen, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler,

Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C. and Wilson, L.
 Voting nay: Senators Liias, Lovelett, McCune and Wilson, J.

SECOND SUBSTITUTE HOUSE BILL NO. 1491, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1357, by House Committee on Appropriations (originally sponsored by Simmons, Schmick, Stonier, Cortes, Reed, Bateman, Harris, Alvarado, Pollet and Caldier)

Modernizing the prior authorization process.

The measure was read the second time.

MOTION

Senator Cleveland moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 48.43 RCW to read as follows:

(1) Each carrier offering a health plan issued or renewed on or after January 1, 2024, shall comply with the following standards related to prior authorization for health care services and prescription drugs:

(a) The carrier shall meet the following time frames for prior authorization determinations and notifications to a participating provider or facility that submits the prior authorization request through an electronic prior authorization process, as designated by each carrier:

(i) For electronic standard prior authorization requests, the carrier shall make a decision and notify the provider or facility of the results of the decision within three calendar days, excluding holidays, of submission of an electronic prior authorization request by the provider or facility that contains the necessary information to make a determination. If insufficient information has been provided to the carrier to make a decision, the carrier shall request any additional information from the provider or facility within one calendar day of submission of the electronic prior authorization request.

(ii) For electronic expedited prior authorization requests, the carrier shall make a decision and notify the provider or facility of the results of the decision within one calendar day of submission of an electronic prior authorization request by the provider or facility that contains the necessary information to make a determination. If insufficient information has been provided to the carrier to make a decision, the carrier shall request any additional information from the provider or facility within one calendar day of submission of the electronic prior authorization request.

(b) The carrier shall meet the following time frames for prior authorization determinations and notifications to a participating provider or facility that submits the prior authorization request through a process other than an electronic prior authorization process:

(i) For nonelectronic standard prior authorization requests, the carrier shall make a decision and notify the provider or facility of

the results of the decision within five calendar days of submission of a nonelectronic prior authorization request by the provider or facility that contains the necessary information to make a determination. If insufficient information has been provided to the carrier to make a decision, the carrier shall request any additional information from the provider or facility within five calendar days of submission of the nonelectronic prior authorization request.

(ii) For nonelectronic expedited prior authorization requests, the carrier shall make a decision and notify the provider or facility of the results of the decision within two calendar days of submission of a nonelectronic prior authorization request by the provider or facility that contains the necessary information to make a determination. If insufficient information has been provided to the carrier to make a decision, the carrier shall request any additional information from the provider or facility within one calendar day of submission of the nonelectronic prior authorization request.

(c) In any instance in which a carrier has determined that a provider or facility has not provided sufficient information for making a determination under (a) and (b) of this subsection, a carrier may establish a specific reasonable time frame for submission of the additional information. This time frame must be communicated to the provider and enrollee with a carrier's request for additional information.

(d) The carrier's prior authorization requirements must be described in detail and written in easily understandable language. The carrier shall make its most current prior authorization requirements and restrictions, including the written clinical review criteria, available to providers and facilities in an electronic format upon request. The prior authorization requirements must be based on peer-reviewed clinical review criteria. The clinical review criteria must be evidence-based criteria and must accommodate new and emerging information related to the appropriateness of clinical criteria with respect to black and indigenous people, other people of color, gender, and underserved populations. The clinical review criteria must be evaluated and updated, if necessary, at least annually.

(2)(a) Each carrier shall build and maintain a prior authorization application programming interface that automates the process for in-network providers to determine whether a prior authorization is required for health care services, identify prior authorization information and documentation requirements, and facilitate the exchange of prior authorization requests and determinations from its electronic health records or practice management system. The application programming interface must support the exchange of prior authorization requests and determinations for health care services beginning January 1, 2025, and must:

(i) Use health level 7 fast health care interoperability resources in accordance with standards and provisions defined in 45 C.F.R. Sec. 170.215 and 45 C.F.R. Sec. 156.22(3)(b);

(ii) Automate the process to determine whether a prior authorization is required for durable medical equipment or a health care service;

(iii) Allow providers to query the carrier's prior authorization documentation requirements;

(iv) Support an automated approach using nonproprietary open workflows to compile and exchange the necessary data elements to populate the prior authorization requirements that are compliant with the federal health insurance portability and accountability act of 1996 or have an exception from the federal centers for medicare and medicaid services; and

(v) Indicate that a prior authorization denial or authorization of a service less intensive than that included in the original request

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is an adverse benefit determination and is subject to the carrier's grievance and appeal process under RCW 48.43.535.

(b) Each carrier shall establish and maintain an interoperable electronic process or application programming interface that automates the process for in-network providers to determine whether a prior authorization is required for a covered prescription drug. The application programming interface must support the exchange of prior authorization requests and determinations for prescription drugs, including information on covered alternative prescription drugs, beginning January 1, 2027, and must:

(i) Allow providers to identify prior authorization information and documentation requirements;

(ii) Facilitate the exchange of prior authorization requests and determinations from its electronic health records or practice management system, and may include the necessary data elements to populate the prior authorization requirements that are compliant with the federal health insurance portability and accountability act of 1996 or have an exception from the federal centers for medicare and medicaid services; and

(iii) Indicate that a prior authorization denial or authorization of a drug other than the one included in the original prior authorization request is an adverse benefit determination and is subject to the carrier's grievance and appeal process under RCW 48.43.535.

(c) If federal rules related to standards for using an application programming interface to communicate prior authorization status to providers are not finalized by the federal centers for medicare and medicaid services by September 13, 2023, the requirements of (a) of this subsection may not be enforced until January 1, 2026.

(d)(i) If a carrier determines that it will not be able to satisfy the requirements of (a) of this subsection by January 1, 2025, the carrier shall submit a narrative justification to the commissioner on or before September 1, 2024, describing:

(A) The reasons that the carrier cannot reasonably satisfy the requirements;

(B) The impact of noncompliance upon providers and enrollees;

(C) The current or proposed means of providing health information to the providers; and

(D) A timeline and implementation plan to achieve compliance with the requirements.

(ii) The commissioner may grant a one-year delay in enforcement of the requirements of (a) of this subsection (2) if the commissioner determines that the carrier has made a good faith effort to comply with the requirements.

(iii) This subsection (2)(d) shall not apply if the delay in enforcement in (c) of this subsection takes effect because the federal centers for medicare and medicaid services did not finalize the applicable regulations by September 13, 2023.

(e) By September 13, 2023, and at least every six months thereafter until September 13, 2026, the commissioner shall provide an update to the health care policy committees of the legislature on the development of rules and implementation guidance from the federal centers for medicare and medicaid services regarding the standards for development of application programming interfaces and interoperable electronic processes related to prior authorization functions. The updates should include recommendations, as appropriate, on whether the status of the federal rule development aligns with the provisions of this act. The commissioner also shall report on any actions by the federal centers for medicare and medicaid services to exercise enforcement discretion related to the implementation and maintenance of an application programming interface for prior

authorization functions. The commissioner shall consult with the health care authority, carriers, providers, and consumers on the development of these updates and any recommendations.

(3) Nothing in this section applies to prior authorization determinations made pursuant to RCW 48.43.761.

(4) For the purposes of this section:

(a) "Expedited prior authorization request" means a request by a provider or facility for approval of a health care service or prescription drug where:

(i) The passage of time:

(A) Could seriously jeopardize the life or health of the enrollee;

(B) Could seriously jeopardize the enrollee's ability to regain maximum function; or

(C) In the opinion of a provider or facility with knowledge of the enrollee's medical condition, would subject the enrollee to severe pain that cannot be adequately managed without the health care service or prescription drug that is the subject of the request; or

(ii) The enrollee is undergoing a current course of treatment using a nonformulary drug.

(b) "Standard prior authorization request" means a request by a provider or facility for approval of a health care service or prescription drug where the request is made in advance of the enrollee obtaining a health care service or prescription drug that is not required to be expedited.

NEW SECTION. Sec. 2. A new section is added to chapter 41.05 RCW to read as follows:

(1) A health plan offered to public employees, retirees, and their covered dependents under this chapter issued or renewed on or after January 1, 2024, shall comply with the following standards related to prior authorization for health care services and prescription drugs:

(a) The health plan shall meet the following time frames for prior authorization determinations and notifications to a participating provider or facility that submits the prior authorization request through an electronic prior authorization process:

(i) For electronic standard prior authorization requests, the health plan shall make a decision and notify the provider or facility of the results of the decision within three calendar days, excluding holidays, of submission of an electronic prior authorization request by the provider or facility that contains the necessary information to make a determination. If insufficient information has been provided to the health plan to make a decision, the health plan shall request any additional information from the provider or facility within one calendar day of submission of the electronic prior authorization request.

(ii) For electronic expedited prior authorization requests, the health plan shall make a decision and notify the provider or facility of the results of the decision within one calendar day of submission of an electronic prior authorization request by the provider or facility that contains the necessary information to make a determination. If insufficient information has been provided to the health plan to make a decision, the health plan shall request any additional information from the provider or facility within one calendar day of submission of the electronic prior authorization request.

(b) The health plan shall meet the following time frames for prior authorization determinations and notifications to a participating provider or facility that submits the prior authorization request through a process other than an electronic prior authorization process described in subsection (2) of this section:

(i) For nonelectronic standard prior authorization requests, the health plan shall make a decision and notify the provider or

facility of the results of the decision within five calendar days of submission of a nonelectronic prior authorization request by the provider or facility that contains the necessary information to make a determination. If insufficient information has been provided to the health plan to make a decision, the health plan shall request any additional information from the provider or facility within five calendar days of submission of the nonelectronic prior authorization request.

(ii) For nonelectronic expedited prior authorization requests, the health plan shall make a decision and notify the provider or facility of the results of the decision within two calendar days of submission of a nonelectronic prior authorization request by the provider or facility that contains the necessary information to make a determination. If insufficient information has been provided to the health plan to make a decision, the health plan shall request any additional information from the provider or facility within one calendar day of submission of the nonelectronic prior authorization request.

(c) In any instance in which the health plan has determined that a provider or facility has not provided sufficient information for making a determination under (a) and (b) of this subsection, the health plan may establish a specific reasonable time frame for submission of the additional information. This time frame must be communicated to the provider and enrollee with the health plan's request for additional information.

(d) The prior authorization requirements of the health plan must be described in detail and written in easily understandable language. The health plan shall make its most current prior authorization requirements and restrictions, including the written clinical review criteria, available to providers and facilities in an electronic format upon request. The prior authorization requirements must be based on peer-reviewed clinical review criteria. The clinical review criteria must be evidence-based criteria and must accommodate new and emerging information related to the appropriateness of clinical criteria with respect to black and indigenous people, other people of color, gender, and underserved populations. The clinical review criteria must be evaluated and updated, if necessary, at least annually.

(2)(a) Each health plan offered to public employees, retirees, and their covered dependents under this chapter shall build and maintain a prior authorization application programming interface that automates the process for in-network providers to determine whether a prior authorization is required for health care services, identify prior authorization information and documentation requirements, and facilitate the exchange of prior authorization requests and determinations from its electronic health records or practice management system. The application programming interface must support the exchange of prior authorization requests and determinations for health care services beginning January 1, 2025, and must:

(i) Use health level 7 fast health care interoperability resources in accordance with standards and provisions defined in 45 C.F.R. Sec. 170.215 and 45 C.F.R. Sec. 156.22(3)(b);

(ii) Automate the process to determine whether a prior authorization is required for durable medical equipment or a health care service;

(iii) Allow providers to query the health plan's prior authorization documentation requirements;

(iv) Support an automated approach using nonproprietary open workflows to compile and exchange the necessary data elements to populate the prior authorization requirements that are compliant with the federal health insurance portability and accountability act of 1996 or have an exception from the federal centers for medicare and medicaid services; and

(v) Indicate that a prior authorization denial or authorization of

a service less intensive than that included in the original request is an adverse benefit determination and is subject to the health plan's grievance and appeal process under RCW 48.43.535.

(b) Each health plan offered to public employees, retirees, and their covered dependents under this chapter shall establish and maintain an interoperable electronic process or application programming interface that automates the process for in-network providers to determine whether a prior authorization is required for a covered prescription drug. The application programming interface must support the exchange of prior authorization requests and determinations for prescription drugs, including information on covered alternative prescription drugs, beginning January 1, 2027, and must:

(i) Allow providers to identify prior authorization information and documentation requirements;

(ii) Facilitate the exchange of prior authorization requests and determinations from its electronic health records or practice management system, and may include the necessary data elements to populate the prior authorization requirements that are compliant with the federal health insurance portability and accountability act of 1996 or have an exception from the federal centers for medicare and medicaid services; and

(iii) Indicate that a prior authorization denial or authorization of a drug other than the one included in the original prior authorization request is an adverse benefit determination and is subject to the health plan's grievance and appeal process under RCW 48.43.535.

(c) If federal rules related to standards for using an application programming interface to communicate prior authorization status to providers are not finalized by the federal centers for medicare and medicaid services by September 13, 2023, the requirements of (a) of this subsection may not be enforced until January 1, 2026.

(d)(i) If the health plan determines that it will not be able to satisfy the requirements of (a) of this subsection by January 1, 2025, the health plan shall submit a narrative justification to the authority on or before September 1, 2024, describing:

(A) The reasons that the health plan cannot reasonably satisfy the requirements;

(B) The impact of noncompliance upon providers and enrollees;

(C) The current or proposed means of providing health information to the providers; and

(D) A timeline and implementation plan to achieve compliance with the requirements.

(ii) The authority may grant a one-year delay in enforcement of the requirements of (a) of this subsection (2) if the authority determines that the health plan has made a good faith effort to comply with the requirements.

(iii) This subsection (2)(d) shall not apply if the delay in enforcement in (c) of this subsection takes effect because the federal centers for medicare and medicaid services did not finalize the applicable regulations by September 13, 2023.

(3) Nothing in this section applies to prior authorization determinations made pursuant to RCW 41.05.526.

(4) For the purposes of this section:

(a) "Expedited prior authorization request" means a request by a provider or facility for approval of a health care service or prescription drug where:

(i) The passage of time;

(A) Could seriously jeopardize the life or health of the enrollee;

(B) Could seriously jeopardize the enrollee's ability to regain maximum function; or

(C) In the opinion of a provider or facility with knowledge of the enrollee's medical condition, would subject the enrollee to

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severe pain that cannot be adequately managed without the health care service or prescription drug that is the subject of the request; or

(i) The enrollee is undergoing a current course of treatment using a nonformulary drug.

(b) "Standard prior authorization request" means a request by a provider or facility for approval of a health care service or prescription drug where the request is made in advance of the enrollee obtaining a health care service that is not required to be expedited.

(5) This section shall not apply to coverage provided under the medicare part C or part D programs set forth in Title XVIII of the social security act of 1965, as amended.

NEW SECTION. Sec. 3. A new section is added to chapter 74.09 RCW to read as follows:

(1) Beginning January 1, 2024, the authority shall require each managed care organization to comply with the following standards related to prior authorization for health care services and prescription drugs:

(a) The managed care organization shall meet the following time frames for prior authorization determinations and notifications to a participating provider or facility that submits the prior authorization request through an electronic prior authorization process, as designated by each managed care organization:

(i) For electronic standard prior authorization requests, the managed care organization shall make a decision and notify the provider or facility of the results of the decision within three calendar days, excluding holidays, of submission of an electronic prior authorization request by the provider or facility that contains the necessary information to make a determination. If insufficient information has been provided to the managed care organization to make a decision, the managed care organization shall request any additional information from the provider or facility within one calendar day of submission of the electronic prior authorization request.

(ii) For electronic expedited prior authorization requests, the managed care organization shall make a decision and notify the provider or facility of the results of the decision within one calendar day of submission of an electronic prior authorization request by the provider or facility that contains the necessary information to make a determination. If insufficient information has been provided to the managed care organization to make a decision, the managed care organization shall request any additional information from the provider or facility within one calendar day of submission of the electronic prior authorization request.

(b) The managed care organization shall meet the following time frames for prior authorization determinations and notifications to a participating provider or facility that submits the prior authorization request through a process other than an electronic prior authorization process described in subsection (2) of this section:

(i) For nonelectronic standard prior authorization requests, the managed care organization shall make a decision and notify the provider or facility of the results of the decision within five calendar days of submission of a nonelectronic prior authorization request by the provider or facility that contains the necessary information to make a determination. If insufficient information has been provided to the managed care organization to make a decision, the managed care organization shall request any additional information from the provider or facility within five calendar days of submission of the nonelectronic prior authorization request.

(ii) For nonelectronic expedited prior authorization requests,

the managed care organization shall make a decision and notify the provider or facility of the results of the decision within two calendar days of submission of a nonelectronic prior authorization request by the provider or facility that contains the necessary information to make a determination. If insufficient information has been provided to the managed care organization to make a decision, the managed care organization shall request any additional information from the provider or facility within one calendar day of submission of the nonelectronic prior authorization request.

(c) In any instance in which a managed care organization has determined that a provider or facility has not provided sufficient information for making a determination under (a) and (b) of this subsection, a managed care organization may establish a specific reasonable time frame for submission of the additional information. This time frame must be communicated to the provider and enrollee with a managed care organization's request for additional information.

(d) The prior authorization requirements of the managed care organization must be described in detail and written in easily understandable language. The managed care organization shall make its most current prior authorization requirements and restrictions, including the written clinical review criteria, available to providers and facilities in an electronic format upon request. The prior authorization requirements must be based on peer-reviewed clinical review criteria. The clinical review criteria must be evidence-based criteria and must accommodate new and emerging information related to the appropriateness of clinical criteria with respect to black and indigenous people, other people of color, gender, and underserved populations. The clinical review criteria must be evaluated and updated, if necessary, at least annually.

(2)(a) Each managed care organization shall build and maintain a prior authorization application programming interface that automates the process for in-network providers to determine whether a prior authorization is required for health care services, identify prior authorization information and documentation requirements, and facilitate the exchange of prior authorization requests and determinations from its electronic health records or practice management system. The application programming interface must support the exchange of prior authorization requests and determinations for health care services beginning January 1, 2025, and must:

(i) Use health level 7 fast health care interoperability resources in accordance with standards and provisions defined in 45 C.F.R. Sec. 170.215 and 45 C.F.R. Sec. 156.22(3)(b);

(ii) Automate the process to determine whether a prior authorization is required for durable medical equipment or a health care service;

(iii) Allow providers to query the managed care organization's prior authorization documentation requirements;

(iv) Support an automated approach using nonproprietary open workflows to compile and exchange the necessary data elements to populate the prior authorization requirements that are compliant with the federal health insurance portability and accountability act of 1996 or have an exception from the federal centers for medicare and medicaid services; and

(v) Indicate that a prior authorization denial or authorization of a service less intensive than that included in the original request is an adverse benefit determination and is subject to the managed care organization's grievance and appeal process under RCW 48.43.535.

(b) Each managed care organization shall establish and maintain an interoperable electronic process or application programming interface that automates the process for in-network

providers to determine whether a prior authorization is required for a covered prescription drug. The application programming interface must support the exchange of prior authorization requests and determinations for prescription drugs, including information on covered alternative prescription drugs, beginning January 1, 2027, and must:

(i) Allow providers to identify prior authorization information and documentation requirements;

(ii) Facilitate the exchange of prior authorization requests and determinations from its electronic health records or practice management system, and may include the necessary data elements to populate the prior authorization requirements that are compliant with the federal health insurance portability and accountability act of 1996 or have an exception from the federal centers for medicare and medicaid services; and

(iii) Indicate that a prior authorization denial or authorization of a drug other than the one included in the original prior authorization request is an adverse benefit determination and is subject to the managed care organization's grievance and appeal process under RCW 48.43.535.

(c) If federal rules related to standards for using an application programming interface to communicate prior authorization status to providers are not finalized by September 13, 2023, the requirements of (a) of this subsection may not be enforced until January 1, 2026.

(d)(i) If a managed care organization determines that it will not be able to satisfy the requirements of (a) of this subsection by January 1, 2025, the managed care organization shall submit a narrative justification to the authority on or before September 1, 2024, describing:

(A) The reasons that the managed care organization cannot reasonably satisfy the requirements;

(B) The impact of noncompliance upon providers and enrollees;

(C) The current or proposed means of providing health information to the providers; and

(D) A timeline and implementation plan to achieve compliance with the requirements.

(ii) The authority may grant a one-year delay in enforcement of the requirements of (a) of this subsection (2) if the authority determines that the managed care organization has made a good faith effort to comply with the requirements.

(iii) This subsection (2)(d) shall not apply if the delay in enforcement in (c) of this subsection takes effect because the federal centers for medicare and medicaid services did not finalize the applicable regulations by September 13, 2023.

(3) Nothing in this section applies to prior authorization determinations made pursuant to RCW 71.24.618 or 74.09.490.

(4) For the purposes of this section:

(a) "Expedited prior authorization request" means a request by a provider or facility for approval of a health care service or prescription drug where:

(i) The passage of time;

(A) Could seriously jeopardize the life or health of the enrollee;

(B) Could seriously jeopardize the enrollee's ability to regain maximum function; or

(C) In the opinion of a provider or facility with knowledge of the enrollee's medical condition, would subject the enrollee to severe pain that cannot be adequately managed without the health care service or prescription drug that is the subject of the request; or

(ii) The enrollee is undergoing a current course of treatment using a nonformulary drug.

(b) "Standard prior authorization request" means a request by a provider or facility for approval of a health care service or

prescription drug where the request is made in advance of the enrollee obtaining a health care service or prescription drug that is not required to be expedited.

Sec. 4. RCW 48.43.0161 and 2020 c 316 s 1 are each amended to read as follows:

(1) ((Except as provided in subsection (2) of this section, by)) By October 1, 2020, and annually thereafter, for individual and group health plans issued by a carrier that has written at least one percent of the total accident and health insurance premiums written by all companies authorized to offer accident and health insurance in Washington in the most recently available year, the carrier shall report to the commissioner the following aggregated and deidentified data related to the carrier's prior authorization practices and experience for the prior plan year:

(a) Lists of the ((ten)) 10 inpatient medical or surgical codes:

(i) With the highest total number of prior authorization requests during the previous plan year, including the total number of prior authorization requests for each code and the percent of approved requests for each code;

(ii) With the highest percentage of approved prior authorization requests during the previous plan year, including the total number of prior authorization requests for each code and the percent of approved requests for each code; and

(iii) With the highest percentage of prior authorization requests that were initially denied and then subsequently approved on appeal, including the total number of prior authorization requests for each code and the percent of requests that were initially denied and then subsequently approved for each code;

(b) Lists of the ((ten)) 10 outpatient medical or surgical codes:

(i) With the highest total number of prior authorization requests during the previous plan year, including the total number of prior authorization requests for each code and the percent of approved requests for each code;

(ii) With the highest percentage of approved prior authorization requests during the previous plan year, including the total number of prior authorization requests for each code and the percent of approved requests for each code; and

(iii) With the highest percentage of prior authorization requests that were initially denied and then subsequently approved on appeal, including the total number of prior authorization requests for each code and the percent of requests that were initially denied and then subsequently approved for each code;

(c) Lists of the ((ten)) 10 inpatient mental health and substance use disorder service codes:

(i) With the highest total number of prior authorization requests during the previous plan year, including the total number of prior authorization requests for each code and the percent of approved requests for each code;

(ii) With the highest percentage of approved prior authorization requests during the previous plan year, including the total number of prior authorization requests for each code and the percent of approved requests for each code; ((and)) and

(iii) With the highest percentage of prior authorization requests that were initially denied and then subsequently approved on appeal, including the total number of prior authorization requests for each code and the percent of requests that were initially denied and then subsequently approved for each code;

(d) Lists of the ((ten)) 10 outpatient mental health and substance use disorder service codes:

(i) With the highest total number of prior authorization requests during the previous plan year, including the total number of prior authorization requests for each code and the percent of approved requests for each code;

(ii) With the highest percentage of approved prior authorization requests during the previous plan year, including the total number

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of prior authorization requests for each code and the percent of approved requests for each code; and

(iii) With the highest percentage of prior authorization requests that were initially denied and then subsequently approved on appeal, including the total number of prior authorization requests for each code and the percent of requests that were initially denied and then subsequently approved;

(e) Lists of the 10 durable medical equipment codes:

(i) With the highest total number of prior authorization requests during the previous plan year, including the total number of prior authorization requests for each code and the percent of approved requests for each code;

(ii) With the highest percentage of approved prior authorization requests during the previous plan year, including the total number of prior authorization requests for each code and the percent of approved requests for each code; and

(iii) With the highest percentage of prior authorization requests that were initially denied and then subsequently approved on appeal, including the total number of prior authorization requests for each code and the percent of requests that were initially denied and then subsequently approved for each code;

(f) Lists of the 10 diabetes supplies and equipment codes:

(i) With the highest total number of prior authorization requests during the previous plan year, including the total number of prior authorization requests for each code and the percent of approved requests for each code;

(ii) With the highest percentage of approved prior authorization requests during the previous plan year, including the total number of prior authorization requests for each code and the percent of approved requests for each code; and

(iii) With the highest percentage of prior authorization requests that were initially denied and then subsequently approved on appeal, including the total number of prior authorization requests for each code and the percent of requests that were initially denied and then subsequently approved for each code;

(g) Lists of the 10 prescription drugs:

(i) With the highest total number of prior authorization requests during the previous plan year, including the total number of prior authorization requests for each prescription drug and the percent of approved requests for each prescription drug;

(ii) With the highest percentage of approved prior authorization requests during the previous plan year, including the total number of prior authorization requests for each prescription drug and the percent of approved requests for each prescription drug; and

(iii) With the highest percentage of prior authorization requests that were initially denied and then subsequently approved on appeal, including the total number of prior authorization requests for each prescription drug and the percent of requests that were initially denied and then subsequently approved for each prescription drug; and

(h) The average determination response time in hours for prior authorization requests to the carrier with respect to each code reported under (a) through (f) of this subsection for each of the following categories of prior authorization:

(i) Expedited decisions;

(ii) Standard decisions; and

(iii) Extenuating circumstances decisions.

(2) ((For the October 1, 2020, reporting deadline, a carrier is not required to report data pursuant to subsection (1)(a)(iii), (b)(iii), (c)(iii), (d)(iii), (e)(iii), or (f)(iii) of this section until April 1, 2021, if the commissioner determines that doing so constitutes a hardship.

(3)) By January 1, 2021, and annually thereafter, the commissioner shall aggregate and deidentify the data collected

under subsection (1) of this section into a standard report and may not identify the name of the carrier that submitted the data. ((The initial report due on January 1, 2021, may omit data for which a hardship determination is made by the commissioner under subsection (2) of this section. Such data must be included in the report due on January 1, 2022.)) The commissioner must make the report available to interested parties.

((4)) (3) The commissioner may request additional information from carriers reporting data under this section.

((5)) (4) The commissioner may adopt rules to implement this section. In adopting rules, the commissioner must consult stakeholders including carriers, health care practitioners, health care facilities, and patients.

((6)) (5) For the purpose of this section, "prior authorization" means a mandatory process that a carrier or its designated or contracted representative requires a provider or facility to follow before a service is delivered, to determine if a service is a benefit and meets the requirements for medical necessity, clinical appropriateness, level of care, or effectiveness in relation to the applicable plan, including any term used by a carrier or its designated or contracted representative to describe this process.

NEW SECTION. Sec. 5. Section 4 of this act takes effect January 1, 2024.

NEW SECTION. Sec. 6. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2023, in the omnibus appropriations act, this act is null and void."

On page 1, line 1 of the title, after "process;" strike the remainder of the title and insert "amending RCW 48.43.0161; adding a new section to chapter 48.43 RCW; adding a new section to chapter 41.05 RCW; adding a new section to chapter 74.09 RCW; creating a new section; and providing an effective date."

Senator Cleveland spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Engrossed Second Substitute House Bill No. 1357.

The motion by Senator Cleveland carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Cleveland, the rules were suspended, Engrossed Second Substitute House Bill No. 1357 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Cleveland and Rivers spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 1357 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 1357 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Liias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen,

Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1357, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1293, by House Committee on Housing (originally sponsored by Klicker, Leavitt, Barkis, Jacobsen, Waters, Chapman, Reed and Graham)

Streamlining development regulations.

The measure was read the second time.

MOTION

Senator Lovelett moved that the following committee striking amendment by the Committee on Local Government, Land Use & Tribal Affairs be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 36.70A RCW to read as follows:

(1) For purposes of this section, "design review" means a formally adopted local government process by which projects are reviewed for compliance with design standards for the type of use adopted through local ordinance.

(2) Except as provided in subsection (3) of this section, counties and cities planning under RCW 36.70A.040 may apply in any design review process only clear and objective development regulations governing the exterior design of new development. For purposes of this section, a clear and objective development regulation:

(a) Must include one or more ascertainable guideline, standard, or criterion by which an applicant can determine whether a given building design is permissible under that development regulation; and

(b) May not result in a reduction in density, height, bulk, or scale below the generally applicable development regulations for a development proposal in the applicable zone.

(3) The provisions of subsection (2) of this section do not apply to development regulations that apply only to designated landmarks or historic districts established under a local preservation ordinance.

(4) Any design review process must be conducted concurrently, or otherwise logically integrated, with the consolidated review and decision process for project permits set forth in RCW 36.70B.120(3), and no design review process may include more than one public meeting.

(5) A county or city must comply with the requirements of this section beginning six months after its next periodic comprehensive plan update required under RCW 36.70A.130.

Sec. 2. RCW 36.70B.160 and 1995 c 347 s 420 are each amended to read as follows:

(1) Each local government is encouraged to adopt further project review provisions to provide prompt, coordinated, and objective review and ensure accountability to applicants and the public, including expedited review for project permit applications

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for projects that are consistent with adopted development regulations or that include dwelling units that are affordable to low-income or moderate-income households and within the capacity of systemwide infrastructure improvements.

(2) Nothing in this chapter is intended or shall be construed to prevent a local government from requiring a preapplication conference or a public meeting by rule, ordinance, or resolution, where otherwise required by applicable state law.

(3) Each local government shall adopt procedures to monitor and enforce permit decisions and conditions.

(4) Nothing in this chapter modifies any independent statutory authority for a government agency to appeal a project permit issued by a local government.

(5) For the purposes of this section:

(a) A dwelling unit is affordable if it requires payment of monthly housing costs, including utilities other than telephone, of no more than 30 percent of the family's income.

(b) "Dwelling unit" means a residential living unit that provides complete independent living facilities for one or more persons and that includes permanent provisions for living, sleeping, eating, cooking, and sanitation, and that is sold or rented separately from other dwelling units.

(c) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is less than 80 percent of the median family income, adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development, or less than 80 percent of the city's median income if the project is located in the city, the city has median income of more than 20 percent above the county median income, and the city has adopted an alternative local median income.

(d) "Moderate-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 120 percent of the median household income, adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development, or less than 120 percent of the city's median income if the project is located in the city, the city has median income of more than 20 percent above the county median income, and the city has adopted an alternative local median income."

On page 1, line 2 of the title, after "regulations;" strike the remainder of the title and insert "amending RCW 36.70B.160; and adding a new section to chapter 36.70A RCW."

WITHDRAWAL OF AMENDMENT

On motion of Senator Salomon and without objection, amendment no. 0308 by Senator Salomon on page 1, line 18 to Engrossed Substitute House Bill No. 1293 was withdrawn.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Local Government, Land Use & Tribal Affairs to Engrossed Substitute House Bill No. 1293.

The motion by Senator Lovelett carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Lovelett, the rules were suspended, Engrossed Substitute House Bill No. 1293 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Lovelett and Torres spoke in favor of passage of the

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bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1293 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1293 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1293, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1260, by House Committee on Appropriations (originally sponsored by Alvarado, Leavitt, Taylor, Senn, Farivar, Simmons, Davis, Fitzgibbon, Callan, Reeves, Reed, Fey, Gregerson, Cortes, Macri, Fosse, Doglio and Pollet)

Accelerating stability for people with a work-limiting disability or incapacity.

The measure was read the second time.

MOTION

Senator Wilson, C. moved that the following committee striking amendment by the Committee on Human Services be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 74.04.805 and 2022 c 208 s 1 are each amended to read as follows:

(1) The department is responsible for determining eligibility for referral for essential needs and housing support under RCW 43.185C.220. Persons eligible for a referral are persons who:

(a) Have been determined to be eligible for the aged, blind, or disabled assistance program under RCW 74.62.030 or the pregnant women assistance program under RCW 74.62.030, or are incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of ~~((ninety))~~ 90 days. The standard for incapacity in this subsection, as evidenced by the ~~((ninety-day))~~ 90-day duration standard, is not intended to be as stringent as federal supplemental security income disability standards;

(b) Are citizens or aliens lawfully admitted for permanent residence or otherwise residing in the United States under color of law, or are victims of human trafficking as defined in RCW 74.04.005;

(c)(i) Have furnished the department with their social security

number. If the social security number cannot be furnished because it has not been issued or is not known, an application for a number must be made prior to authorization of benefits, and the social security number must be provided to the department upon receipt;

(ii) This requirement does not apply to victims of human trafficking as defined in RCW 74.04.005 if they have not been issued a social security number;

(d)(i) Have countable income as described in RCW 74.04.005 ~~((at or below four hundred twenty eight dollars for a married couple or at or below three hundred thirty nine dollars for a single individual))~~ that meets the standard established by the department, which shall not exceed 100 percent of the federal poverty level; or

(ii) Have income that meets the standard established by the department, who are eligible for the pregnant women assistance program;

(e) Do not have countable resources in excess of those described in RCW 74.04.005; and

(f) Are not eligible for federal aid assistance, other than basic food benefits transferred electronically and medical assistance.

~~((2))~~ ~~((Recipients of aged, blind, or disabled assistance program benefits who meet other eligibility requirements in this section are eligible for a referral for essential needs and housing support services within funds appropriated for the department of commerce.~~

~~((3))~~ Recipients of pregnant women assistance program benefits who meet other eligibility requirements in this section are eligible for referral for essential needs and housing support services, within funds appropriated for the department of commerce, for ~~((twenty-four))~~ 24 consecutive months from the date the department determines pregnant women assistance program eligibility.

~~((4))~~ (3) The following persons are not eligible for a referral for essential needs and housing support:

(a) Persons who refuse or fail to cooperate in obtaining federal aid assistance, without good cause;

(b) Persons who refuse or fail without good cause to participate in substance use treatment if an assessment by a certified substance use disorder professional indicates a need for such treatment. Good cause must be found to exist when a person's physical or mental condition, as determined by the department, prevents the person from participating in substance use treatment, when needed outpatient treatment is not available to the person in the county of their residence ~~((or))~~, when needed inpatient treatment is not available in a location that is reasonably accessible for the person, or when the person is a parent or other relative personally providing care for a minor child or an incapacitated individual living in the same home as the person, and child care or day care would be necessary for the person to participate in substance use disorder treatment, and such care is not available; and

(c) Persons who are fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony, under the laws of the state of Washington or the place from which the person flees; or who are violating a condition of probation, community supervision, or parole imposed under federal or state law for a felony or gross misdemeanor conviction.

~~((5))~~ (4) For purposes of determining whether a person is incapacitated from gainful employment under subsection (1) of this section:

(a) The department shall adopt by rule medical criteria for incapacity determinations to ensure that eligibility decisions are consistent with statutory requirements and are based on clear, objective medical information; and

(b) The process implementing the medical criteria must involve consideration of opinions of the treating or consulting physicians or health care professionals regarding incapacity, and any eligibility decision which rejects uncontroverted medical opinion must set forth clear and convincing reasons for doing so.

~~((6))~~ (5) For purposes of reviewing a person's continuing eligibility and in order to remain eligible for the program, persons who have been found to have an incapacity from gainful employment must demonstrate that there has been no material improvement in their medical or mental health condition. The department may discontinue benefits when there was specific error in the prior determination that found the person eligible by reason of incapacitation.

~~((7))~~ (6) The department must review the cases of all persons who have received benefits under the essential needs and housing support program for twelve consecutive months, and at least annually after the first review, to determine whether they are eligible for the aged, blind, or disabled assistance program.

(7) The department shall share client data for individuals eligible for essential needs and housing support with the department of commerce and designated essential needs and housing support entities as required under RCW 43.185C.230.

Sec. 2. RCW 74.62.005 and 2011 1st sp.s. c 36 s 1 are each amended to read as follows:

(1) The legislature finds that:

(a) Persons who have a long-term disability and apply for federal supplemental security income benefits should receive assistance while their application for federal benefits is pending (~~with repayment from the federal government of state funded income assistance paid through the aged, blind, or disabled assistance program~~);

(b) Persons who are incapacitated from gainful employment for an extended period, but who may not meet the level of severity of a long-term disability, are at increased risk of homelessness; and

(c) Persons who are homeless and suffering from significant medical impairments, mental illness, or ~~((chemical dependency))~~ substance use disorder face substantial barriers to successful participation in, and completion of, needed medical or behavioral health treatment services. Stable housing increases the likelihood of compliance with and completion of treatment.

(2) Through chapter 36, Laws of 2011 1st sp. sess., the legislature intends to:

(a) Terminate all components of the disability lifeline program created in 2010 and codified in RCW 74.04.005 and create new programs: (i) To provide financial grants through the aged, blind, ~~((and or))~~ or disabled assistance program and the pregnant women assistance program; and (ii) to provide services through the essential needs and housing support program; and

(b) Increase opportunities to utilize limited public funding, combined with private charitable and volunteer efforts to serve persons who are recipients of the benefits provided by the new programs created under chapter 36, Laws of 2011 1st sp. sess.

Sec. 3. RCW 74.62.030 and 2022 c 208 s 2 are each amended to read as follows:

(1)(a) The aged, blind, or disabled assistance program shall provide financial grants to persons in need who:

(i) Are not eligible to receive ~~((federal aid assistance, other than basic food benefits transferred electronically and medical assistance))~~ supplemental security income, refugee cash assistance, temporary assistance for needy families, or state family assistance benefits;

(ii) Meet the eligibility requirements of subsection (3) of this section; and

(iii) Are aged, blind, or disabled. For purposes of determining eligibility for assistance for the aged, blind, or disabled assistance

program, the following definitions apply:

(A) "Aged" means age ~~((sixty-five))~~ 65 or older.

(B) "Blind" means statutorily blind as defined for the purpose of determining eligibility for the federal supplemental security income program.

(C) "Disabled" means likely to meet the federal supplemental security income disability standard. In making this determination, the department should give full consideration to the cumulative impact of an applicant's multiple impairments, an applicant's age, and vocational and educational history.

In determining whether a person is disabled, the department may rely on, but is not limited to, the following:

(I) A previous disability determination by the social security administration or the disability determination service entity within the department; or

(II) A determination that an individual is eligible to receive optional categorically needy medicaid as a disabled person under the federal regulations at 42 C.F.R. Parts 435, Secs. 201(a)(3) and 210.

(b) The following persons are not eligible for the aged, blind, or disabled assistance program:

(i) Persons who are not able to engage in gainful employment due primarily to a substance use disorder. These persons shall be referred to appropriate assessment, treatment, or shelter services. Referrals shall be made at the time of application or at the time of eligibility review. This subsection may not be construed to prohibit the department from granting aged, blind, or disabled assistance benefits to persons with a substance use disorder who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the aged, blind, or disabled assistance program; or

(ii) Persons for whom there has been a final determination of ineligibility based on age, blindness, or disability for federal supplemental security income benefits.

(c) Persons may receive aged, blind, or disabled assistance benefits and essential needs and housing program support under RCW 43.185C.220 concurrently while pending application for federal supplemental security income benefits. ~~((The monetary value of any aged, blind, or disabled assistance benefit that is subsequently duplicated by the person's receipt of supplemental security income for the same period shall be considered a debt due the state and shall by operation of law be subject to recovery through all available legal remedies.))~~ Effective October 1, 2025, a person's receipt of supplemental security income received for the same period as aged, blind, or disabled program assistance as described in this section shall not be considered a debt due to the state and is not subject to recovery. However, the monetary value of aged, blind, or disabled cash assistance paid prior to October 1, 2025, that is duplicated by the person's receipt of supplemental security income for the same period shall be considered a debt due to the state and shall by operation of law be subject to recovery through all available legal remedies.

(2) The pregnant women assistance program shall provide financial grants to persons who:

(a) ~~((Are not eligible to receive federal aid assistance other than basic food benefits or medical assistance; and~~

~~((b)))~~ Are pregnant and in need, based upon the current income and resource standards of the federal temporary assistance for needy families program, but are ineligible for federal temporary assistance for needy families or state family assistance benefits for a reason other than failure to cooperate in program requirements; and

~~((e)))~~ (b) Meet the eligibility requirements of subsection (3) of this section.

(3) To be eligible for the aged, blind, or disabled assistance

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program under subsection (1) of this section or the pregnant women assistance program under subsection (2) of this section, a person must:

(a) Be a citizen or alien lawfully admitted for permanent residence or otherwise residing in the United States under color of law, or be a victim of human trafficking as defined in RCW 74.04.005;

(b) Meet the income and resource standards described in RCW 74.04.805(1) (d) and (e);

(c)(i) Have furnished the department with their social security number. If the social security number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of benefits, and the social security number shall be provided to the department upon receipt;

(ii) This requirement does not apply to victims of human trafficking as defined in RCW 74.04.005 if they have not been issued a social security number;

(d) Not have refused or failed without good cause to participate in substance use treatment if an assessment by a certified substance use disorder professional indicates a need for such treatment. Good cause must be found to exist when a person's physical or mental condition, as determined by the department, prevents the person from participating in substance use treatment, when needed outpatient treatment is not available to the person in the county of their residence ((~~or~~)), when needed inpatient treatment is not available in a location that is reasonably accessible for the person, or when the person is a parent or other relative personally providing care for a minor child or an incapacitated individual living in the same home as the person, and child care or day care would be necessary for the person to participate in substance use disorder treatment, and such care is not available; and

(e) Not have refused or failed to cooperate in obtaining federal aid assistance, without good cause.

(4) Referrals for essential needs and housing support under RCW 43.185C.220 shall be provided to persons found eligible under RCW 74.04.805.

(5) No person may be considered an eligible individual for benefits under this section with respect to any month if during that month the person:

(a) Is fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony, under the laws of the state of Washington or the place from which the person flees; or

(b) Is violating a condition of probation, community supervision, or parole imposed under federal or state law for a felony or gross misdemeanor conviction.

(6) The department must share client data for individuals eligible for essential needs and housing support with the department of commerce and designated essential needs and housing support entities as required under RCW 43.185C.230."

On page 1, line 2 of the title, after "incapacity;" strike the remainder of the title and insert "and amending RCW 74.04.805, 74.62.005, and 74.62.030."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Human Services to Engrossed Substitute House Bill No. 1260.

The motion by Senator Wilson, C. carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Wilson, C., the rules were suspended, Engrossed Substitute House Bill No. 1260 as amended by the

Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Wilson, C. and Kauffman spoke in favor of passage of the bill.

Senator Boehnke spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1260 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1260 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 44; Nays, 5; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett, Lovick, MacEwen, McCune, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Shewmake, Stanford, Torres, Trudeau, Valdez, Van De Wege, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

Voting nay: Senators Boehnke, Mullet, Schoesler, Short and Wagoner

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1260, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED HOUSE BILL NO. 1324, by Representatives Hackney, Senn, Simmons, Reed, Lekanoff, Doglio, Pollet and Macri

Concerning the scoring of prior juvenile offenses in sentencing range calculations.

The measure was read the second time.

MOTION

Senator Dhingra moved that the following committee striking amendment by the Committee on Law & Justice be adopted:

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** The legislature intends to:

(1) Give real effect to the juvenile justice system's express goals of rehabilitation and reintegration;

(2) Bring Washington in line with the majority of states, which do not consider prior juvenile offenses in sentencing range calculations for adults;

(3) Recognize the expansive body of scientific research on brain development, which shows that adolescent's perception, judgment, and decision making differs significantly from that of adults;

(4) Facilitate the provision of due process by granting the procedural protections of a criminal proceeding in any adjudication which may be used to determine the severity of a criminal sentence; and

(5) Recognize how grave disproportionality within the juvenile legal system may subsequently impact sentencing ranges in adult court.

Sec. 2. RCW 9.94A.525 and 2021 c 215 s 100 are each 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) 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.589.

(b) For the purposes of this section, adjudications of guilt pursuant to Title 13 RCW which are not murder in the first or second degree or class A felony sex offenses may not be included in the offender score.

(2)(a) Class A and sex prior felony convictions shall always be included in the offender score.

(b) Class B prior felony convictions other than sex offenses 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 committing any crime that subsequently results in a conviction.

(c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses 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 committing any crime that subsequently results in a conviction.

(d) Except as provided in (e) of this subsection, 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 conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction.

(e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate crimes for the offense as defined by RCW 46.61.5055(14) shall be included in the offender score, and prior convictions for felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)) shall always be included in the offender score. All other convictions of the defendant shall be scored according to this section.

(f) Prior convictions for a repetitive domestic violence offense, as defined in RCW 9.94A.030, shall not be included in the offender score if, since the last date of release from confinement or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

(g) This subsection applies to both prior adult convictions and prior juvenile ((prior convictions)) adjudications.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Neither out-of-state

adjudications or convictions for juvenile offenses which are not murder in the first or second degree or class A felony sex offenses, nor federal convictions for juvenile offenses which are not murder in the first or second degree or class A felony sex offenses may be included in the offender score. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

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

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

(i) Prior offenses which were found, under RCW 9.94A.589(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 ((~~or prior juvenile offenses for which sentences were served consecutively~~)), whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), 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. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;

(ii) 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 or adjudications 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.

(b) As used in this subsection (5), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

(6) 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. When these convictions are used as criminal history, score them the same as a completed crime.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11), (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~~)).

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

(9) If the present conviction is for a serious violent offense, count three points for prior ((~~adult and juvenile~~)) convictions for crimes in this category, two points for each prior ((~~adult and juvenile~~)) violent conviction (not already counted), and one point for each prior ((~~adult~~)) nonviolent felony conviction((~~and 1/2 point for each prior juvenile nonviolent felony conviction~~)).

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

(11) 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 count one point for each ~~((adult and 1/2 point for each juvenile))~~ prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each ~~((adult and 1/2 point for each juvenile))~~ prior conviction; count one point for each ~~((adult and 1/2 point for each juvenile))~~ prior conviction for operation of a vessel while under the influence of intoxicating liquor or any drug.

(12) If the present conviction is for homicide by watercraft or assault by watercraft count two points for each ~~((adult or juvenile))~~ prior conviction for homicide by watercraft or assault by watercraft; for each felony offense count one point for each ~~((adult and 1/2 point for each juvenile))~~ prior conviction; count one point for each ~~((adult and 1/2 point for each juvenile))~~ prior conviction for driving under the influence of intoxicating liquor or any drug, actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, or operation of a vessel while under the influence of intoxicating liquor or any drug.

(13) If the present conviction is for manufacture of methamphetamine count three points for each ~~((adult))~~ prior manufacture of methamphetamine conviction ~~((and two points for each juvenile manufacture of methamphetamine offense))~~. If the present conviction is for a drug offense and the offender has a criminal history that includes a sex offense or serious violent offense, count three points for each ~~((adult))~~ prior felony drug offense conviction ~~((and two points for each juvenile drug offense))~~. All other ~~((adult and juvenile))~~ felonies are scored as in subsection (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(14) If the present conviction is for Escape from Community Custody, RCW 72.09.310, 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 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each ~~((adult and juvenile))~~ prior Burglary 1 conviction, and two points for each ~~((adult))~~ prior Burglary 2 or residential burglary conviction ~~((and one point for each juvenile prior Burglary 2 or residential burglary conviction))~~.

(17) If the present conviction is for a sex offense, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult prior sex offense conviction and juvenile prior class A felony sex offense ~~((conviction))~~ adjudication.

(18) If the present conviction is for failure to register as a sex offender under RCW 9A.44.130 or 9A.44.132, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each ~~((adult and juvenile))~~ prior sex offense conviction, excluding prior convictions for failure to register as a sex offender under RCW 9A.44.130 or 9A.44.132, which shall count as one point.

(19) If the present conviction is for an offense committed while

the offender was under community custody, add one point. For purposes of this subsection, community custody includes community placement or postrelease supervision, as defined in chapter 9.94B RCW.

(20) If the present conviction is for Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2, count priors as in subsections (7) through (18) of this section; however count one point for prior convictions of Vehicle Prowling 2, and three points for each ~~((adult and juvenile))~~ prior Theft 1 (of a motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2 conviction.

(21) If the present conviction is for a felony domestic violence offense where domestic violence as defined in RCW 9.94A.030 was pleaded and proven, count priors as in subsections (7) through (20) of this section; however, count points as follows:

(a) Count two points for each ~~((adult))~~ prior conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after August 1, 2011, for any of the following offenses: A felony violation of a no-contact or protection order (RCW 7.105.450 or former RCW 26.50.110), felony Harassment (RCW 9A.46.020(2)(b)), felony Stalking (RCW 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020), Kidnapping 1 (RCW 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful imprisonment (RCW 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2 (RCW 9A.56.210), Assault 1 (RCW 9A.36.011), Assault 2 (RCW 9A.36.021), Assault 3 (RCW 9A.36.031), Arson 1 (RCW 9A.48.020), or Arson 2 (RCW 9A.48.030);

(b) Count two points for each ~~((adult))~~ prior conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after July 23, 2017, for any of the following offenses: Assault of a child in the first degree, RCW 9A.36.120; Assault of a child in the second degree, RCW 9A.36.130; Assault of a child in the third degree, RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW 9A.42.020; or Criminal Mistreatment in the second degree, RCW 9A.42.030; and

~~((Count one point for each second and subsequent juvenile conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after August 1, 2011, for the offenses listed in (a) of this subsection; and~~

~~((d))~~ Count one point for each ~~((adult))~~ prior conviction for a repetitive domestic violence offense as defined in RCW 9.94A.030, where domestic violence as defined in RCW 9.94A.030, was pleaded and proven after August 1, 2011.

(22) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the sentencing reform act requires including or counting those convictions. Prior convictions that were not included in criminal history or in the offender score shall be included upon any resentencing to ensure imposition of an accurate sentence."

On page 1, line 2 of the title, after "calculations;" strike the remainder of the title and insert "amending RCW 9.94A.525; and creating a new section."

MOTION

Senator Dhingra moved that the following amendment no. 0326 by Senator Dhingra be adopted:

On page 3, beginning on line 14, strike all material through "score" on line 18 and insert "or federal convictions which would have been presumptively adjudicated in juvenile court under Washington law may be included in the offender score unless they are comparable to murder in the first or second degree or a class A felony sex offense"

On page 3, beginning on line 33, strike all material through "~~consecutively~~)" on line 35 and insert "adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively"

On page 4, beginning on line 23, after "each" strike all material through "~~conviction~~)" on line 25 and insert "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~~) which is scorable under subsection (1)(b) of this section"

On page 4, line 28, after "prior" strike all material through "conviction" on line 29 and insert "adult violent felony conviction and juvenile violent felony conviction which is scorable under subsection (1)(b) of this section"

On page 4, line 29, after "prior" strike "~~(adult)~~" and insert "adult"

On page 4, line 33, after "prior" strike "~~(adult and juvenile)~~ convictions" and insert "adult convictions and juvenile convictions which are scorable under subsection (1)(b) of this section"

On page 4, beginning on line 34, after "prior" strike "~~(adult and juvenile)~~" and insert "adult and scorable juvenile"

On page 4, line 36, after "prior" strike "~~(adult)~~" and insert "adult"

On page 5, beginning on line 6, after "each" strike all material through "conviction" on line 7 and insert "adult prior conviction and 1/2 point for each juvenile prior conviction which is scorable under subsection (1)(b) of this section"

On page 5, line 9, after "each" strike "~~(adult and 1/2 point for each juvenile)~~ prior conviction" and insert "adult prior conviction and 1/2 point for each juvenile prior conviction which is scorable under subsection (1)(b) of this section"

On page 5, line 10, after "each" strike "~~(adult and~~ and insert "adult (~~and~~"

On page 5, line 14, after "each" strike "~~(adult or~~ and insert "adult (~~or~~"

On page 5, beginning on line 16, after "point for each" strike all material through "conviction" on line 17 and insert "adult prior conviction and 1/2 point for each juvenile prior conviction which would be scorable under subsection (1)(b) of this section"

On page 5, at the beginning of line 18, strike "~~(adult and~~ and insert "adult (~~and~~"

On page 5, line 24, after "each" strike "~~(adult)~~" and insert "adult"

On page 5, line 29, after "each" strike "~~(adult)~~" and insert "adult"

On page 5, line 35, after "only" insert "adult"

On page 5, beginning on line 39, after "count" strike all material through "~~point~~)" on line 40 and insert "adult prior convictions as one point and juvenile prior convictions which are scorable under subsection (1)(b) of this section as 1/2 point"

On page 6, beginning on line 15, after "each" strike all material through "conviction" on line 16 and insert "adult prior sex offense conviction and juvenile prior sex offense conviction which is scorable under subsection (1)(b) of this section"

On page 6, line 16, after "excluding" insert "adult"

On page 6, line 28, after "each" strike "~~(adult and~~ and insert "adult (~~and~~"

On page 6, line 38, after "each" strike "~~(adult)~~" and insert "adult"

On page 7, line 9, after "each" strike "~~(adult)~~" and insert "adult"

On page 7, line 21, after "each" strike "~~(adult)~~" and insert "adult"

Senator Dhingra spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0326 by Senator Dhingra on page 3, line 14 to the committee striking amendment.

The motion by Senator Dhingra carried and amendment no. 0326 was adopted by voice vote.

MOTION

Senator Frame moved that the following amendment no. 0320 by Senator Frame be adopted:

On page 7, after line 36, insert the following:

NEW SECTION. Sec. 3. A new section is added to chapter 9.94A RCW to read as follows:

(1) Beginning January 1, 2025, any offender sentenced for an offense committed prior to the effective date of section 2 of this act, and whose offender score for that offense was increased due to any juvenile adjudications which would not have been included in the offender score under RCW 9.94A.525 as currently enacted, is entitled to a resentencing hearing upon the offender's motion for relief from sentence to the original sentencing court if the person is currently incarcerated in total confinement and:

(a) Has a release date of January 1, 2025, or later and has less than three years remaining to serve on the sentence;

(b) Would be eligible for release within three years of January 1, 2025, based on an offender score that does not include any juvenile adjudications that would not have been included in the offender score under RCW 9.94A.525 as it is currently enacted; or

(c) Has served over 15 years or at least 50 percent of the sentence.

(2) Beginning January 1, 2026, any offender sentenced for an offense committed prior to the effective date of section 2 of this act, and whose offender score for that offense was increased due to any juvenile adjudications which would not have been included in the offender score under RCW 9.94A.525 as it is currently enacted, is entitled to a resentencing hearing upon the offender's motion for relief from sentence to the original sentencing court if the person is currently incarcerated in total confinement.

(3) The sentencing court shall grant the motion made under subsection (1) or (2) of this section if it finds that the offender is currently incarcerated in total confinement and the previous offender score was increased due to any juvenile adjudications which would not have been included in the offender score under RCW 9.94A.525 as it is currently enacted, and shall immediately set an expedited date for resentencing. At resentencing, the court shall sentence the offender as if any juvenile adjudications that would not have been included in the offender score under RCW 9.94A.525 as it is currently enacted were not part of the offender score at the time the original sentence was imposed."

On page 8, line 2, after "9.94A.525;" insert "adding a new section to chapter 9.94A RCW;"

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Senator Frame spoke in favor of adoption of the amendment to the committee striking amendment.

WITHDRAWAL OF AMENDMENT

On motion of Senator Frame and without objection, amendment no. 0320 by Senator Frame on page 7, line 36 to Engrossed House Bill No. 1324 was withdrawn.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Law & Justice to Engrossed House Bill No. 1324.

The motion by Senator Dhingra carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Dhingra, the rules were suspended, Engrossed House Bill No. 1324 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Dhingra and Frame spoke in favor of passage of the bill.

Senator Padden spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 1324 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 1324 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 26; Nays, 23; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Cleveland, Conway, Dhingra, Frame, Hasegawa, Hunt, Kauffman, Keiser, Kuderer, Lias, Lovelett, Lovick, Mullet, Nguyen, Nobles, Pedersen, Randall, Robinson, Saldaña, Salomon, Stanford, Trudeau, Valdez, Wellman and Wilson, C.

Voting nay: Senators Boehnke, Braun, Dozier, Fortunato, Gildon, Hawkins, Holy, King, MacEwen, McCune, Muzzall, Padden, Rivers, Rolfes, Schoesler, Shewmake, Short, Torres, Van De Wege, Wagoner, Warnick, Wilson, J. and Wilson, L.

ENGROSSED HOUSE BILL NO. 1324, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1117, by House Committee on Environment & Energy (originally sponsored by Mosbrucker, Dye, Leavitt, Schmidt, Christian and Walsh)

Addressing the extent to which Washington residents are at risk of rolling blackouts and power supply inadequacy events.

The measure was read the second time.

MOTION

Senator MacEwen moved that the following committee striking amendment by the Committee on Environment, Energy & Technology be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that the electric grid is undergoing profound changes. Due to decreasing costs of renewable generation and policies like the clean energy transformation act, the grid is gradually evolving from one built to deliver to the customer electricity from centralized electric generation plants to one with variable energy resources like wind turbines and solar panels dispersed geographically across a broad landscape. As described in the 2021 Washington state energy strategy, the grid that our region is transitioning to will require greater transmission capacity and make greater use of energy storage and customer-side resources to manage the generation on the supply side.

As clean electricity replaces fossil fuels in the state's economy, the transmission and distribution infrastructure, the sticks and wires of the grid, must meet increasingly complex service requirements and loads. The changing demand includes, but is not limited to, population changes, vehicle charging, serving other specialized technology that requires high power quality, electrification of building-related end uses now served by fossil fuels, electricity deployed on the customer side of the meter through net metering, community solar programs, and the growth of demand response programs.

Further, the clean energy transformation act requires that utilities making investments in new resources after May 2019, rely on energy efficiency, demand response, renewable resources, and energy storage to the maximum extent feasible, while transitioning away from coal and natural gas-fired generation. Electric utilities are actively working to ensure resource adequacy through the development of explicit resource adequacy standards and a standardized resource adequacy program. This work is ongoing and should result in a binding and enforceable program with a robust public oversight mechanism. Understanding and addressing any energy adequacy challenges created by a deeply decarbonized grid is key to keeping the state's supply of electricity reliable.

Sec. 2. RCW 19.280.065 and 2020 c 63 s 2 are each amended to read as follows:

(1) At least once every twelve months, the department and the commission shall jointly convene a meeting of representatives of the investor-owned utilities and consumer-owned utilities, regional planning organizations, transmission operators, energy analytics experts at Pacific Northwest national laboratory, and other stakeholders to discuss the current, short-term, and long-term adequacy of energy resources to serve the state's electric needs, and address specific steps the utilities can take to coordinate planning in light of the significant changes to the Northwest's power system including, but not limited to, technological developments, retirements of legacy baseload power generation resources, and changes in laws and regulations affecting power supply options. The department and commission shall provide a summary of these meetings, including any specific action items, to the governor and legislature within sixty days of the meeting.

(2) In 2023, the meeting convened by the department and the commission pursuant to subsection (1) of this section must address strategies to ensure power supply adequacy to avoid the risk of rolling blackouts. The meeting must also focus discussion on the extent to which proposed laws and regulations may require new state policy for resource adequacy. The stakeholder meeting should seek to identify regulatory and statutory incentives to enhance and ensure resource adequacy and reliability. If regional energy analytics capability is established at Pacific Northwest

national laboratory, the department and the commission must invite the Pacific Northwest national laboratory to the meeting to provide relevant analytics to inform the discussion.

(3) This section expires January 1, (~~2025~~) 2031."

On page 1, beginning on line 3 of the title, after "events;" strike the remainder of the title and insert "amending RCW 19.280.065; creating a new section; and providing an expiration date."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Environment, Energy & Technology to Substitute House Bill No. 1117.

The motion by Senator MacEwen carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator MacEwen, the rules were suspended, Substitute House Bill No. 1117 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators MacEwen and Nguyen spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1117 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1117 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

Voting nay: Senators Liias and Saldaña

SUBSTITUTE HOUSE BILL NO. 1117, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 1578, by House Committee on Appropriations (originally sponsored by Springer, Kretz, Reeves, Leavitt, Ramel, Lekanoff, Reed, Pollet and Kloba)

Improving community preparedness, response, recovery, and resilience to wildland fire health and safety impacts in areas of increasing population density, including in the wildland urban interface.

The measure was read the second time.

MOTION

Senator Pedersen moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** (1) The legislature recognizes that, just as the forests on the east side of the state are being impacted by climate change, western Washington forests, too, are seeing increasing vulnerabilities to forest health and resilience. The frequency and severity of wildfires, resulting smoke incursions, and postfire flash floods and debris flow in areas of increasing population density are expected to intensify in the years to come, fueled by drought, pests, and disease, and increasing temperatures.

(2) The legislature recognizes that communities within the wildland urban interface and in areas of high or growing population density are increasingly experiencing more frequent and severe wildfires, resulting smoke exposure, flash floods, and debris flow, and that this intensifies health and safety hazards for residents, infrastructure, and ecosystems.

(3) The legislature finds that lives, health, and infrastructure are endangered by unplanned wildland fires, associated smoke exposure, and postwildfire debris flow hazards in Washington state. Wildland fires come with cascading and multihazard impacts on air quality and the health of our residents. Therefore, investing in wildland fire community preparedness, recovery, and resilience provides important cobenefits that will improve the health and safety of residents, infrastructure, and ecosystems in forested and nonforested areas and will reduce the economic burden on local governments, organizations, communities, and the state.

(4) The legislature acknowledges that public health and emergency management preparedness aligns with the state's environmental justice goals, where programming and interventions support vulnerable populations and those living in regions experiencing disproportionately high levels of wildfire, air pollutants, and smoke exposure.

(5) The legislature recognizes that there is a need for a comprehensive approach to public safety and health related to evacuation planning, emergency response and stabilization, creating resilience to wildfire smoke, and postfire landslide hazard identification and mitigation. A key priority during a wildfire response is engaging relevant evacuation and emergency response plans. A key priority in wildfire recovery is emergency stabilization to prevent increased damage to life, infrastructure, or natural resources, and longer-term stabilization and rehabilitation efforts may need to be continued for several years following a wildfire to prevent unacceptable and dangerous land and water degradation.

(6) The legislature recognizes that while smoke from wildland fires can affect individuals differently based on a multitude of different factors, the negative health effects of poor air quality are well established. A study led by the office of financial management and the department of ecology found that when air quality is categorized as "unhealthy," as compared to "good," due to wildfire smoke, there is a 24 percent increase in medical service claims related to asthma and a 12 percent increase in emergency department visits.

(7) The legislature finds that cross-agency emergency management planning and response that addresses wildland fires and related smoke is important to the health and safety of the residents of Washington. It is critical to provide timely smoke impact and forecast information and messaging to the public that is accessible and based on the best available science.

(8) The legislature recognizes that having clean and properly ventilated indoor air is important to protect the health of all residents. Those who experience acute or chronic health

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challenges are at greater risk of the effects of hazardous or polluted air. During wildfire events that lead to increased smoke in the ambient air, public health officials often recommend staying indoors and closing doors and windows. However, particularly on the western side of the state, many homes do not have air conditioning systems. Compared to nearly all other states, Washington homes have some of the fewest air conditioning systems. Accordingly, during the warmest days of summer, when wildfire events are most common, doors and windows are opened for ventilation purposes, which inadvertently allows smoke to enter the home and degrade indoor air quality.

(9) The legislature recognizes the work that the department of natural resources has done to implement RCW 76.04.505, and that, based on a robust prioritization process, the department of natural resources has focused a majority of its efforts to date on wildfire prevention and preparedness on the east side of the state.

(10) The legislature acknowledges that the department of natural resources' community resilience programming for community-level and property-level wildfire readiness has been successfully implemented in numerous counties throughout eastern Washington and that broadening the program statewide and incorporating smoke readiness programming will benefit communities, residents, and local governments facing growing wildfire-related risks.

(11) Therefore, the legislature finds that, given the increasing impacts on the rapidly growing wildland urban interface and in areas of increasing population density, the department of natural resources must now also accelerate efforts to address the threats facing them. This includes, but is not limited to, improving community preparedness, response, recovery, and resilience related to wildland fire, smoke, and postfire flash floods and debris flow.

NEW SECTION. Sec. 2. A new section is added to chapter 76.04 RCW to read as follows:

(1)(a) The department must assess areas at significant risk for wildfire, by decade, for a period encompassing not less than 30 years. The assessment must include an analysis of the predicted climate influence on wildfire risk in the state and provide enough detail for landowners, the public, local governments, and tribal nations to develop strategies to address wildfire risk. The department must provide the first risk assessment to the appropriate committees of the legislature by July 1, 2027, covering a risk assessment period of July 1, 2027, through June 30, 2037. A subsequent decadal assessment is due to the appropriate committees of the legislature every 10 years thereafter. The department must also provide a mid-decade interim report to the appropriate committees of the legislature by July 1, 2032, and every 10 years thereafter.

(b) The department must coordinate with counties on an update to wildland urban interface maps consistent with RCW 43.30.580.

(2) The department, in consultation with the Washington military department emergency management division and the Washington state patrol, must cooperate with law enforcement, Indian tribes, emergency managers at the city and county level, and local fire protection districts to develop public safety evacuation strategies for areas identified in the respective decadal assessments as facing significant risk of wildfire. The department must provide support to help incorporate wildfire evacuation strategies within existing regional and local emergency response plans. Implementation of evacuation strategies remains under the authority of local law enforcement.

(3) The department must lead a project to provide emergency disaster and evacuation plan messaging and information to the public at department-managed recreation and outdoor access sites. Information must be displayed in an accessible manner,

including in signage at trailheads, and be relevant to the area's particular natural disaster risk profile. The department must place particular emphasis on ensuring accessibility and accommodation needs of public visitors are reflected in planning, design, and information dissemination.

(4) Further, the department shall:

(a) Expand its community resilience and preparedness programming, for community-level and property-level wildfire readiness, and the associated supporting programs such as community resilience grants and service forestry, within the wildland urban interface in counties or regions of western Washington where risk of wildfires and smoke exposure exist as determined by the department;

(b) Participate in cross-agency emergency management planning and response efforts related to wildfire smoke plans developed under chapter 38.52 RCW. The department shall incorporate smoke readiness into community resilience programming and coordinate with state, county, federal agencies, and Indian tribes to collaboratively share information and guidance for Washington communities affected by wildfire smoke. This includes providing updated wildfire information to air quality and health agencies and to the public through online information sources.

(i) The department shall coordinate cross-agency and shall provide information to assess wildland fire smoke risks and impacts. Activities may include:

(A) Coordinating with the department of ecology, local clean air agencies, and the United States forest service to deploy temporary air monitors to assess smoke conditions during wildfires;

(B) Providing information to the department of ecology to continue to improve smoke modeling and forecasting tools and support regulatory compliance;

(C) Advancing science and conducting research on wildfire smoke event recurrence geographically, based on different forest types and incorporating this research into planning efforts; and

(D) Information dissemination to the public through online information sources.

(ii) The provisions of this section may not impact or prevent the implementation of prescribed burns to improve forest health and resiliency and reduce wildfire risks.

(iii) The department shall work cross-agency to address smoke risk to transportation safety and firefighter exposure to smoke.

(iv) The department, in collaboration with the departments of health and ecology, shall conduct community engagement and outreach related to wildfire smoke risks and impacts, particularly in regions of the state that experience disproportionately high levels of air contaminants and pollutants. Particular emphasis in outreach will be focused on overburdened populations, and vulnerable people, including outdoor workers, those older in age, those experiencing persistent health challenges, and those experiencing unstable housing arrangements;

(c) Leverage community resilience programming to ensure residents and community organizations are provided information about services and programs to improve indoor air quality in the home. This may include connecting residents with their local contracted weatherization agency, which may provide home weatherization services to eligible applicants and residents. Weatherization upgrades may save energy, reduce utility costs, and improve indoor air quality;

(d) By July 1, 2028, implement a postwildfire debris flow program. The department shall identify areas prone to hazards from postwildfire debris flows, assess burned areas to determine potential for increases in postwildfire debris flow hazards, improve modeling to determine triggers for postwildfire debris

MOTION

flow early warning for at-risk communities and infrastructure, and communicate to emergency managers, local governments, stakeholders, state agencies, and the public both for preparedness and response; and

(e) By December 30, 2027, have established a structure for a state sponsored burned area emergency stabilization and response team and make recommendations regarding the appropriate number of teams needed, the funding necessary to support team deployments, and the implementation of hazard mitigation. The department shall provide capacity-building to local communities to establish local teams. The purpose of the burned area emergency stabilization and response team is to determine the need for emergency postfire treatments for public safety and resource protection. The department must consult with emergency managers, the military department, and the Washington conservation commission when developing the organizational structure of the teams established in this section.

(5) The department, when acting in good faith in its implementation of this section, is carrying out duties owed to the public in general and not to any individual person or class of persons separate and apart from the public. Nothing contained in this section may be construed to evidence a legislative intent that the work of preparing for, responding to, or recovering from wildfire, smoke incursions, or postfire landslides is owed to any individual person or class of persons separate and apart from the public in general. This section does not alter the department's duties and responsibilities as a landowner.

(6) Until July 1, 2025, the assessments and reports required by this section are only intended to assist with improving community preparedness, response, recovery, and resilience to wildland fires and are not intended and may not be used in the development of, or as the basis of, any regulations by a state agency or a local governmental entity.

NEW SECTION. Sec. 3. This act may be known and cited as the cascading impacts of wildfires act."

On page 1, line 4 of the title, after "interface;" strike the remainder of the title and insert "adding a new section to chapter 76.04 RCW; and creating new sections."

MOTION

Senator Kauffman moved that the following amendment no. 0353 by Senator Kauffman be adopted:

On page 3, beginning on line 26, after "and" strike "tribal nations" and insert "federally recognized Indian tribes"

On page 3, line 39, after "enforcement," insert "federally recognized"

On page 4, line 29, after "and" insert "federally recognized"

Senator Kauffman spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0353 by Senator Kauffman on page 3, line 26 to Second Substitute House Bill No. 1578.

The motion by Senator Kauffman carried and amendment no. 0353 was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means as amended to Second Substitute House Bill No. 1578.

The motion by Senator Pedersen carried and the committee striking amendment as amended was adopted by voice vote.

On motion of Senator Salomon, the rules were suspended, Second Substitute House Bill No. 1578 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Salomon and Muzzall spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 1578 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 1578 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

SECOND SUBSTITUTE HOUSE BILL NO. 1578, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 5:49 p.m., on motion of Senator Pedersen, the Senate was declared to be at ease subject to the call of the President.

Senator Muzzall announced a meeting of the Republican Caucus.

Senator Pedersen announced a meeting of the Democratic Caucus.

EVENING SESSION

The Senate was called to order at 7:38 p.m. by President Heck.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 1762, by House Committee on Appropriations (originally sponsored by Doglio, Berry, Ramel, Fosse, Reed, Alvarado, Peterson and Pollet)

Protecting warehouse employees.

The measure was read the second time.

MOTION

Senator Pedersen moved that the following committee striking amendment by the Committee on Labor & Commerce be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The definitions in this section apply throughout this chapter unless the context clearly requires

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otherwise.

(1) "Affiliate" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. For purposes of this subsection, "control" means the possession, directly or indirectly, of more than 50 percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(2) "Aggregated data" means information that an employer has combined or collected in summary or other form such that the data cannot be identified with any individual.

(3) "Defined time period" means any unit of time measurement equal to or less than the duration of an employee's shift, and includes hours, minutes, and seconds and any fraction thereof.

(4) "Department" means the department of labor and industries.

(5) "Designated employee representative" means any employee representative, including but not limited to an authorized employee representative that has a collective bargaining relationship with the employer.

(6) "Director" means the director of the department of labor and industries or the director's designee.

(7) "Employee" means an employee who is not exempt under RCW 49.46.010(3)(c) and works at a warehouse distribution center.

(8)(a) "Employee work speed data" means information an employer collects, stores, analyzes, or interprets relating to an individual employee's performance of a quota including, but not limited to, quantities of tasks performed, quantities of items or materials handled or produced, rates or speeds of tasks performed, measurements or metrics of employee performance in relation to a quota, and time categorized as performing tasks or not performing tasks.

(b) Employee work speed data does not include qualitative performance assessments, personnel records, or itemized wage statements pursuant to department rules, except for any content of those records that includes employee work speed data as defined in this subsection.

(9)(a) "Employer" means a person who directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary services, or staffing agency, independent contractor, or any similar entity, at any time, employs or exercises control over the wages, hours, or working conditions of 100 or more employees at a single warehouse distribution center in the state or 500 or more employees at one or more warehouse distribution centers in the state.

(b) For the purposes of determining the number of employees employed at a single warehouse distribution center or at one or more warehouse distribution centers, all employees employed directly or indirectly, or through an agency or any other person, and all employees employed by an employer and its affiliates, must be counted.

(c) For the purposes of determining responsible employers, all agents or other persons, and affiliates must be deemed employers and are jointly and severally responsible for compliance with this chapter.

(10) "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

(11) "Quota" means a work performance standard, whether required or recommended, where: (a) An employee is assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period and under which

the employee may suffer an adverse employment action if they fail to complete the performance standard; or (b) an employee's actions are categorized between time performing tasks and not performing tasks, if the employee may suffer an adverse employment action if they fail to meet the performance standard.

(12) "Warehouse distribution center" means an establishment engaged in activities as defined by any of the following North American industry classification system codes, however such establishment is denominated:

(a) 493 for warehousing and storage, but does not include 493130 for farm product warehousing and storage;

(b) 423 for merchant wholesalers, durable goods;

(c) 424 for merchant wholesalers, nondurable goods; or

(d) 454110 for electronic shopping and mail-order houses.

NEW SECTION. Sec. 2. (1) An employer must provide to each employee, upon hire, or within 30 days of the effective date of this section, a written description of:

(a) Each quota to which the employee is subject, including the quantified number of tasks to be performed or materials to be produced or handled within a defined time period;

(b) Any potential adverse employment action that could result from failure to meet each quota; and

(c) Any incentives or bonus programs associated with meeting or exceeding each quota.

(2) Whenever there is a change to the quota that results in a different quota than the most recent written description provided to the employee, the employer must: (a) Notify the employee verbally or in writing as soon as possible and before the employee is subject to the new quota; and (b) provide the employee with an updated written description of each quota to which the employee is subject within two business days of the quota change.

(3) Whenever an employer takes an adverse action against an employee in whole or in part for failure to meet a quota, the employer must provide that employee with the applicable quota for the employee and the personal work speed data for the employee that was the basis for the adverse action.

(4) The written description must be understandable, in plain language, and in the employee's preferred language. The department may adopt rules regarding the format, plain language, and language access requirements for the written description.

NEW SECTION. Sec. 3. (1) The time period considered in a quota, including time designated as productive time or time on task must include:

(a) Time for rest breaks and reasonable time to travel to designated locations for rest breaks;

(b) Reasonable travel time to on-site designated meal break locations. Meal breaks are not considered time on task or productive time unless the employee is required by the employer to remain on duty on the premises or at a prescribed worksite in the interest of the employer;

(c) Time to perform any activity required by the employer in order to do the work subject to any quota;

(d) Time to use the bathroom, including reasonable travel time; and

(e) Time to take any actions necessary for the employee to exercise the employee's right to a safe and healthful workplace pursuant to chapter 49.17 RCW, including but not limited to time to access tools or safety equipment necessary to perform the employee's duties.

(2) Reasonable travel time must include consideration of the architecture and geography of the facility and the location within the facility that the employee is located at the time.

NEW SECTION. Sec. 4. (1) Except as provided in section 5 of this act, a quota violates this chapter if the quota:

(a) Does not provide sufficient time as required under section

3(1) (a) through (c) of this act; or

(b) Prevents the performance of any activity required by the employer for the employee to do the work subject to any quota.

(2) An employee is not required to meet a quota that violates this section.

(3) An employer may not take adverse action against an employee for failing to meet a quota that violates this section or that was not disclosed to the employee as required under section 2 of this act.

NEW SECTION. Sec. 5. (1) A quota violates chapter 49.17 RCW if the quota:

(a) Does not provide sufficient time as required under section 3(1) (d) and (e) of this act;

(b) Prevents the performance of any activity related to occupational safety and health required by the employer for the employee to do the work subject to any quota; or

(c) Exposes an employee to occupational safety and health hazards in violation of the requirements of chapter 49.17 RCW and the applicable rules or regulations.

(2) An employee is not required to meet a quota that violates this section.

(3) An employer may not take adverse action against an employee for failing to meet a quota that violates this section.

(4) All provisions of section 8 of this act apply to any person who complains to the employer, the director, or any local, state, or federal governmental agency or official, related to a quota alleging any violations of this section.

(5)(a) This section must be implemented and enforced, including penalties, violations, citations, and other administrative procedures, pursuant to chapter 49.17 RCW.

(b) An employer who fails to allow adequate inspection of records in an inspection by the department within a reasonable time period may not use such records in any appeal to challenge the correctness of any citation and notice issued by the department.

NEW SECTION. Sec. 6. (1) An employer must establish, maintain, and preserve contemporaneous, true, and accurate records of the following:

(a) Each employee's own personal work speed data;

(b) The aggregated work speed data for similar employees at the same warehouse distribution center; and

(c) The written descriptions of each quota the employee was provided pursuant to section 2 of this act.

(2)(a) The required records must be maintained and preserved throughout the duration of each employee's period of employment and for the period required by this subsection.

(b) Except as required under (c) of this subsection, subsequent to an employee's separation from the employer, records relating to the six-month period prior to the date of the employee's separation from the employer must be preserved for at least three years from the date of the employee's separation.

(c) Where an employer has taken adverse action against an employee in whole or in part for failure to meet a quota, the employer must preserve the records relating to the basis for the adverse action for at least three years from the date of the adverse action.

(d) The employer must make records available to the director upon request.

(3) Nothing in this section requires an employer to collect or keep such records if the employer does not use quotas or monitor work speed data.

(4) An employer who fails to allow adequate inspection of records in an inspection by the department within a reasonable time period may not use such records in any appeal to challenge the correctness of any citation and notice issued by the

department.

NEW SECTION. Sec. 7. (1) An employee has the right to request, at any time, a written description of each quota to which the employee is subject, a copy of the employee's own personal work speed data for the prior six months, and a copy of the prior six months of aggregated work speed data for similar employees at the same warehouse distribution center.

(2) A former employee has the right to request, within three years subsequent to the date of their separation from the employer, a written description of the quota to which they were subject as of the date of their separation, a copy of the employee's own personal work speed data for the six months prior to their date of separation, and a copy of aggregated work speed data for similar employees at the same warehouse distribution center for the six months prior to their date of separation.

(3) An employer must provide records requested under this section at no cost to the employee or former employee.

(4) An employer must provide records requested under this section as soon as practicable and subject to the following:

(a) Requested records of written descriptions of a quota must be provided no later than two business days following the date of the receipt of the request; and

(b) Requested personal work speed data and aggregated work speed data must be provided no later than seven business days following the date of the receipt of the request.

(5) Nothing in this section requires an employer to use quotas or monitor work speed data. An employer that does not use quotas or monitor work speed data has no obligation to provide records under this section.

NEW SECTION. Sec. 8. (1) A person, including but not limited to an employer, his or her agent, or person acting as or on behalf of a hiring entity, or the officer or agent of any entity, business, corporation, partnership, or limited liability company, may not discharge or in any way retaliate, discriminate, or take adverse action against an employee or former employee for exercising any rights established in this chapter, or for being perceived as exercising rights established in this chapter including, but not limited to:

(a) Initiating a request for information about a quota or personal work speed data pursuant to section 7 of this act; and

(b) Making a complaint to the employer, the director, or any local, state, or federal governmental agency or official, related to a quota that is allegedly in violation of this chapter or chapter 49.17 RCW.

(2) An employee or former employee need not explicitly refer to this section or the rights established in this chapter to be protected from an adverse action. The protection provided in this section applies to former employees and to employees who mistakenly but in good faith allege violations of this chapter.

(3)(a) If a person takes adverse action against an employee or former employee within 90 days of the employee engaging or attempting to engage in activities protected by this chapter, there is a rebuttable presumption that the adverse action is a retaliatory action in violation of this section.

(b) The presumption may be rebutted by clear and convincing evidence that: (i) The action was taken for other permissible reasons; and (ii) the engaging or attempting to engage in activities protected by this chapter was not a motivating factor in the adverse action.

(4) Except as provided for in section 5 of this act, the department must carry out and enforce the provisions of this section and section 4(3) of this act pursuant to procedures established under chapter 49.46 RCW and any applicable rules. The department may adopt new rules to implement or enforce this subsection.

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NEW SECTION. Sec. 9. (1)(a) An employee may file a complaint with the department alleging a violation under this chapter or applicable rules, except for violations and enforcement of sections 5 and 8 of this act. The department must investigate the complaint.

(b) The department may not investigate any such alleged violation of rights that occurred more than three years before the date that the employee filed the complaint.

(c) If an employee files a timely complaint with the department, the department must investigate the complaint and issue either a citation and notice of assessment or a closure letter within 90 days after the date on which the department received the complaint, unless the complaint is otherwise resolved. The department may extend the period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the period and specifying the duration of the extension.

(d) The department must send the citation and notice of assessment or the closure letter to both the employer and the employee by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(2) If the department's investigation finds that the employee's allegation cannot be substantiated, the department must issue a closure letter to the employee and the employer detailing such finding.

(3) The director may initiate an investigation without an employee's complaint to ensure compliance with this chapter.

(4) For complaints filed under this section, an employer who is found to have violated a requirement of this chapter and the rules adopted under this chapter, is subject to a civil penalty of not less than \$1,000 for each violation. Civil penalties must be collected by the department and deposited into the supplemental pension fund established under RCW 51.44.033.

(5) Except as provided under subsection (1) of this section, an employer who is found to have violated a requirement of this chapter and the rules adopted under this chapter resulting in a rest or meal period violation, must pay the employee one additional hour of pay at the employee's regular rate of pay for each day there is a violation.

(6) Upon receiving a complaint, the department may request or subpoena the records of the warehouse distribution center.

(7) For enforcement actions under this section, if any person fails to pay an assessment under this chapter, or under any rule under this chapter, after it has become a final and unappealable order, or after the court has entered final judgment in favor of the agency, the director may initiate collection procedures in accordance with the collection procedures under RCW 49.48.086.

NEW SECTION. Sec. 10. (1) For enforcement actions under section 9 of this act, a person, firm, or corporation aggrieved by a citation and notice of assessment by the department or any rules adopted under this chapter may appeal the citation and notice of assessment to the director by filing a notice of appeal with the director within 30 days of the department's issuance of the citation and notice of assessment. A citation and notice of assessment not appealed within 30 days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director under this section stays the effectiveness of the citation and notice of assessment pending final review of the appeal by the director as provided in chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the director must assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures must be conducted in

accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment must be de novo. Any party who seeks to challenge an initial order must file a petition for administrative review with the director within 30 days after service of the initial order. The director must conduct an administrative review in accordance with chapter 34.05 RCW.

(4) The director must issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An employer who fails to allow adequate inspection of records in an investigation by the department under this chapter within a reasonable time period may not use such records in any appeal under this section to challenge the correctness of any determination by the department of the penalty assessed.

NEW SECTION. Sec. 11. An employee or former employee or designated employee representative may bring an action for injunctive relief to obtain compliance with this chapter, except for provisions of this chapter pertaining to violations of chapter 49.17 RCW. Upon prevailing in the action, the employee or former employee or designated employee representative may recover costs and reasonable attorneys' fees.

(1) In any action involving a quota that is deemed a violation under section 4 of this act, injunctive relief is limited to suspension of the quota and restitution and injunctive relief to address any retaliation or other adverse action taken by the employer in relation to the complaint or its enforcement.

(2) In any action alleging retaliation, in addition to the injunctive relief authorized above, the prevailing employee or former employee or the representative must be awarded damages equal to the greater of \$10,000 or three times the actual damages, including but not limited to unpaid wages and benefits.

NEW SECTION. Sec. 12. The attorney general, either upon the attorney general's own complaint or the complaint of any person acting for themselves or the general public, may bring a civil action for violations of this chapter, except for provisions of this chapter pertaining to violations of chapter 49.17 RCW, or to enforce this chapter, independently and without specific direction of the director.

NEW SECTION. Sec. 13. The department may adopt and implement rules to carry out and enforce the provisions of this chapter.

NEW SECTION. Sec. 14. 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. 15. Sections 1 through 14 of this act constitute a new chapter in Title 49 RCW.

NEW SECTION. Sec. 16. This act takes effect July 1, 2024."

On page 1, line 1 of the title, after "warehouses;" strike the remainder of the title and insert "adding a new chapter to Title 49 RCW; prescribing penalties; and providing an effective date."

WITHDRAWAL OF AMENDMENT

On motion of Senator Schoesler and without objection, amendment no. 0420 by Senator Schoesler on page 3, line 2 to the committee striking amendment was withdrawn.

MOTION

Senator Schoesler moved that the following amendment no. 0421 by Senator Schoesler be adopted:

On page 3, line 6, after "storage" insert "and 493120 for refrigerated warehousing and storage"

Senators Schoesler and Keiser spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0421 by Senator Schoesler on page 3, line 6 to the committee striking amendment.

The motion by Senator Schoesler carried and amendment no. 0421 was adopted by voice vote.

MOTION

Senator King moved that the following amendment no. 0422 by Senator King be adopted:

On page 7, line 26, after "by" strike "clear and convincing" and insert "a preponderance of the"

Senators King and Keiser spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0422 by Senator King on page 7, line 26 to the committee striking amendment.

The motion by Senator King carried and amendment no. 0422 was adopted by voice vote.

MOTION

Senator Keiser moved that the following amendment no. 0419 by Senators Keiser and Conway be adopted:

Beginning on page 9, line 37, strike all of sections 11 and 12
Renumber the remaining sections consecutively and correct any internal references accordingly.

Senators Keiser and King spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Stanford spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0419 by Senators Keiser and Conway on page 9, line 37 to the committee striking amendment.

The motion by Senator Keiser carried and amendment no. 0419 was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Labor & Commerce as amended to Second Substitute House Bill No. 1762.

The motion by Senator Pedersen carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

On motion of Senator Keiser, the rules were suspended, Second Substitute House Bill No. 1762 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser, Conway and King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 1762 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 1762 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 29; Nays, 20; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Cleveland, Conway, Dhingra, Frame, Holy, Hunt, Kauffman, Keiser, King, Lias, Lovick, Nguyen, Nobles, Pedersen, Randall, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Trudeau, Valdez, Van De Wege, Warnick, Wellman, Wilson, C. and Wilson, J.

Voting nay: Senators Boehnke, Braun, Dozier, Fortunato, Gildon, Hasegawa, Hawkins, Kuderer, Lovelett, MacEwen, McCune, Mullet, Muzzall, Padden, Rivers, Short, Stanford, Torres, Wagoner and Wilson, L.

SECOND SUBSTITUTE HOUSE BILL NO. 1762, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1678, by House Committee on Health Care & Wellness (originally sponsored by Riccelli, Lekanoff, Stonier, Morgan, Bateman, Macri, Ormsby, Slatter, Entenman, Ramos, Peterson, Tharinger, Chopp, Ryu, Pollet, Davis, Harris, Taylor, Simmons, Kloba and Gregerson)

Establishing and authorizing the profession of dental therapy.

The measure was read the second time.

MOTION

Senator King moved that the following amendment no. 0423 by Senators King and Rivers be adopted:

On page 3, beginning on line 7, after "(8)" strike all material through "patient" on line 9 and insert ""General supervision" means that a supervising dentist has examined and diagnosed the patient and provided subsequent instructions to be performed by the dental therapist, but does not require that the dentist be physically present in the treatment facility"

Beginning on page 4, line 27, strike all of section 6 and insert the following:

"NEW SECTION. Sec. 6. (1) Excluding the practice of dental therapy in tribal settings and subject to the limitations in this section, a licensed dental therapist may provide the following services and procedures under the general supervision of a licensed dentist as provided under section 7 of this act and to the extent the supervising dentist authorizes the service or procedure to be provided by the dental therapist:

- (a) Oral health instruction and disease prevention education, including nutritional counseling and dietary analysis;
- (b) Comprehensive charting of the oral cavity;
- (c) Making radiographs;
- (d) Mechanical polishing;
- (e) Prophylaxis;
- (f) Periodontal scaling and root planing;
- (g) Application of topical preventative or prophylactic agents,

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including fluoride and pit and fissure sealants;

- (h) Pulp vitality testing;
- (i) Application of desensitizing medication or resin;
- (j) Fabrication of athletic mouth guards;
- (k) Placement of temporary restorations;
- (l) Fabrication of soft occlusal guards;
- (m) Tissue conditioning and soft reline;
- (n) Atraumatic restorative therapy;
- (o) Dressing changes;
- (p) Administration of local anesthetic;
- (q) Administration of nitrous oxide;
- (r) The placement and removal of space maintainers;
- (s) Placement of temporary crowns;
- (t) Suture removal;
- (u) Brush biopsies; and
- (v) Minor adjustments and repairs on removable prostheses.

(2) Excluding the practice of dental therapy in tribal settings and subject to the limitations in this section, a licensed dental therapist may provide the following services and procedures under the close supervision of a licensed dentist as provided under section 7 of this act and to the extent the supervising dentist authorizes the service or procedure to be provided by the dental therapist:

- (a) Interim restorative therapy;
- (b) Emergency palliative treatment of dental pain limited to the procedures listed in this section;
- (c) Cavity preparation;
- (d) Restoration of primary and permanent teeth;
- (e) Preparation and placement of preformed crowns for patients 18 years of age or older;
- (f) Indirect and direct pulp capping on primary and permanent teeth;
- (g) Stabilization of reimplanted teeth;
- (h) Extractions of primary teeth;
- (i) Recementing of permanent crowns;
- (j) Oral evaluation and assessment of dental disease and the formulation of an individualized treatment plan. When possible, a dental therapist must collaborate with the supervising dentist to formulate a patient's individualized treatment plan;
- (k) Identification of oral and systemic conditions requiring evaluation and treatment by a dentist, physician, or other health care provider, and management of referrals;
- (l) Nonsurgical extractions of erupted permanent teeth under limited conditions; and
- (m) The dispensation and oral administration of drugs pursuant to subsection (3) of this section.

(3)(a) A dental therapist may dispense and orally administer the following drugs within the parameters of the practice plan contract established in section 7 of this act: Nonnarcotic analgesics, anti-inflammatories, preventive agents, and antibiotics.

(b) The authority to dispense and orally administer drugs extends only to the drugs identified in this subsection and may be further limited by the practice plan contract.

(c) The authority to dispense includes the authority to dispense sample drugs within the categories established in this subsection if the dispensing is permitted under the practice plan contract.

(d) A dental therapist may not dispense or administer narcotic drugs as defined in chapter 69.50 RCW.

(e) A dental therapist does not have the authority to prescribe drugs.

(4) A licensed dental therapist may supervise expanded function dental auxiliaries, dental assistants, and dental hygienists. However, a dental therapist may supervise no more than a total of three expanded function dental auxiliaries, dental

assistants, and dental hygienists at any one time in any one practice setting. A dental therapist may not supervise an expanded function dental auxiliary, dental assistant, or dental hygienist with respect to tasks that the dental therapist is not authorized to perform.

(5) A dental therapist may only provide services and procedures in which they have been educated.

(6) A dental therapist may not provide any service or procedure that is not both authorized by this section and been authorized by the supervising dentist via inclusion in the dental therapist's practice plan contract."

On page 6, line 35, after "under" strike "off-site" and insert "general"

Beginning on page 6, line 37, after "(a)" strike all of material through "(b)" on page 7, line 1

Reletter the remaining subsections consecutively and correct any internal references accordingly.

Senators King and Short spoke in favor of adoption of the amendment.

Senator Cleveland spoke against adoption of the amendment.

MOTION

Senator Short demanded a roll call.

The President declared that one-sixth of the members supported the demand, and the demand was sustained.

The President declared the question before the Senate to be the adoption of the amendment by Senators King and Rivers on page 3, line 7 to Engrossed Substitute House Bill No. 1678.

ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senators King and Rivers and the amendment was not adopted by the following vote: Yeas, 22; Nays, 27; Absent, 0; Excused, 0.

Voting yea: Senators Boehnke, Braun, Dozier, Fortunato, Gildon, Hawkins, Holy, King, Liias, MacEwen, McCune, Mullet, Muzzall, Padden, Pedersen, Schoesler, Short, Torres, Wagoner, Warnick, Wilson, J. and Wilson, L.

Voting nay: Senators Billig, Cleveland, Conway, Dhingra, Frame, Hasegawa, Hunt, Kauffman, Keiser, Kuderer, Lovelett, Lovick, Nguyen, Nobles, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Shewmake, Stanford, Trudeau, Valdez, Van De Wege, Wellman and Wilson, C.

MOTION

On motion of Senator Cleveland, the rules were suspended, Engrossed Substitute House Bill No. 1678 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Cleveland and Lovelett spoke in favor of passage of the bill.

Senators King and Rivers spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1678.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1678 and the bill passed the Senate by the following vote: Yeas, 30; Nays, 19; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Cleveland, Conway, Dhingra, Frame, Hasegawa, Hunt, Kauffman, Keiser, Kuderer, Liias, Lovelett, Lovick, Nguyen, Nobles, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Shewmake, Stanford, Trudeau, Valdez, Van De Wege, Wagoner, Wellman, Wilson, C. and Wilson, J.

Voting nay: Senators Boehnke, Braun, Dozier, Fortunato, Gildon, Hawkins, Holy, King, MacEwen, McCune, Mullet, Muzzall, Padden, Pedersen, Schoesler, Short, Torres, Warnick and Wilson, L.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1678, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1683, by House Committee on Health Care & Wellness (originally sponsored by Barnard, Macri, Harris, Walen, Caldier, Gregerson, Christian and Riccelli)

Concerning health carriers offering dental only coverage.

The measure was read the second time.

MOTION

Senator Cleveland moved that the following committee striking amendment by the Committee on Health & Long-Term Care be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 48.43 RCW to read as follows:

(1) Every health carrier offering dental only coverage and every health carrier offering dental only coverage in addition to a health plan delivered, issued for delivery, or renewed by a health carrier on and after January 1, 2024, shall permit denturists licensed under chapter 18.30 RCW to provide dental services or care included in their benefits package, to the extent that:

(a) The provision of such dental services or care is within the health care providers' permitted scope of practice; and

(b) The providers agree to abide by standards related to:

(i) Provision, utilization review, and cost containment of dental services;

(ii) Management and administrative procedures; and

(iii) Provision of cost-effective and clinically efficacious dental services.

(2) The requirements of subsection (1) of this section do not apply to a licensed health care profession regulated under Title 18 RCW when the licensing statute for the profession states that such requirements do not apply.

(3) For purposes of this section, "health carrier," in addition to the definition in RCW 48.43.005, also includes health care service contractors, limited health care service contractors, and disability insurers offering dental only coverage

(4) This act does not apply to a plan that offers dental only coverage when the plan relies solely on employees of the health carrier for provision of the benefits."

On page 1, at the beginning of line 2 of the title, strike the remainder of the title and insert "and adding a new section to

chapter 48.43 RCW."

Senator Cleveland spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Health & Long-Term Care to Substitute House Bill No. 1683.

The motion by Senator Cleveland carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Cleveland, the rules were suspended, Substitute House Bill No. 1683 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Cleveland spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1683.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1683 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Liias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Wamick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

SUBSTITUTE HOUSE BILL NO. 1683, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1230, by Representatives Callan, Harris, Thai, Reeves, Senn, Ortiz-Self, Ormsby, Kloba, Duerr, Doglio, Berry, Riccelli, Morgan, Davis, Ramel, Bergquist, Pollet, Tharinger, Peterson, Stonier and Santos

Requiring school districts and other public education entities to make information from the department of health available.

The measure was read the second time.

MOTION

On motion of Senator Wellman, the rules were suspended, House Bill No. 1230 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Wellman spoke in favor of passage of the bill.

Senator Hawkins spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1230.

ROLL CALL

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The Secretary called the roll on the final passage of House Bill No. 1230 and the bill passed the Senate by the following vote: Yeas, 29; Nays, 20; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Cleveland, Conway, Dhingra, Frame, Hasegawa, Hunt, Kauffman, Keiser, Kuderer, Liias, Lovelett, Lovick, Mullet, Nguyen, Nobles, Pedersen, Randall, Robinson, Rolfes, Saldaña, Salomon, Shewmake, Stanford, Trudeau, Valdez, Van De Wege, Wellman and Wilson, C.

Voting nay: Senators Boehnke, Braun, Dozier, Fortunato, Gildon, Hawkins, Holy, King, MacEwen, McCune, Muzzall, Padden, Rivers, Schoesler, Short, Torres, Wagoner, Warnick, Wilson, J. and Wilson, L.

HOUSE BILL NO. 1230, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1044, by House Committee on Capital Budget (originally sponsored by McEntire, Graham, Couture, Sandlin, Walsh, Rude, Caldier and Santos)

Providing capital financial assistance to small school districts with demonstrated funding challenges.

The measure was read the second time.

MOTION

Senator Wellman moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature intends to create a new grant program through which small, financially distressed school districts that generally do not participate in the current school construction assistance program will be able to get the necessary funds to modernize or rebuild their school buildings.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.525 RCW to read as follows:

(1) Supplementary modernization and new construction grants and planning grants for financially distressed school districts must be awarded and determined in accordance with this section.

(2) Applicant eligibility criteria. Subject to subsection (4) of this section, only school districts that meet the following criteria are eligible for grants under this section:

(a) School districts that have a student headcount enrollment of 1,000 or fewer students; or

(b) School districts that have a student headcount enrollment of 3,000 or fewer students that meet the following additional criteria:

(i) The school district is located in an educational service district with rural communities that experience prohibitive access to skill centers or other workforce development facilities or programs;

(ii) The school district has been unable to secure voter approval to issue bonds for capital purposes in the prior 25 years and has had at least three bond measures rejected by voters in consecutive years during that 25-year period; and

(iii) The school district has instructional buildings that do not meet structural, capacity, environmental, or emergency requirements.

(3) Project eligibility criteria.

(a) Projects funded under this section must meet the following conditions: (i) Projects must comprehensively modernize or

replace instructional buildings that are at least 30 years old and that are recorded as poor or unsatisfactory condition by the office of the superintendent of public instruction; and (ii) projects must not exceed 110 percent of the statewide average cost per square foot for new construction or modernization, as applicable, and as estimated by the advisory committee and approved by the office of the superintendent of public instruction.

(b) To meet the project eligibility criteria for comprehensive modernization specified under (a) of this subsection, projects must correct critical physical deficiencies and essential safety concerns, including: (i) Seismic vulnerabilities; (ii) failing or broken building and site systems; (iii) deficiencies of infrastructure and components; (iv) barriers to program accessibility; (v) deteriorated exterior conditions; and (vi) deficiencies in interior classroom spaces. Project approaches may include modernizing, repairing, reconfiguring, or replacing existing buildings, constructing new buildings, and upgrading deteriorated and outdated site infrastructure.

(c) School districts applying for a grant under this section must submit separate applications for each individual school.

(4) Other eligibility criteria. School districts with incomplete or outdated building inventories, natural hazard assessments, and condition information as required by the office of the superintendent of public instruction are not eligible to apply for construction grants under this section but may apply for planning grants. Building inventory and condition information must be provided by an independent consultant certified by the office of the superintendent of public instruction. A seismic building assessment must be conducted by an engineer licensed as a structural engineer in Washington state.

(5) Eligible use of grants. A grant awarded pursuant to this section may only be used for the following purposes: (a) The collection of the required information in subsection (4) of this section; (b) all predesign and design costs including value engineering and constructability review; and (c) all related costs associated with the project except school district administration costs as determined by the office of the superintendent of public instruction.

(6) Required grant list.

(a) The superintendent of public instruction must propose a list of prioritized planning and construction grants pursuant to this section for school districts meeting the eligibility requirements established in subsection (2) of this section to the governor by September 1st of even-numbered years, beginning on September 1, 2024. This list must include: (i) A description of the proposed project; (ii) the proposed planning grant amount, when applicable; (iii) the proposed construction grant amount, when applicable; (iv) the anticipated school construction assistance program amount; (v) the anticipated local share of project cost; and (vi) the estimated total project cost.

(b) The superintendent of public instruction and the governor may determine the level of funding in their omnibus capital appropriations act requests to support grants under this section, but their funding requests must follow the prioritized list prepared by the advisory committee unless new information determines that a specific project is no longer viable as proposed.

(7) Planning grant requirements and prioritization. Subject to the availability of amounts appropriated for this specific purpose, the office of the superintendent of public instruction must assist eligible school districts that are interested in applying for a construction grant under this section by providing technical assistance and planning grants. School districts seeking planning grants under this section must provide a brief statement describing existing school conditions, building system and site deficiencies, current and five-year projected student headcount

enrollment, student achievement measures, and financial constraints. If applications for planning grants exceed funds available, the office of the superintendent of public instruction may prioritize planning grant requests with primary consideration given to school district financial capacity and facility conditions.

(8) Construction grant requirements and prioritization.

(a) School districts applying for a construction grant under this section must have received and completed a planning grant under subsection (7) of this section or have completed construction documents including drawings, specifications, total project cost estimates, contract and procurement requirements, and other materials required by the advisory committee, as part of the construction grant application process.

(b) Subject to the availability of amounts appropriated for this specific purpose, the advisory committee must prioritize applications from school districts with the lowest remaining debt capacity, most significant building deficiencies, and lowest head count enrollment. The advisory committee may weigh these factors as appropriate given the pool of applicants and the extent each factor deviates from the statewide average.

(9) Eligibility and prioritization recommendations. The advisory committee may propose changes to the eligibility threshold and grant application prioritization criteria to the legislature as they learn more about the characteristics of school districts that are unable to replace or modernize their aging school facilities.

(10) Share of project costs. School districts receiving a grant under this section must provide a district share in accordance with the following requirements:

(a) Except as provided for under (b) and (c) of this subsection, to receive a grant under this section a school district must provide, for each grant awarded, a district share of project cost equal to at least 50 percent of the district's remaining debt capacity pursuant to RCW 39.36.020.

(b) To the extent that the district share requirement under (a) of this subsection would, at the time of application, require the estimated school district property tax rate increment associated with the grant to exceed a threshold of \$1.75 per \$1,000 of assessed property value, the office of the superintendent of public instruction must reduce the required district share to achieve an estimated property tax rate equal to this threshold.

(c) A school district may use federal funding, other nonstate grant funding, and private donations to pay for its share under this subsection. When calculating a district's share requirement under (a) of this subsection, the superintendent of public instruction must reduce the district's required share in a manner directly proportionate to the amount of nonstate and nonschool district funding provided to support the state grant.

(d) To determine the property tax rate threshold under (b) of this subsection, the office of the superintendent of public instruction must calculate the property tax rate increment associated with the grant based on the estimated annualized debt service costs for general obligation bonds issued with an average maturity of no less than 20 years and the interest rate for state of Washington general obligation bonds issued most closely to the date of application for the grant.

(11) Coordination with the school construction assistance program and local cost share. To the extent that a school district awarded a grant under this section is also eligible for funding under the school construction assistance program provided by RCW 28A.525.162 through 28A.525.180, the office of the superintendent of public instruction must coordinate grant funding between the programs and ensure that total state funding from a grant under this section and a school construction assistance program grant does not exceed total project costs

minus the school district's share calculated under subsection (10) of this section. School districts that receive grants under this section may use the grant to fund the required local funding equal to or greater than the difference between the total approved project cost and the amount of state funding assistance computed provided by RCW 28A.525.162 through 28A.525.180. However, school districts coordinating grants provided in this section with school construction assistance program funding are required to contribute not less than the school district's required share as calculated under subsection (10) of this section.

(12) Disbursement of grant funds and reporting requirements. The office of the superintendent of public instruction must award grants under this section to school districts. The grants must not be awarded until the recipient has identified available local and other resources sufficient to complete the approved project considering the amount of state grant funding. The grant must specify reporting requirements for the district and must include:

(a) Updating all school inventory and condition data considered necessary by the office of the superintendent of public instruction;

(b) Submitting a final project report as specified by the office of the superintendent of public instruction in consultation with the advisory committee and approved by the school facilities citizen advisory panel created under RCW 28A.525.025; and

(c) Implementing and maintaining an asset preservation program for the facility receiving grant funding as required by the office of the superintendent of public instruction's asset preservation program.

(13) For the purposes of this section, "advisory committee" means the advisory committee created under RCW 28A.525.159.

Sec. 3. RCW 28A.525.159 and 2020 c 299 s 1 are each amended to read as follows:

(1) School construction assistance program grants for small school districts and state-tribal education compact schools must be determined in accordance with this section.

(2) Eligibility. School districts and state-tribal education compact schools with enrollments that are less than or equal to one thousand students are eligible for small school district modernization grants. The advisory committee specified in subsection (4)(a) of this section may recommend amendments to the eligibility threshold as they learn more about the characteristics of school districts and state-tribal education compact schools that are unable to modernize their aging school facilities. Districts with incomplete information in the inventory and condition of schools data system are not eligible to apply for construction grants but may apply for planning grants.

(3) The office of the superintendent of public instruction must assist eligible school districts and state-tribal education compact schools that are interested in applying for a small school district modernization grant under this section by providing technical assistance and planning grants within appropriations for this purpose. Districts and state-tribal education compact schools seeking planning grants must provide a brief statement of the school condition, its deficiencies, student enrollment, student achievement measures, and financial limitations of the district or state-tribal education compact school. If applications for planning grants exceed funds available, the office of the superintendent of public instruction may prioritize the recipients of planning grants in order to help districts and state-tribal education compact schools with the most serious apparent building deficiencies, and the most limited financial capacity.

(4) Prioritized construction grants and advisory committee.

(a) The superintendent of public instruction must propose a list of prioritized grants to the governor by September 1st of even-numbered years. The superintendent of public instruction must appoint an advisory committee to separately prioritize

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applications from small school districts and state-tribal education compact schools and from financially distressed school districts for grants under section 2 of this act. Committee members must have experience in financing, managing, repairing, and improving school facilities in small school districts or state-tribal education compact schools but must not be involved in ((a small school district modernization program)) grant request under this section or section 2 of this act for the biennium under consideration. The office of the superintendent of public instruction must provide administrative and staff support to the (([advisory])) advisory committee and coordinate activities to minimize costs to the extent practicable. The office of the superintendent of public instruction in consultation with the advisory committee must design a grant application process with specific criteria for prioritizing grant requests.

(b) The advisory committee created in (a) of this subsection must evaluate final applications from eligible school districts and state-tribal education compact schools. The advisory committee must submit a prioritized list of grants to the superintendent of public instruction. The list must prioritize applications to achieve the greatest improvement of school facilities, in the districts and state-tribal education compact schools with the most limited financial capacity, for projects that are likely to improve student health, safety, and academic performance for the largest number of students for the amount of state grant support. The advisory committee must develop specific criteria to achieve the prioritization. The submitted prioritized list must describe the project, the proposed state funding level, and the estimated total project cost including other funding and in-kind resources. The list must also indicate student achievement measures that will be used to evaluate the benefits of the project. The superintendent of public instruction and the governor may determine the level of funding in their omnibus capital appropriations act requests to support small school district modernization grants, but their funding requests must follow the prioritized list prepared by the advisory committee unless new information determines that a specific project is no longer viable as proposed.

(5) Coordination with the school construction assistance program.

(a) The full administrative and procedural process of school construction assistance program funding under RCW 28A.525.162 through 28A.525.180 may be streamlined by the office of the superintendent of public instruction in order to coordinate eligible school construction assistance program funding with the small school district modernization grants. Such coordination must ensure that total state funding from both grants does not exceed total project costs minus available local resources.

(b) Projects seeking small school district modernization grants must meet the requirements for a school construction assistance program grant except for the following: (i) The estimated cost of the project may be less than forty percent of the estimated replacement value of the facility, and (ii) local funding assistance percentage requirements of the school construction assistance program do not apply. However, available district and state-tribal education compact school resources are considered in prioritizing small school district modernization grants.

(6) Disbursement of grant funds and reporting requirements. The office of the superintendent of public instruction must award grants to school districts and state-tribal education compact schools. The grant must not be awarded until the district or state-tribal education compact school has identified available local and other resources sufficient to complete the approved project considering the amount of the state grant. The grant must specify reporting requirements from the district or state-tribal education

compact school, which must include updating all pertinent information in the inventory and condition of schools data system and submitting a final project report as specified by the office of the superintendent of public instruction in consultation with the school facilities ((citizens [citizen])) citizen advisory panel specified in RCW 28A.525.025.

Sec. 4. RCW 28A.515.320 and 1996 c 186 s 503 are each amended to read as follows:

(1) The common school construction fund is to be used exclusively for the purpose of financing the construction of facilities for the common schools. The sources of said fund shall be: (((1))) (a) Those proceeds derived from sale or appropriation of timber and other crops from school and state land other than those granted for specific purposes; (((2))) (b) the interest accruing on the permanent common school fund less the allocations to the state treasurer's service ((account [fund])) fund pursuant to RCW 43.08.190 and the state investment board expense account pursuant to RCW 43.33A.160 together with all rentals and other revenue derived therefrom and from land and other property devoted to the permanent common school fund; (((3))) (c) all moneys received by the state from the United States under the provisions of section 191, Title 30, ((United States Code)) U.S.C., Annotated, and under section 810, chapter 12, Title 16, (Conservation), ((United States Code)) U.S.C., Annotated, except moneys received before June 30, 2001, and when ((thirty)) 30 megawatts of geothermal power is certified as commercially available by the receiving utilities and the department of ((community, trade, and economic development)) commerce, ((eighty)) 80 percent of such moneys, under the Geothermal Steam Act of 1970 pursuant to former RCW 43.140.030; and (((4))) (d) such other sources as the legislature may direct. That portion of the common school construction fund derived from interest on the permanent common school fund may be used to retire such bonds as may be authorized by law for the purpose of financing the construction of facilities for the common schools.

(2) The interest accruing on the permanent common school fund less the allocations to the state treasurer's service fund pursuant to RCW 43.08.190 and the state investment board expense account pursuant to RCW 43.33A.160 together with all rentals and other revenues accruing thereto pursuant to subsection (((2))) (1)(b) of this section prior to July 1, 1967, shall be exclusively applied to the current use of the common schools.

(3) To the extent that the moneys in the common school construction fund are in excess of the amount necessary to allow fulfillment of the purpose of said fund, the excess shall be available for deposit to the credit of the permanent common school fund or available for the current use of the common schools, as the legislature may direct. Any money from the common school construction fund which is made available for the current use of the common schools shall be restored to the fund by appropriation, including interest income ((foregone [forgone])) forgone, before the end of the next fiscal biennium following such use.

(4) Appropriations for the small school districts project prioritized list submitted under RCW 28A.525.159 are the first priority of appropriations from the common school construction fund, after payment of principal and interest on the bonds authorized in RCW 28A.527.040 from that portion of the common school construction fund derived from interest on the permanent common school fund. Appropriations from the common school construction fund must be prioritized as follows, as fund balance allows:

(a) Beginning with appropriations enacted for the 2025-2027 fiscal biennium, no less than \$60,000,000 of new appropriations

in the biennial capital budget must be used to fund the small school districts project prioritized list, and any remaining amounts in the common school construction fund may be appropriated for other common school construction purposes.

(b) Beginning with appropriations enacted for the 2027-2029 fiscal biennium, no less than \$70,000,000 of new appropriations in the biennial capital budget must be used to fund the small school districts project prioritized list, and any remaining amounts in the common school construction fund may be appropriated for other common school construction purposes.

(c) Beginning with appropriations enacted for the 2029-2031 fiscal biennium and each biennium thereafter, no less than \$80,000,000 of new appropriations in the biennial capital budget must be used to fund the small school districts project prioritized list, and any remaining amounts in the common school construction fund may be appropriated for other common school construction purposes."

On page 1, line 2 of the title, after "challenges;" strike the remainder of the title and insert "amending RCW 28A.525.159 and 28A.515.320; adding a new section to chapter 28A.525 RCW; and creating a new section."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Substitute House Bill No. 1044.

The motion by Senator Wellman carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Wellman, the rules were suspended, Substitute House Bill No. 1044 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Wellman, Hawkins, Mullet and Wilson, J. spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1044 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1044 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 46; Nays, 3; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Kauffman, Keiser, King, Kuderer, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

Voting nay: Senators Hunt, Liias and Randall

SUBSTITUTE HOUSE BILL NO. 1044, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1777, by Representatives Doglio,

Fitzgibbon, Duerr, Lekanoff, Stearns, McEntire, Ramel and Pollet

Authorizing the use of performance-based contracting for energy services and equipment.

The measure was read the second time.

MOTION

Senator Nguyen moved that the following committee striking amendment by the Committee on Ways & Means be not adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 39.35C RCW to read as follows:

(1) The objective of this act is to promote private-public partnerships to reduce the amount of deferred maintenance required by the clean building performance standard and decarbonize buildings and central energy systems in public facilities in a cost-effective manner.

(2) By June 30, 2031, the department must submit a report to the governor and the appropriate committees of the legislature on the adoption rate and cost-effectiveness of the performance-based contract authorized under this act. The report must include:

(a) The number of performance-based contracts issued;

(b) The cost-effectiveness of performance-based contracts issued, compared to alternative available financing mechanisms, including certificates of participation;

(c) Recommendations to improve the use of performance-based contracts; and

(d) Any other significant information associated with the implementation of this act.

(3) It is the intent of the legislature to consider the findings of the report and extend the expiration date of this act if performance-based contracts are achieving the legislative objective.

(4) This section expires June 30, 2033.

Sec. 2. RCW 39.35A.020 and 2022 c 128 s 2 are each amended to read as follows:

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

(1)(a) "Conservation" includes reduced:

(i) Energy consumption;

(ii) Energy demand;

(iii) Energy cost; or

(iv) Greenhouse gas emissions.

(b)(i) "Conservation" includes reductions in the use or cost of water, wastewater, or solid waste.

(ii) "Conservation" does not include thermal or electric energy production from cogeneration.

(2) "Energy equipment and services" means:

(a) Energy management systems and any equipment, materials, supplies, or conservation projects that are expected, upon installation, to reduce the energy use, reduce the energy demand, reduce the energy cost, or reduce the greenhouse gas emissions, of a facility; and

(b) The services associated with the equipment, materials, supplies, or conservation projects including, but not limited to, design, engineering, financing, installation, project management, guarantees, operations, and maintenance. Reduction in energy use or energy cost may also include reductions in the use or cost of water, wastewater, or solid waste.

(3) "Energy management system" has the definition provided in RCW 39.35.030.

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(4) "Facility" includes a building, structure, group of buildings or structures at a single site, site improvement, or other facility owned by a municipality.

(5) "Municipality" has the definition provided in RCW 39.04.010.

(6) "Performance-based contract" means one or more contracts for water conservation services, solid waste reduction services, or energy equipment and services between a municipality and any other persons or entities, if the payment obligation for each year under the contract, including the year of installation, is either: (a) Set as a percentage of the annual energy cost savings, water cost savings, solid waste cost savings, or benefits achieved through conservation projects attributable under the contract; or (b) guaranteed by the other persons or entities to be less than the annual energy cost savings, water cost savings, solid waste cost savings, or other benefits attributable under the contract. Such guarantee shall be, at the option of the municipality, a bond or insurance policy, or some other guarantee determined sufficient by the municipality to provide a level of assurance similar to the level provided by a bond or insurance policy. Payment obligations may include regular service payments made by a municipality to any persons or entities that own energy equipment and services under a performance-based contract.

Sec. 3. RCW 39.35C.010 and 2022 c 128 s 1 are each amended to read as follows:

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

(1) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. If these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

(2)(a) "Conservation" includes reduced:

- (i) Energy consumption;
- (ii) Energy demand;
- (iii) Energy cost; or
- (iv) Greenhouse gas emissions.

(b) "Conservation" does not include thermal or electric energy production from cogeneration.

(c) "Conservation" also includes reductions in the use or cost of water, wastewater, or solid waste.

(3)(a) "Cost-effective" means that the present value to a state agency or school district of the benefits reasonably expected to be achieved or produced by a facility, conservation activity, measure, or piece of equipment over its useful life, including any compensation received from a utility or the Bonneville power administration, is greater than the net present value of the costs of implementing, maintaining, and operating such facility, activity, measure, or piece of equipment over its useful life, when discounted at the cost of public borrowing.

(b) The expected value of energy equipment and services at the time of contract execution that are provided through a performance-based contract may exceed the fair market value.

(4) "Department" means the state department of enterprise services.

(5) "Energy" means energy as defined in RCW 43.21F.025(5).

(6) "Energy audit" has the definition provided in RCW 43.19.670, and may include a determination of the water or solid waste consumption characteristics of a facility.

(7) "Energy efficiency project" means a conservation or cogeneration project.

(8) "Energy efficiency services" means assistance furnished by the department to state agencies and school districts in identifying, evaluating, and implementing energy efficiency

projects.

(9) "Local utility" means the utility or utilities in whose service territory a public facility is located.

(10) "Performance-based contracting" means contracts for which payment ~~((is))~~ or payment obligations are conditional on achieving contractually specified energy savings, which may include regular service payments made by a state agency or school district to any persons or entities that own energy equipment and services under a performance-based contract.

(11) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

(12) "Public facility" means a building, structure, group of buildings or structures at a single site, site improvement, or other facility owned by a state agency or school district.

(13) "State agency" means every state office or department, whether elective or appointive, state institutions of higher education, and all boards, commissions, or divisions of state government, however designated.

(14) "State facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency.

(15) "Utility" means privately or publicly owned electric and gas utilities, electric cooperatives and mutuals, whether located within or without Washington state.

Sec. 4. RCW 39.35C.050 and 2015 c 79 s 10 are each amended to read as follows:

In addition to any other authorities conferred by law:

(1) The department, with the consent of the state agency or school district responsible for a facility, a state or regional university acting independently, and any other state agency or school district acting through the department or ~~((as otherwise authorized by law))~~ acting independently, may:

(a) Develop and finance conservation at public facilities in accordance with express provisions of this chapter;

(b) Contract for energy services, including through a performance-based ~~((contracts))~~ contract;

(c) Contract to sell energy savings from a conservation project at public facilities to local utilities or the Bonneville power administration; and

(d) Contract with a person or entity for energy equipment or services provided to a state agency or school district when the following conditions are met:

(i) The contract must include terms that transfer ownership of energy equipment from the state agency or school district to the person or entity;

(ii) The person or entity is responsible for cost-savings and performance guarantees through the terms of the contract;

(iii) The value of energy equipment or services at the time of contract execution may exceed the fair market value;

(iv) At the end of the financing term of the contract, equipment ownership may be transferred back to the state agency or school district. The financing term may not exceed the manufacturer's published life expectancy of the equipment;

(v) The contract does not directly result in loss of any position of employment by state employees in the classified service under RCW 41.06.020, employees included in the Washington management service under RCW 41.06.022, or school district employees under RCW 28A.150.203;

(vi) Training must be offered in the preventative maintenance and other related activities of energy equipment and services to existing classified employees at the state agency or school district; and

(vii) Prior to entering into a contract, the state agency or school district must coordinate with the department to analyze the cost-effectiveness of the proposed performance-based contract

compared to alternative available financing and service mechanisms, including certificates of participation. The agency or district may only enter into a contract if the cost-effectiveness is greater than other available alternatives.

(2) A state or regional university acting independently, and any other state agency acting through the department or as otherwise authorized by law, may undertake procurements for third-party development of conservation at its facilities.

(3) A school district may also:

(a) Develop and finance conservation at school district facilities; and

~~(b) ((Contract for energy services, including performance-based contracts at school district facilities; and~~

~~(e)) Contract to sell energy savings from energy conservation projects at school district facilities to local utilities or the Bonneville power administration directly or ((to local utilities or the Bonneville power administration)) through third parties.~~

(4) In exercising the authority granted by subsections (1), (2), and (3) of this section, a school district or state agency must comply with the provisions of RCW 39.35C.040.

Sec. 5. RCW 39.35C.060 and 1996 c 186 s 410 are each amended to read as follows:

State agencies and school districts may use financing contracts under chapter 39.94 RCW, as well as performance-based contracts, to provide all or part of the funding for conservation projects. The department shall determine the eligibility of such projects for financing contracts. The repayments of the financing contracts or performance-based contracts shall be sufficient to pay, when due, the principal and interest on the contracts or the services payments over the agreed upon term. Performance-based contracts entered into by state agencies and school districts under this act are subject to the requirements of chapter 39.94 RCW. Pursuant to chapter 39.94 RCW, no later than December 31, 2023, the department shall complete development of approved model contracts authorized by this act.

NEW SECTION. Sec. 6. Sections 2 through 5 of this act expire June 30, 2033. Contracts entered into under the authority granted by this act may remain in effect following expiration of this act."

On page 1, line 2 of the title, after "equipment;" strike the remainder of the title and insert "amending RCW 39.35A.020, 39.35C.010, 39.35C.050, and 39.35C.060; adding a new section to chapter 39.35C RCW; and providing expiration dates."

The President declared the question before the Senate to be the motion to not adopt the committee striking amendment by the Committee on Ways & Means to House Bill No. 1777.

The motion by Senator Nguyen carried and the committee striking amendment was not adopted by voice vote.

MOTION

Senator Nguyen moved that the following committee striking amendment by the Committee on Environment, Energy & Technology be not adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 39.35C RCW to read as follows:

(1) The objective of this act is to promote private-public partnerships to reduce the amount of deferred maintenance required by the clean building performance standard and decarbonize buildings and central energy systems in public facilities in a cost-effective manner.

(2) By June 30, 2031, the department must submit a report to the governor and the appropriate committees of the legislature on the adoption rate and cost-effectiveness of the performance-based contract authorized under this act. The report must include:

(a) The number of performance-based contracts issued;

(b) The cost-effectiveness of performance-based contracts issued, compared to alternative available financing mechanisms, including certificates of participation;

(c) Recommendations to improve the use of performance-based contracts; and

(d) Any other significant information associated with the implementation of this act.

(3) It is the intent of the legislature to consider the findings of the report and extend the expiration date of this act if performance-based contracts are achieving the legislative objective.

(4) This section expires June 30, 2033.

Sec. 2. RCW 39.35A.020 and 2022 c 128 s 2 are each amended to read as follows:

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

(1)(a) "Conservation" includes reduced:

(i) Energy consumption;

(ii) Energy demand;

(iii) Energy cost; or

(iv) Greenhouse gas emissions.

(b)(i) "Conservation" includes reductions in the use or cost of water, wastewater, or solid waste.

(ii) "Conservation" does not include thermal or electric energy production from cogeneration.

(2) "Energy equipment and services" means:

(a) Energy management systems and any equipment, materials, supplies, or conservation projects that are expected, upon installation, to reduce the energy use, reduce the energy demand, reduce the energy cost, or reduce the greenhouse gas emissions, of a facility; and

(b) The services associated with the equipment, materials, supplies, or conservation projects including, but not limited to, design, engineering, financing, installation, project management, guarantees, operations, and maintenance. Reduction in energy use or energy cost may also include reductions in the use or cost of water, wastewater, or solid waste.

(3) "Energy management system" has the definition provided in RCW 39.35.030.

(4) "Facility" includes a building, structure, group of buildings or structures at a single site, site improvement, or other facility owned by a municipality.

(5) "Municipality" has the definition provided in RCW 39.04.010.

(6) "Performance-based contract" means one or more contracts for water conservation services, solid waste reduction services, or energy equipment and services between a municipality and any other persons or entities, if the payment obligation for each year under the contract, including the year of installation, is either: (a) Set as a percentage of the annual energy cost savings, water cost savings, solid waste cost savings, or benefits achieved through conservation projects attributable under the contract; or (b) guaranteed by the other persons or entities to be less than the annual energy cost savings, water cost savings, solid waste cost savings, or other benefits attributable under the contract. Such guarantee shall be, at the option of the municipality, a bond or insurance policy, or some other guarantee determined sufficient by the municipality to provide a level of assurance similar to the level provided by a bond or insurance policy. Payment obligations may include regular service payments made by a municipality to

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any persons or entities that own energy equipment and services under a performance-based contract.

Sec. 3. RCW 39.35C.010 and 2022 c 128 s 1 are each amended to read as follows:

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

(1) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. If these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

(2)(a) "Conservation" includes reduced:

- (i) Energy consumption;
- (ii) Energy demand;
- (iii) Energy cost; or
- (iv) Greenhouse gas emissions.

(b) "Conservation" does not include thermal or electric energy production from cogeneration.

(c) "Conservation" also includes reductions in the use or cost of water, wastewater, or solid waste.

(3)(a) "Cost-effective" means that the present value to a state agency or school district of the benefits reasonably expected to be achieved or produced by a facility, conservation activity, measure, or piece of equipment over its useful life, including any compensation received from a utility or the Bonneville power administration, is greater than the net present value of the costs of implementing, maintaining, and operating such facility, activity, measure, or piece of equipment over its useful life, when discounted at the cost of public borrowing.

(b) The expected value of energy equipment and services at the time of contract execution that are provided through a performance-based contract may exceed the fair market value.

(4) "Department" means the state department of enterprise services.

(5) "Energy" means energy as defined in RCW 43.21F.025(5).

(6) "Energy audit" has the definition provided in RCW 43.19.670, and may include a determination of the water or solid waste consumption characteristics of a facility.

(7) "Energy efficiency project" means a conservation or cogeneration project.

(8) "Energy efficiency services" means assistance furnished by the department to state agencies and school districts in identifying, evaluating, and implementing energy efficiency projects.

(9) "Local utility" means the utility or utilities in whose service territory a public facility is located.

(10) "Performance-based contracting" means contracts for which payment ~~((is))~~ or payment obligations are conditional on achieving contractually specified energy savings, which may include regular service payments made by a state agency or school district to any persons or entities that own energy equipment and services under a performance-based contract.

(11) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

(12) "Public facility" means a building, structure, group of buildings or structures at a single site, site improvement, or other facility owned by a state agency or school district.

(13) "State agency" means every state office or department, whether elective or appointive, state institutions of higher education, and all boards, commissions, or divisions of state government, however designated.

(14) "State facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency.

(15) "Utility" means privately or publicly owned electric and gas utilities, electric cooperatives and mutuals, whether located within or without Washington state.

Sec. 4. RCW 39.35C.050 and 2015 c 79 s 10 are each amended to read as follows:

In addition to any other authorities conferred by law:

(1) The department, with the consent of the state agency or school district responsible for a facility, a state or regional university acting independently, and any other state agency or school district acting through the department or ~~((as otherwise authorized by law))~~ acting independently, may:

(a) Develop and finance conservation at public facilities in accordance with express provisions of this chapter;

(b) Contract for energy services, including through a performance-based ~~((contracts))~~ contract;

(c) Contract to sell energy savings from a conservation project at public facilities to local utilities or the Bonneville power administration; and

(d) Contract with a person or entity for energy equipment or services provided to a state agency or school district when the following conditions are met:

(i) The contract must include terms that transfer ownership of energy equipment from the state agency or school district to the person or entity;

(ii) The person or entity is responsible for cost-savings and performance guarantees through the terms of the contract;

(iii) The value of energy equipment or services at the time of contract execution may exceed the fair market value of property leased by the state agency or school district, and this must be considered to be cost-effective;

(iv) At the end of the financing term of the contract, equipment ownership must be transferred back to the state agency or school district at no residual value;

(v) The contract does not directly result in loss of any position of employment by state employees in the classified service under RCW 41.06.020, employees included in the Washington management service under RCW 41.06.022, or school district employees under RCW 28A.150.203; and

(vi) Training must be offered in the preventative maintenance and repair of energy equipment and services to existing classified employees at the state agency or school district.

(2) A state or regional university acting independently, and any other state agency acting through the department or as otherwise authorized by law, may undertake procurements for third-party development of conservation at its facilities.

(3) A school district may also:

(a) Develop and finance conservation at school district facilities; and

~~((b) ((Contract for energy services, including performance-based contracts at school district facilities; and~~

~~((e)))~~ Contract to sell energy savings from energy conservation projects at school district facilities to local utilities or the Bonneville power administration ((directly or to local utilities or the Bonneville power administration)) through third parties.

(4) In exercising the authority granted by subsections (1), (2), and (3) of this section, a school district or state agency must comply with the provisions of RCW 39.35C.040.

Sec. 5. RCW 39.35C.060 and 1996 c 186 s 410 are each amended to read as follows:

State agencies and school districts may use financing contracts under chapter 39.94 RCW, as well as performance-based contracts, to provide all or part of the funding for conservation projects. The department shall determine the eligibility of such projects for financing contracts. The repayments of the financing contracts or performance-based contracts shall be sufficient to

pay, when due, the principal and interest on the contracts or the services payments over the agreed upon term. Performance-based contracts entered into by state agencies and school districts under this act are subject to the requirements of chapter 39.94 RCW. Pursuant to chapter 39.94 RCW, no later than December 31, 2023, the department shall complete development of approved model contracts authorized by this act.

NEW SECTION. Sec. 6. Sections 2 through 5 of this act expire June 30, 2033. Contracts entered into under the authority granted by this act may remain in effect following expiration of this act."

On page 1, line 2 of the title, after "equipment;" strike the remainder of the title and insert "amending RCW 39.35A.020, 39.35C.010, 39.35C.050, and 39.35C.060; adding a new section to chapter 39.35C RCW; and providing expiration dates."

Senator Nguyen spoke in favor of the motion to not adopt the committee striking amendment.

The President declared the question before the Senate to be to not adopt the committee striking amendment by the Committee on Environment, Energy & Technology to House Bill No. 1777.

The motion by Senator Nguyen carried and the committee striking amendment was not adopted by voice vote.

MOTION

Senator Nguyen moved that the following striking amendment no. 0409 by Senator Nguyen be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 39.35C RCW to read as follows:

(1) The objective of this act is to promote private-public partnerships to reduce the amount of deferred maintenance required by the clean building performance standard and decarbonize buildings and central energy systems in public facilities in a cost-effective manner.

(2) By June 30, 2031, the department must submit a report to the governor and the appropriate committees of the legislature on the adoption rate and cost-effectiveness of the performance-based contract authorized under this act. The report must include:

- (a) The number of performance-based contracts issued;
- (b) The cost-effectiveness of performance-based contracts issued, compared to alternative available financing mechanisms, including certificates of participation;
- (c) Recommendations to improve the use of performance-based contracts; and
- (d) Any other significant information associated with the implementation of this act.

(3) It is the intent of the legislature to consider the findings of the report and extend the expiration date of this act if performance-based contracts are achieving the legislative objective.

(4) This section expires June 30, 2033.

Sec. 2. RCW 39.35A.020 and 2022 c 128 s 2 are each amended to read as follows:

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

- (1)(a) "Conservation" includes reduced:
 - (i) Energy consumption;
 - (ii) Energy demand;
 - (iii) Energy cost; or
 - (iv) Greenhouse gas emissions.
- (b)(i) "Conservation" includes reductions in the use or cost of

water, wastewater, or solid waste.

(ii) "Conservation" does not include thermal or electric energy production from cogeneration.

(2) "Energy equipment and services" means:

(a) Energy management systems and any equipment, materials, supplies, or conservation projects that are expected, upon installation, to reduce the energy use, reduce the energy demand, reduce the energy cost, or reduce the greenhouse gas emissions, of a facility; and

(b) The services associated with the equipment, materials, supplies, or conservation projects including, but not limited to, design, engineering, financing, installation, project management, guarantees, operations, and maintenance. Reduction in energy use or energy cost may also include reductions in the use or cost of water, wastewater, or solid waste.

(3) "Energy management system" has the definition provided in RCW 39.35.030.

(4) "Facility" includes a building, structure, group of buildings or structures at a single site, site improvement, or other facility owned by a municipality.

(5) "Municipality" has the definition provided in RCW 39.04.010.

(6) "Performance-based contract" means one or more contracts for water conservation services, solid waste reduction services, or energy equipment and services between a municipality and any other persons or entities, if the payment obligation for each year under the contract, including the year of installation, is either: (a) Set as a percentage of the annual energy cost savings, water cost savings, solid waste cost savings, or benefits achieved through conservation projects attributable under the contract; or (b) guaranteed by the other persons or entities to be less than the annual energy cost savings, water cost savings, solid waste cost savings, or other benefits attributable under the contract. Such guarantee shall be, at the option of the municipality, a bond or insurance policy, or some other guarantee determined sufficient by the municipality to provide a level of assurance similar to the level provided by a bond or insurance policy. Payment obligations may include regular service payments made by a municipality to any persons or entities that own energy equipment and services under a performance-based contract.

Sec. 3. RCW 39.35C.010 and 2022 c 128 s 1 are each amended to read as follows:

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

(1) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. If these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

(2)(a) "Conservation" includes reduced:

- (i) Energy consumption;
- (ii) Energy demand;
- (iii) Energy cost; or
- (iv) Greenhouse gas emissions.

(b) "Conservation" does not include thermal or electric energy production from cogeneration.

(c) "Conservation" also includes reductions in the use or cost of water, wastewater, or solid waste.

(3)(a) "Cost-effective" means that the present value to a state agency or school district of the benefits reasonably expected to be achieved or produced by a facility, conservation activity, measure, or piece of equipment over its useful life, including any compensation received from a utility or the Bonneville power administration, is greater than the net present value of the costs of

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implementing, maintaining, and operating such facility, activity, measure, or piece of equipment over its useful life, when discounted at the cost of public borrowing.

(b) The expected value of energy equipment and services at the time of contract execution that are provided through a performance-based contract may exceed the fair market value.

(4) "Department" means the state department of enterprise services.

(5) "Energy" means energy as defined in RCW 43.21F.025(5).

(6) "Energy as a service" means a performance-based contract in which a state agency, public school district, public university, or municipality makes service payments to a third party or entity for energy services, which may include the provision of energy equipment that is owned and operated by a third party or entity.

(7) "Energy audit" has the definition provided in RCW 43.19.670, and may include a determination of the water or solid waste consumption characteristics of a facility.

~~((7))~~ (8) "Energy efficiency project" means a conservation or cogeneration project.

~~((8))~~ (9) "Energy efficiency services" means assistance furnished by the department to state agencies and school districts in identifying, evaluating, and implementing energy efficiency projects.

~~((9))~~ (10) "Local utility" means the utility or utilities in whose service territory a public facility is located.

~~((10))~~ (11) "Performance-based contracting" means contracts for which payment ~~((is))~~ or payment obligations are conditional on achieving contractually specified energy savings, which may include regular service payments made by a state agency, public school district, public university, or municipality to any persons or entities that own energy equipment and services under a performance-based contract.

~~((11))~~ (12) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

~~((12))~~ (13) "Public facility" means a building, structure, group of buildings or structures at a single site, site improvement, or other facility owned by a state agency or school district.

~~((13))~~ (14) "State agency" means every state office or department, whether elective or appointive, state institutions of higher education, and all boards, commissions, or divisions of state government, however designated.

~~((14))~~ (15) "State facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency.

~~((15))~~ (16) "Utility" means privately or publicly owned electric and gas utilities, electric cooperatives and mutuals, whether located within or without Washington state.

Sec. 4. RCW 39.35C.050 and 2015 c 79 s 10 are each amended to read as follows:

In addition to any other authorities conferred by law:

(1) The department, with the consent of the state agency or school district responsible for a facility, a state or regional university acting independently, and any other state agency or school district acting through the department or ~~((as otherwise authorized by law))~~ acting independently, may:

(a) Develop and finance conservation at public facilities in accordance with express provisions of this chapter;

(b) Contract for energy services, including through a performance-based ~~((contracts))~~ contract; and

(c) Contract to sell energy savings from a conservation project at public facilities to local utilities or the Bonneville power administration.

(2)(a) This subsection authorizes state agencies, public school districts, public universities, and municipalities to enter into

energy as a service contracts. Pursuant to this subsection, a state agency, public school district, public university, or municipality may, whether acting independently or through the department:

(i) Develop conservation projects and services that require the ownership of energy equipment to be held by other persons or entities;

(ii) Contract for energy services, including through a performance-based contract;

(iii) Contract to sell energy savings from a conservation project at public facilities to local utilities or the Bonneville power administration; and

(iv) Contract with a person or entity for energy equipment or services.

(b) Any contract for energy as a service entered into pursuant to the authority of this subsection is subject to the following conditions:

(i) The contract may include terms that transfer ownership of energy equipment from the state agency, public school district, public university, or municipality to the person or entity;

(ii) The person or entity is responsible for cost-savings and performance guarantees through the terms of the contract;

(iii) The value of energy equipment or services at the time of contract execution may exceed the fair market value;

(iv) At the end of the term of the contract, equipment ownership may be transferred back to the state agency, public school district, public university, or municipality;

(v) The state agency, public school district, public university, or municipality will ensure that a contract does not directly result in loss of any position of employment by state employees in the classified service under RCW 41.06.020, employees included in the Washington management service under RCW 41.06.022, or school district employees under RCW 28A.150.203;

(vi) Training must be offered in the preventative maintenance and other related activities of energy equipment and services as detailed in the contract for energy services to existing classified employees who currently provide maintenance of energy equipment for the state agency, public school district, public university, or municipality; and

(vii) Prior to entering into a contract, the state agency, public school district, public university, or municipality must coordinate with the department to analyze the cost-effectiveness of the proposed performance-based contract compared to alternative available financing and service mechanisms, including certificates of participation. The state agency, public school district, public university, or municipality may enter into a contract only if the cost-effectiveness is greater than other available alternatives.

(3) A state or regional university acting independently, and any other state agency acting through the department or as otherwise authorized by law, may undertake procurements for third-party development of conservation at its facilities.

~~((3))~~ (4) A school district may also:

(a) Develop and finance conservation at school district facilities; and

~~((b))~~ ~~((Contract for energy services, including performance-based contracts at school district facilities; and~~

~~((c))~~ ~~((Contract to sell energy savings from energy conservation projects at school district facilities to local utilities or the Bonneville power administration directly or~~ ~~((to local utilities or the Bonneville power administration))~~ through third parties.

~~((4))~~ (5) Direct financial grants and incentives received on behalf of the state agency, public school district, public university, or municipality will be passed on to the state agency, public school district, public university, or municipality.

(6) In exercising the authority granted by subsections (1), ~~((2)),~~

and) (3), and (4) of this section, a school district or state agency must comply with the provisions of RCW 39.35C.040.

Sec. 5. RCW 39.35C.060 and 1996 c 186 s 410 are each amended to read as follows:

State agencies, public school districts, public universities, and municipalities may use financing contracts under chapter 39.94 RCW, as well as performance-based contracts, to provide all or part of the funding for conservation projects. The department shall determine the eligibility of such projects for financing contracts. The repayments of the financing contracts or performance-based contracts shall be sufficient to pay, when due, the principal and interest on the contracts or the services payments over the agreed upon term. Performance-based contracts entered into by state agencies, public school districts, public universities, and municipalities under this act that include the purchase of real or personal property are subject to the requirements of chapter 39.94 RCW. Pursuant to chapter 39.94 RCW, no later than December 31, 2023, the department shall complete development of approved model contracts authorized by this act.

NEW SECTION. Sec. 6. Sections 2 through 5 of this act expire June 30, 2033. Contracts entered into under the authority granted by this act may remain in effect following expiration of this act."

On page 1, line 2 of the title, after "equipment;" strike the remainder of the title and insert "amending RCW 39.35A.020, 39.35C.010, 39.35C.050, and 39.35C.060; adding a new section to chapter 39.35C RCW; and providing expiration dates."

The President declared the question before the Senate to be the adoption of striking amendment no. 0409 by Senator Nguyen to House Bill No. 1777.

The motion by Senator Nguyen carried and striking amendment no. 0409 was adopted by voice vote.

MOTION

On motion of Senator Nguyen, the rules were suspended, House Bill No. 1777 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Nguyen and MacEwen spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1777 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1777 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Liias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

Voting nay: Senators Hasegawa and Schoesler

HOUSE BILL NO. 1777, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 1534, by House Committee on Appropriations (originally sponsored by Orwall, Berry and Fosse)

Strengthening protections for consumers in the construction industry.

The measure was read the second time.

MOTION

Senator Keiser moved that the following committee striking amendment by the Committee on Labor & Commerce be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 18.27.010 and 2015 c 52 s 1 are each amended to read as follows:

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

(1)(a) "Contractor" includes any person, firm, corporation, or other entity who or which, in the pursuit of an independent business undertakes to, or offers to undertake, or submits a bid to, construct, alter, repair, add to, subtract from, improve, develop, move, wreck, or demolish any building, highway, road, railroad, excavation or other structure, project, development, or improvement attached to real estate or to do any part thereof including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works in connection therewith, the installation or repair of roofing or siding, performing tree removal services, or cabinet or similar installation; or, who, to do similar work upon his or her own property, employs members of more than one trade upon a single job or project or under a single building permit except as otherwise provided in this chapter.

(b) "Contractor" also includes a consultant acting as a general contractor.

(c) "Contractor" also includes any person, firm, corporation, or other entity covered by this subsection (1), whether or not registered as required under this chapter or who are otherwise required to be registered or licensed by law, who offer to sell their property without occupying or using the structures, projects, developments, or improvements for more than one year from the date the structure, project, development, or improvement was substantially completed or abandoned. A person, firm, corporation, or other entity is not a contractor under this subsection (1)(c) if the person, firm, corporation, or other entity contracts with a registered general contractor and does not superintend the work.

(2) "Department" means the department of labor and industries.

(3) "Director" means the director of the department of labor and industries or designated representative employed by the department.

(4) "Filing" means delivery of a document that is required to be filed with an agency to a place designated by the agency.

(5) "General contractor" means a contractor whose business operations require the use of more than one building trade or craft upon a single job or project or under a single building permit. A general contractor also includes one who superintends, or consults on, in whole or in part, work falling within the definition of a contractor.

(6) "Notice of infraction" means a form used by the department to notify contractors that an infraction under this chapter has been

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filed against them.

(7) "Partnership" means a business formed under Title 25 RCW.

(8) "Registration cancellation" means a written notice from the department that a contractor's action is in violation of this chapter and that the contractor's registration has been revoked.

(9) "Registration suspension" means either an automatic suspension as provided in this chapter, or a written notice from the department that a contractor's action is a violation of this chapter and that the contractor's registration has been suspended for a specified time, or until the contractor shows evidence of compliance with this chapter.

(10) "Residential homeowner" means an individual person or persons owning or leasing real property:

(a) Upon which one single-family residence is to be built and in which the owner or lessee intends to reside upon completion of any construction; or

(b) Upon which there is a single-family residence to which improvements are to be made and in which the owner or lessee intends to reside upon completion of any construction.

(11) "Service," except as otherwise provided in RCW 18.27.225 and 18.27.370, means posting in the United States mail, properly addressed, postage prepaid, return receipt requested, or personal service. Service by mail is complete upon deposit in the United States mail to the last known address provided to the department.

(12) "Specialty contractor" means a contractor whose operations do not fall within the definition of "general contractor". A specialty contractor may only subcontract work that is incidental to the specialty contractor's work.

(13) "Substantial completion" means the same as "substantial completion of construction" in RCW 4.16.310.

(14) "Successor" means an applicant operating with all or part of the assets of another entity previously registered under this chapter, where the applicant is under substantially common ownership, management, or control of the other entity.

~~(15)~~ "Unregistered contractor" means a person, firm, corporation, or other entity doing work as a contractor without being registered in compliance with this chapter. "Unregistered contractor" includes contractors whose registration is expired, revoked, or suspended. "Unregistered contractor" does not include a contractor who has maintained a valid bond and the insurance or assigned account required by RCW 18.27.050, and whose registration has lapsed for ~~((thirty))~~ 30 or fewer days.

~~((45))~~ ~~(16)~~ "Unsatisfied final judgment" means a judgment or final tax warrant that has not been satisfied either through payment, court approved settlement, discharge in bankruptcy, or assignment under RCW 19.72.070.

~~((46))~~ ~~(17)~~ "Verification" means the receipt and duplication by the city, town, or county of a contractor registration card that is current on its face, checking the department's contractor registration database, or calling the department to confirm that the contractor is registered.

Sec. 2. RCW 18.27.030 and 2008 c 120 s 1 are each amended to read as follows:

(1) An applicant for registration as a contractor shall submit an application under oath upon a form to be prescribed by the director and which shall include the following information pertaining to the applicant:

(a) Employer social security number or individual taxpayer identification number.

(b) Unified business identifier number.

(c) Evidence of workers' compensation coverage for the applicant's employees working in Washington, as follows:

(i) The applicant's industrial insurance account number issued

by the department;

(ii) The applicant's self-insurer number issued by the department; or

(iii) For applicants domiciled in a state or province of Canada subject to an agreement entered into under RCW 51.12.120(7), as permitted by the agreement, filing a certificate of coverage issued by the agency that administers the workers' compensation law in the applicant's state or province of domicile certifying that the applicant has secured the payment of compensation under the other state's or province's workers' compensation law.

(d) Employment security department number.

(e) Unified business identifier (UBI) account number may be substituted for the information required by (c) and (d) of this subsection if the applicant will not employ employees in Washington.

(f) Type of contracting activity, whether a general or a specialty contractor and if the latter, the type of specialty.

(g) The name and address of each partner if the applicant is a firm or partnership, or the name and address of the owner if the applicant is an individual proprietorship, or the name and address of the corporate officers and statutory agent, if any, if the applicant is a corporation or the name and address of all members of other business entities. The information contained in such application is a matter of public record and open to public inspection.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)(c) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(3)(a) The department shall deny an application for registration if: (i) The applicant has been previously performing work subject to this chapter as a sole proprietor, partnership, corporation, or other entity and the department has notice that the applicant has an unsatisfied final judgment against him or her in an action based on work performed subject to this chapter or the applicant owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment; (ii) the applicant was an owner, principal, or officer of a partnership, corporation, or other entity that either has an unsatisfied final judgment against it in an action that was incurred for work performed subject to this chapter or owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment; (iii) the applicant is a successor to an entity with an unsatisfied final judgment against it in an action that was incurred for work performed subject to this chapter or owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment, except as provided under (d) of this subsection (3); ~~(iv)~~ (iv) the applicant does not have a valid unified business identifier number; ~~((iv))~~ (v) the department determines that the applicant has falsified information on the application, unless the error was inadvertent; ~~((v))~~ (vi) the applicant does not have an active and valid certificate of registration with the department of revenue; or (vii) the applicant is under 18 years old at the time of application.

(b) The department shall suspend an active registration if (i) the department has determined that the registrant has an unsatisfied final judgment against it for work within the scope of this chapter; (ii) the department has determined that the registrant is a sole proprietor or an owner, principal, or officer of a registered contractor that has an unsatisfied final judgment against it for work within the scope of this chapter; (iii) the registrant does not maintain a valid unified business identifier number; (iv) the

department has determined that the registrant falsified information on the application, unless the error was inadvertent; or (v) the registrant does not have an active and valid certificate of registration with the department of revenue.

(c) The department may suspend an active registration if the department has determined that an owner, principal, partner, or officer of the registrant was an owner, principal, or officer of a previous partnership, corporation, or other entity that has an unsatisfied final judgment against it.

(d) For the purposes of (a)(iii) of this subsection (3), it is presumed that an applicant knew or should have known of the relevant unsatisfied final judgment. If an applicant demonstrates by a preponderance of the evidence that the applicant did not know of the unsatisfied final judgment, by having exercised due diligence and timely verifying with the department that the other contractor was in good standing, then the department may grant the application for registration under this section, provided that the applicant meets applicable requirements under this chapter. The department shall adopt rules for the purposes of implementing this subsection (3)(d).

(4) The department shall not deny an application or suspend a registration because of an unsatisfied final judgment if the applicant's or registrant's unsatisfied final judgment was determined by the director to be the result of the fraud or negligence of another party, unless the applicant or registrant is a successor to said party under subsection (3)(a)(iii) of this section.

Sec. 3. RCW 18.27.040 and 2019 c 155 s 1 are each amended to read as follows:

(1) Each applicant shall file with the department a surety bond issued by a surety insurer who meets the requirements of chapter 48.28 RCW in the sum of ~~((twelve thousand dollars))~~ \$30,000 if the applicant is a general contractor ~~((and six thousand dollars))~~ or \$15,000 if the applicant is a specialty contractor. If no valid bond is already on file with the department at the time the application is filed, a bond must accompany the registration application. The bond shall have the state of Washington named as obligee with good and sufficient surety in a form to be approved by the department. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director. A cancellation or revocation of the bond or withdrawal of the surety from the bond automatically suspends the registration issued to the contractor until a new bond or reinstatement notice has been filed and approved as provided in this section. The bond shall be conditioned that the applicant will pay all persons performing labor, including employee benefits, for the contractor, will pay all taxes and contributions due to the state of Washington, and will pay all persons furnishing material or renting or supplying equipment to the contractor and will pay all amounts that may be adjudged against the contractor by reason of breach of contract including improper work in the conduct of the contracting business. A change in the name of a business or a change in the type of business entity shall not impair a bond for the purposes of this section so long as one of the original applicants for such bond maintains partial ownership in the business covered by the bond.

(2) At the time of initial registration or renewal, the contractor shall provide a bond or other security deposit as required by this chapter and comply with all of the other provisions of this chapter before the department shall issue or renew the contractor's certificate of registration. Any contractor registered as of ~~((July 1, 2004))~~ June 30, 2024, who maintains that registration in accordance with this chapter is in compliance with this chapter until the next renewal of the contractor's certificate of registration.

(3) Any person, firm, or corporation having a claim against the contractor for any of the items referred to in this section may bring

suit against the contractor and the bond or deposit in the superior court of the county in which the work was done or of any county in which jurisdiction of the contractor may be had. The surety issuing the bond shall be named as a party to any suit upon the bond. Action upon the bond or deposit brought by a residential homeowner for breach of contract by a party to the construction contract shall be commenced by filing the summons and complaint with the clerk of the appropriate superior court within two years from the date the claimed contract work was substantially completed or abandoned, whichever occurred first. Action upon the bond or deposit brought by any other authorized party shall be commenced by filing the summons and complaint with the clerk of the appropriate superior court within one year from the date the claimed labor was performed and benefits accrued, taxes and contributions owing the state of Washington became due, materials and equipment were furnished, or the claimed contract work was substantially completed or abandoned, whichever occurred first. Service of process in an action filed under this chapter against the contractor and the contractor's bond or the deposit shall be exclusively by service upon the department. Three copies of the summons and complaint and a fee adopted by rule of not less than ~~((fifty dollars))~~ \$50 to cover the costs shall be served by registered or certified mail, or other delivery service requiring notice of receipt, upon the department at the time suit is started and the department shall maintain a record, available for public inspection, of all suits so commenced. Service is not complete until the department receives the fee and three copies of the summons and complaint. The service shall constitute service and confer personal jurisdiction on the contractor and the surety for suit on claimant's claim against the contractor and the bond or deposit and the department shall transmit the summons and complaint or a copy thereof to the contractor at the address listed in the contractor's application and to the surety within two days after it shall have been received.

(4) The surety upon the bond shall not be liable in an aggregate amount in excess of the amount named in the bond nor for any monetary penalty assessed pursuant to this chapter for an infraction. The liability of the surety shall not cumulate where the bond has been renewed, continued, reinstated, reissued or otherwise extended. The surety upon the bond may, upon notice to the department and the parties, tender to the clerk of the court having jurisdiction of the action an amount equal to the claims thereunder or the amount of the bond less the amount of judgments, if any, previously satisfied therefrom and to the extent of such tender the surety upon the bond shall be exonerated but if the actions commenced and pending and provided to the department as required in subsection (3) of this section, at any one time exceed the amount of the bond then unimpaired, claims shall be satisfied from the bond in the following order:

- (a) Employee labor and claims of laborers, including employee benefits;
- (b) Claims for breach of contract by a party to the construction contract;
- (c) Registered or licensed subcontractors, material, and equipment;
- (d) Taxes and contributions due the state of Washington;
- (e) Any court costs, interest, and attorneys' fees plaintiff may be entitled to recover. The surety is not liable for any amount in excess of the penal limit of its bond.

A payment made by the surety in good faith exonerates the bond to the extent of any payment made by the surety.

(5) The total amount paid from a bond or deposit ~~((required of a general contractor by this section))~~ to claimants other than residential homeowners must not exceed one-half of the bond ~~((amount. The total amount paid from a bond or deposit required~~

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~~of a specialty contractor by this section to claimants other than residential homeowners must not exceed one half of the bond amount or four thousand dollars, whichever is greater)) or deposit.~~

(6) The prevailing party in an action filed under this section against the contractor and contractor's bond or deposit, for breach of contract by a party to the construction contract involving a residential homeowner, is entitled to costs, interest, and reasonable attorneys' fees. The surety upon the bond or deposit is not liable in an aggregate amount in excess of the amount named in the bond or deposit nor for any monetary penalty assessed pursuant to this chapter for an infraction.

(7) If a final judgment impairs the liability of the surety upon the bond or deposit so furnished that there is not in effect a bond or deposit in the full amount prescribed in this section, the registration of the contractor is automatically suspended until the bond or deposit liability in the required amount unimpaired by unsatisfied judgment claims is furnished.

(8) In lieu of the surety bond required by this section the contractor may file with the department an assigned savings account, upon forms provided by the department.

(9) Any person having filed and served a summons and complaint as required by this section having an unsatisfied final judgment against the registrant for any items referred to in this section may execute upon the security held by the department by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the department within one year of the date of entry of such judgment. Upon the receipt of service of such certified copy the department shall pay or order paid from the deposit, through the registry of the superior court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment by the department shall be the order of receipt by the department, but the department shall have no liability for payment in excess of the amount of the deposit.

(10) Within ~~((ten))~~ 10 days after resolution of the case, a certified copy of the final judgment and order, or any settlement documents where a case is not disposed of by a court trial, a certified copy of the dispositive settlement documents must be provided to the department by the prevailing party. Failure to provide a copy of the final judgment and order or the dispositive settlement documents to the department within ~~((ten))~~ 10 days of entry of such an order constitutes a violation of this chapter and a penalty adopted by rule of not less than ~~((two hundred fifty dollars))~~ \$250 may be assessed against the prevailing party.

(11) The director may require an applicant applying to renew or reinstate a registration or applying for a new registration to file a bond of up to three times the normally required amount, if the director determines that an applicant, or a previous registration of a corporate officer, owner, or partner of a current applicant, has had in the past five years one final judgment in actions under this chapter involving a residential single-family dwelling.

(12) The director may adopt rules necessary for the proper administration of the security.

~~((13)(a) The department must convene a work group no later than August 1, 2019, to consider additional safeguards for consumers who engage contractors. The department must provide staff support for the work group and include in the work group: Department staff; large and small contractors that primarily contract with residential homeowners, those that build new and rehabilitate residences, and other interested contractors; surety bond companies; realtors or their representatives; workers and/or their representatives; representatives from the consumer protection division of the office of the attorney general; consumers and/or advocates representing them; and local building officials.~~

The work group shall submit a report with recommendations to the department and, if applicable, the appropriate committees of the legislature by June 30, 2020. The report must address whether:

~~(i) Bond amounts are sufficient and appropriate to protect consumers, workers, and suppliers and meet tax obligations;~~

~~(ii) Additional criteria for contractors would provide a greater level of protection;~~

~~(iii) Strategies to discourage the transfer of a business to a different entity for the purpose of evading penalties or judgments under this chapter should be implemented;~~

~~(iv) Any other registration requirements or options for consumer recovery under this chapter should be changed to increase protections for consumers; and~~

~~(v) Incentives to adopt industry best practices would increase consumer protections.~~

~~(b) The work group must dissolve once the report is submitted.))~~

Sec. 4. RCW 18.27.340 and 1997 c 314 s 17 are each amended to read as follows:

(1) Except as otherwise provided in subsection (3) of this section, a contractor found to have committed an infraction under RCW 18.27.200 shall be assessed a monetary penalty of not less than ~~((two hundred dollars))~~ \$200 and not more than ~~((five thousand dollars))~~ \$10,000.

(2) The director may waive collection in favor of payment of restitution to a consumer complainant.

(3) A contractor found to have committed an infraction under RCW 18.27.200 for failure to register shall be assessed a fine of not less than ~~((one thousand dollars))~~ \$1,200, nor more than ~~((five thousand dollars))~~ \$10,000. The director may reduce the penalty for failure to register, but in no case below ~~((five hundred dollars))~~ \$600, if the person becomes registered within ~~((ten))~~ 10 days of receiving a notice of infraction and the notice of infraction is for a first offense.

(4) Monetary penalties collected under this ~~((chapter))~~ section shall be deposited in the ~~((general fund))~~ homeowner recovery account under section 7 of this act.

Sec. 5. RCW 18.27.400 and 2017 3rd sp.s. c 11 s 1 are each amended to read as follows:

All moneys, except fines and penalties, received or collected under the terms of this chapter must be deposited into the construction registration inspection account. All fines and penalties received or collected under the terms of this chapter shall be deposited in the ~~((general fund))~~ homeowner recovery account under section 7 of this act.

NEW SECTION. Sec. 6. A new section is added to chapter 18.27 RCW to read as follows:

(1) Subject to the availability of funds appropriated for this purpose, the homeowner recovery program is created and administered by the department. The department shall have such rule-making authority as the department deems necessary to administer the program.

(2)(a) Beginning July 1, 2026, a person is eligible to recover from the homeowner recovery program, provided that each of the following conditions is satisfied:

(i) The person is a claimant with a final judgment in a court of competent jurisdiction against a registered contractor for a claim brought under RCW 18.27.040(3) on his or her primary residence. For purposes of a claim brought on a multifamily dwelling consisting of more than one unit, only the unit in which the claimant actually resides is considered the claimant's primary residence;

(ii) The judgment specifies the actual damages suffered as a consequence of such a claim;

(iii) The claimant has proceeded against any existing bond

covering the contractor;

(iv) The judgment has not been satisfied in full; and
 (v) An application for recovery under (b) of this subsection is made within 90 days after the conclusion of the civil action brought under RCW 18.27.040(3).

(b) The department shall publish a form on its website for claimants to apply for payment from the account under this section. The department may determine by rule additional documentation required to complete an application under this section.

(3)(a) The priority of payment for eligible applicants must be by the order of receipt by the department, subject to the limitations in this subsection (3). Payment for an eligible application must be to the full extent of eligibility, without proration, before consideration of payment for a subsequent application in the order of receipt. Determinations regarding payments must be made by the department in its sole discretion.

(b) Payment from the account is limited to actual damages awarded in a final judgment, after recovery against the bond, for a claim brought under RCW 18.27.040(3). Payment from the account for other costs related to or pursuant to civil proceedings, such as attorneys' fees, court costs, or punitive damages, is prohibited.

(c) Payment from the account may not exceed \$25,000 per contractor per parcel, or the amount unpaid on the judgment, whichever is less.

(d)(i) Total payments under the homeowner recovery program for a fiscal year may not be greater than 80 percent of the account balance calculated at the end of the previous fiscal year.

(ii) The department shall create and maintain a waitlist for any eligible applications unpaid due to an insufficient account balance under (d)(i) of this subsection. The waitlist must preserve the order of receipt in accordance with (a) of this subsection.

(e) Eligibility for payment under subsection (2) of this section does not create a right to payment under this section. Payments under this section are discretionary. This section does not create an entitlement to payment or services. This section does not create a right of action.

(f) The department is not criminally or civilly liable and may not have any penalty or cause of action of any nature arise against it regarding the provision or lack of provision of funds for payments under this section.

(4)(a) At the time of payment from the account under this section, the claimant shall assign his or her right, title, and interest in any final judgment on his or her claim against the contractor to the department to the extent of such payment. The department shall be subrogated to the right, title, and interest of the claimant, and may pursue an insurer or other third party to recover amounts paid from the account. Any amount subsequently recovered on the judgment must be for the purpose of reimbursing the account.

(b) A claimant in receipt of payment from the account pursuant to an application under this section is prohibited from pursuing collection, or authorizing another entity to pursue collection on the claimant's behalf, of the damages attributable to the same claims to the extent of such payment.

(c) Upon any payment from the account, the department shall notify the contractor that a payment has been made and the claimant has made an assignment under this section. The department shall include any additional information about the process for reimbursing the account under subsection (5) of this section.

(5)(a) The department may pursue reimbursement to the account from the contractor for the amount paid from the account, as well as interest on that amount, in accordance with rules adopted by the department. The department may establish

reimbursement payment plans up to 36 months. Any payment plan longer than 12 months must assess interest as provided in RCW 43.17.240. The department must deposit all moneys recovered in the account.

(b) Where a contractor defaults in payment of reimbursement, collection of amounts will be handled pursuant to the procedures in RCW 49.48.086.

(c) The department's duties with respect to obtaining reimbursement from the contractor to the account are limited to those specified within this subsection (5).

(6) Nothing contained herein limits the authority of the department to take action against a contractor for a violation under this chapter or the rules promulgated thereunder; nor does the reimbursement in full of all obligations to the account by a contractor effect any enforcement of a violation under this chapter or the rules promulgated thereunder.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Account" means the homeowner recovery account created in section 7 of this act.

(b) "Claimant" means the owner of an owner-occupied residential property in the state.

(c) "Residential property" means a single-family dwelling, or a multifamily dwelling consisting of four or fewer units, but does not include a condominium.

NEW SECTION. Sec. 7. A new section is added to chapter 18.27 RCW to read as follows:

The homeowner recovery account is created in the custody of the state treasurer. All repayments under section 6 of this act, private contributions, and other moneys transferred or directed to the account must be deposited into the account. Expenditures from the account may only be used for the homeowner recovery program to satisfy unpaid judgments for eligible claims under section 6 of this act. Administrative costs of the program may not be paid from the account. Only the director or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. Sec. 8. A new section is added to chapter 18.27 RCW to read as follows:

(1) By December 1st of each year through 2034, the department must submit an annual report to the appropriate committees of the legislature, in accordance with RCW 43.01.036, on the homeowner recovery program under section 6 of this act, including the following information for the previous fiscal year:

(a) The applications made under the program, including data as to claim amounts;

(b) The payments made under the program;

(c) The status of any waitlist;

(d) The status and solvency of the homeowner recovery account under section 7 of this act; and

(e) Recommendations for any changes to the program, if deemed necessary by the department.

(2) By December 1, 2035, and each year thereafter, the department shall notify the appropriate committees of the legislature, by submitting a report in accordance with RCW 43.01.036, if the department finds there is a significant waitlist of eligible applicants or otherwise finds there is insufficient funds in the homeowner recovery account to sustain the homeowner recovery program.

Sec. 9. RCW 43.79A.040 and 2022 c 244 s 3, 2022 c 206 s 8, 2022 c 183 s 16, and 2022 c 162 s 6 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with

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RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

(2) All income received from investment of the treasurer's trust fund must be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments must occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer must distribute the earnings credited to the investment income account to the state general fund except under (b), (c), and (d) of this subsection.

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Gina Grant Bull memorial legislative page scholarship account, the Rosa Franklin legislative internship program scholarship account, the Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a better life experience program account, the Washington career and college pathways innovation challenge program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the behavioral health loan repayment program account, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county ~~(enhanced)~~ 911 excise tax account, the county road administration board emergency loan account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the energy facility site evaluation council account, the fair fund, the family and medical leave insurance account, the fish and wildlife federal lands revolving account, the natural resources federal lands revolving account, the food animal veterinarian conditional scholarship account, the forest health revolving account, the fruit and vegetable inspection account, the educator conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the Washington history day account, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the low-income home rehabilitation revolving loan program account, the homeowner recovery account, the multiagency permitting team account, the northeast Washington wolf-livestock management account, the produce railcar pool account, the public use general aviation airport loan revolving account, the regional transportation investment district account, the rural rehabilitation account, the Washington sexual assault kit account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual

development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state library-archives building account, the reduced cigarette ignition propensity account, the center for deaf and hard of hearing youth account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, the school employees' benefits board insurance reserve fund, the public employees' and retirees' insurance account, the school employees' insurance account, the long-term services and supports trust account, the radiation perpetual maintenance fund, the Indian health improvement reinvestment account, the department of licensing tuition recovery trust fund, the student achievement council tuition recovery trust fund, the tuition recovery trust fund, the Washington student loan account, the industrial insurance premium refund account, the mobile home park relocation fund, the natural resources deposit fund, the Washington state health insurance pool account, the federal forest revolving account, and the library operations account.

(c) The following accounts and funds must receive 80 percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advance right-of-way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

Sec. 10. RCW 51.44.190 and 2017 3rd sp.s. c 11 s 4 are each amended to read as follows:

(1) The construction registration inspection account is created in the state treasury. All moneys, except fines and penalties, received or collected under the terms of chapters 18.27 and 70.87 RCW and under the terms of RCW 43.22.335 through 43.22.430 and 43.22.432 through 43.22.495 must be deposited into the account. Moneys in the account may only be spent after appropriation. Expenditures from the account, not including moneys transferred to the general fund, may be used only to carry out the purposes of chapters 18.27 and 70.87 RCW and RCW 43.22.335 through 43.22.430 and 43.22.432 through 43.22.495.

(2) The department shall set the fees deposited in the account at a level that generates revenue that is as near as practicable to the amount of the appropriation to carry out the duties specified in this section.

(3) ~~((Until June 30, 2023, on))~~ On the last working day of the first month following each quarterly period, ~~((seven))~~ three and one-half percent of all revenues received into the account during the previous quarter from licenses, permits, and registrations, net of refunds paid to customers, must be transferred into the general fund.

NEW SECTION. Sec. 11. 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. 12. Sections 3 through 9 of this act take effect July 1, 2024.

NEW SECTION. Sec. 13. Section 10 of 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 takes effect June 30, 2023."

On page 1, line 2 of the title, after "industry;" strike the remainder of the title and insert "amending RCW 18.27.010, 18.27.030, 18.27.040, 18.27.340, 18.27.400, and 51.44.190; reenacting and amending RCW 43.79A.040; adding new sections to chapter 18.27 RCW; providing effective dates; and declaring an emergency."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Labor & Commerce to Second Substitute House Bill No. 1534.

The motion by Senator Keiser carried and the committee striking amendment was adopted by voice vote.

MOTION

On motion of Senator Keiser, the rules were suspended, Second Substitute House Bill No. 1534 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser and King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 1534.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 1534 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Lias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

SECOND SUBSTITUTE HOUSE BILL NO. 1534, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1700, by House Committee on State Government & Tribal Relations (originally sponsored by Kretz, Chapman, Dent, Barnard, Ormsby and Timmons)

Establishing a memorial on the capitol campus to commemorate eastern Washington. Revised for first Substitute: Establishing a cultural landscape feature on the capitol campus to commemorate eastern Washington.

The measure was read the second time.

MOTION

Senator Hunt moved that the following committee striking amendment by the Committee on State Government & Elections be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 43.34 RCW to read as follows:

(1) Any cultural landscape feature established on the capitol campus to commemorate the geological and cultural diversity of eastern Washington must recognize the flora and fauna, rich agriculture and forestry, and history of eastern Washington. Any such cultural landscape feature must include floral components such as ponderosa pine trees, quaking aspen trees, and western larch trees, or other site-adapted species. The design of such a cultural landscape feature must serve to celebrate the unique beauty of eastern Washington, its unparalleled agricultural significance to the state and world, and the deep history of these lands. The cultural landscape feature will also serve as a place of enjoyment and familiarity for those who call eastern Washington home.

(2) The capitol committee, or any subcommittee within, must consult with the department of enterprise services and the department of natural resources in its planning, planting, and placement of any floral components to be used as part of the eastern Washington cultural landscape feature.

NEW SECTION. Sec. 2. A new section is added to chapter 43.34 RCW to read as follows:

(1) The Washington state eastern Washington cultural landscape feature account is created in the custody of the state treasurer. The purpose of the account is to support the establishment and maintenance of the cultural landscape feature. The department of enterprise services may solicit and accept moneys from gifts, grants, or endowments for this purpose. All receipts from federal funds, gifts, or grants from the private sector, foundations, or other sources must be deposited into the account. Expenditures from the account may be used only for the design, siting, permitting, construction, maintenance, dedication, or creation of educational materials related to placement of this cultural landscape feature on the capitol campus. Only the secretary of state, or the secretary of state's designee, may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but appropriation is not required for expenditures.

(2) The secretary of state may adopt rules governing the receipt and use of funds in the account."

On page 1, line 2 of the title, after "Washington;" strike the remainder of the title and insert "and adding new sections to chapter 43.34 RCW."

MOTION

Senator Hunt moved that the following amendment no. 0271 by Senator Hunt be adopted:

On page 2, beginning on line 4, after "Only the" strike "secretary of state, or the secretary of state's designee" and insert "department of enterprise services, or the department of enterprise services' designee"

On page 2, line 8, after "(2) The" strike "secretary of state" and insert "department of enterprise services"

Senators Hunt and Wilson, J. spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of amendment no. 0271 by Senator Hunt on page 2, line 4 to Substitute House Bill No. 1700.

The motion by Senator Hunt carried and amendment no. 0271 was adopted by voice vote.

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The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on State Government & Elections as amended to Substitute House Bill No. 1700.

The motion by Senator Hunt carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

On motion of Senator Hunt, the rules were suspended, Substitute House Bill No. 1700 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hunt and Wilson, J. spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1700 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1700 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Boehnke, Braun, Cleveland, Conway, Dhingra, Dozier, Fortunato, Frame, Gildon, Hasegawa, Hawkins, Holy, Hunt, Kauffman, Keiser, King, Kuderer, Liias, Lovelett, Lovick, MacEwen, McCune, Mullet, Muzzall, Nguyen, Nobles, Padden, Pedersen, Randall, Rivers, Robinson, Rolfes, Saldaña, Salomon, Schoesler, Shewmake, Short, Stanford, Torres, Trudeau, Valdez, Van De Wege, Wagoner, Warnick, Wellman, Wilson, C., Wilson, J. and Wilson, L.

SUBSTITUTE HOUSE BILL NO. 1700, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1575, by Representatives Reed, Berry, Berg, Taylor, Farivar, Stonier, Peterson, Senn, Doglio, Cortes, Ryu, Fosse, Springer, Bateman, Goodman, Ramel, Bergquist and Pollet

Modifying the sales and use tax for cultural access programs by allowing the tax to be imposed by a councilmanic or commission authority and defining timelines and priorities for action.

The measure was read the second time.

WITHDRAWAL OF AMENDMENT

On motion of Senator Torres and without objection, striking amendment no. 0424 by Senator Torres to House Bill No. 1575 was withdrawn.

MOTION

On motion of Senator Lovelett, the rules were suspended, House Bill No. 1575 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Lovelett spoke in favor of passage of the bill.

Senator Torres spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1575.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1575 and the bill passed the Senate by the following vote: Yeas, 27; Nays, 22; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Cleveland, Conway, Dhingra, Frame, Hunt, Kauffman, Keiser, Kuderer, Liias, Lovelett, Lovick, Nguyen, Nobles, Pedersen, Rivers, Robinson, Rolfes, Saldaña, Salomon, Shewmake, Stanford, Trudeau, Valdez, Van De Wege, Wellman and Wilson, C.

Voting nay: Senators Boehnke, Braun, Dozier, Fortunato, Gildon, Hasegawa, Hawkins, Holy, King, MacEwen, McCune, Mullet, Muzzall, Padden, Randall, Schoesler, Short, Torres, Wagoner, Warnick, Wilson, J. and Wilson, L.

HOUSE BILL NO. 1575, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 9:11 p.m., on motion of Senator Pedersen, the Senate adjourned until 9 o'clock a.m. Wednesday, April 12, 2023.

DENNY HECK, President of the Senate

SARAH BANNISTER, Secretary of the Senate

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