
SUBSTITUTE SENATE BILL 6046

State of Washington

53rd Legislature

1994 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators A. Smith, Nelson, Quigley, Erwin, Winsley, Haugen, Pelz, Oke, McAuliffe and Roach)

Read first time 01/31/94.

1 AN ACT Relating to driving while under the influence of alcohol or
2 any drug; amending RCW 46.61.502, 46.61.504, 46.61.515, and 46.61.524;
3 reenacting and amending RCW 46.61.515, 9.94A.320, and 9.94A.360;
4 prescribing penalties; providing an effective date; and providing an
5 expiration date.

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

7 **Sec. 1.** RCW 46.61.502 and 1993 c 328 s 1 are each amended to read
8 as follows:

9 (1) A person is guilty of driving while under the influence of
10 intoxicating liquor or any drug if the person drives a vehicle within
11 this state:

12 (a) And the person has 0.10 grams or more of alcohol per two
13 hundred ten liters of breath within two hours after driving, as shown
14 by analysis of the person's breath made under RCW 46.61.506; or

15 (b) And the person has 0.10 percent or more by weight of alcohol in
16 the person's blood within two hours after driving, as shown by analysis
17 of the person's blood made under RCW 46.61.506; or

18 (c) While the person is under the influence of or affected by
19 intoxicating liquor or any drug; or

1 (d) While the person is under the combined influence of or affected
2 by intoxicating liquor and any drug.

3 (2) A person who drives while under the influence of intoxicating
4 liquor or any drug as defined by this section is guilty of a gross
5 misdemeanor punishable pursuant to RCW 46.61.515 except that a person
6 is guilty of a class C felony punishable under chapter 9A.20 RCW if the
7 person drives while under the influence of intoxicating liquor or any
8 drug as defined by this section and has previously been convicted of
9 driving or being in physical control of a motor vehicle while under the
10 influence of intoxicating liquor or any drug on two or more prior
11 occasions within a five-year period.

12 (3) The fact that any person charged with a violation of this
13 section is or has been entitled to use such drug under the laws of this
14 state shall not constitute a defense against any charge of violating
15 this section.

16 (~~(3)~~) (4) It is an affirmative defense to a violation of
17 subsection (1) (a) and (b) of this section which the defendant must
18 prove by a preponderance of the evidence that the defendant consumed a
19 sufficient quantity of alcohol after the time of driving and before the
20 administration of an analysis of the person's breath or blood to cause
21 the defendant's alcohol concentration to be 0.10 or more within two
22 hours after driving. The court shall not admit evidence of this
23 defense unless the defendant notifies the prosecution prior to the
24 omnibus or pretrial hearing in the case of the defendant's intent to
25 assert the affirmative defense.

26 (~~(4)~~) (5) Analyses of blood or breath samples obtained more than
27 two hours after the alleged driving may be used as evidence that within
28 two hours of the alleged driving, a person had 0.10 grams or more of
29 alcohol per two hundred ten liters of breath or 0.10 percent or more of
30 alcohol in the person's blood, pursuant to subsection (1) (a) and (b)
31 of this section, and may be used as evidence that a person was under
32 the influence of or affected by intoxicating liquors or any drug
33 pursuant to subsection (1) (c) and (d) of this section.

34 **Sec. 2.** RCW 46.61.504 and 1993 c 328 s 2 are each amended to read
35 as follows:

36 (1) A person is guilty of being in actual physical control of a
37 motor vehicle while under the influence of intoxicating liquor or any

1 drug if the person has actual physical control of a vehicle within this
2 state:

3 (a) And the person has 0.10 grams or more of alcohol per two
4 hundred ten liters of breath within two hours after being in actual
5 physical control of a motor vehicle, as shown by analysis of the
6 person's breath made under RCW 46.61.506; or

7 (b) And the person has 0.10 percent or more by weight of alcohol in
8 the person's blood within two hours after being in actual physical
9 control of a motor vehicle, as shown by analysis of the person's blood
10 made under RCW 46.61.506; or

11 (c) While the person is under the influence of or affected by
12 intoxicating liquor or any drug; or

13 (d) While the person is under the combined influence of or affected
14 by intoxicating liquor and any drug.

15 (2) A person who is in actual physical control of a motor vehicle
16 while under the influence of intoxicating liquor or any drug as defined
17 by this section is guilty of a gross misdemeanor punishable pursuant to
18 RCW 46.61.515 except that a person is guilty of a class C felony
19 punishable under chapter 9A.20 RCW if the person is in actual physical
20 control of a motor vehicle while under the influence of intoxicating
21 liquor or any drug as defined by this section and has been previously
22 convicted of being in physical control of a motor vehicle or driving a
23 motor vehicle while under the influence of intoxicating liquor or any
24 drug on two or more occasions within a five-year period.

25 (3) The fact that any person charged with a violation of this
26 section is or has been entitled to use such drug under the laws of this
27 state shall not constitute a defense against any charge of violating
28 this section. No person may be convicted under this section if, prior
29 to being pursued by a law enforcement officer, the person has moved the
30 vehicle safely off the roadway.

31 ((+3+)) (4) It is an affirmative defense to a violation of
32 subsection (1) (a) and (b) of this section which the defendant must
33 prove by a preponderance of the evidence that the defendant consumed a
34 sufficient quantity of alcohol after the time of being in actual
35 physical control of a motor vehicle and before the administration of an
36 analysis of the person's breath or blood to cause the defendant's
37 alcohol concentration to be 0.10 or more within two hours after being
38 in actual physical control of a motor vehicle. The court shall not
39 admit evidence of this defense unless the defendant notifies the

1 prosecution prior to the omnibus or pretrial hearing in the case of the
2 defendant's intent to assert the affirmative defense.

3 ((+4)) (5) Analyses of blood or breath samples obtained more than
4 two hours after the alleged actual physical control of a motor vehicle
5 may be used as evidence that within two hours of the alleged actual
6 physical control of a motor vehicle, a person had 0.10 grams or more of
7 alcohol per two hundred ten liters of breath or 0.10 percent or more of
8 alcohol in the person's blood, pursuant to subsection (1) (a) and (b)
9 of this section, and may be used as evidence that a person was under
10 the influence of or affected by intoxicating liquors or any drug
11 pursuant to subsection (1) (c) and (d) of this section.

12 **Sec. 3.** RCW 46.61.515 and 1993 c 501 s 7 and 1993 c 239 s 1 are
13 each reenacted and amended to read as follows:

14 (1) Unless otherwise specified, every person who is convicted of a
15 violation of RCW 46.61.502 or 46.61.504 shall be punished by
16 imprisonment for not less than twenty-four consecutive hours nor more
17 than one year, and by a fine of not less than two hundred fifty dollars
18 and not more than one thousand dollars. Unless the judge finds the
19 person to be indigent, two hundred fifty dollars of the fine shall not
20 be suspended or deferred. Twenty-four consecutive hours of the jail
21 sentence shall not be suspended or deferred unless the judge finds that
22 the imposition of the jail sentence will pose a substantial risk to the
23 defendant's physical or mental well-being. Whenever the mandatory jail
24 sentence is suspended or deferred, the judge must state, in writing,
25 the reason for granting the suspension or deferral and the facts upon
26 which the suspension or deferral is based. The court may impose
27 conditions of probation that may include nonrepetition, alcohol or drug
28 treatment, supervised probation, or other conditions that may be
29 appropriate. The convicted person shall, in addition, be required to
30 complete a course in an alcohol information school approved by the
31 department of social and health services or more intensive treatment in
32 a program approved by the department of social and health services, as
33 determined by the court. A diagnostic evaluation and treatment
34 recommendation shall be prepared under the direction of the court by an
35 alcoholism agency approved by the department of social and health
36 services or a qualified probation department approved by the department
37 of social and health services. A copy of the report shall be forwarded
38 to the department of licensing. Based on the diagnostic evaluation,

1 the court shall determine whether the convicted person shall be
2 required to complete a course in an alcohol information school approved
3 by the department of social and health services or more intensive
4 treatment in a program approved by the department of social and health
5 services. Standards for approval for alcohol treatment programs shall
6 be prescribed by rule under the Administrative Procedure Act, chapter
7 34.05 RCW. The department of social and health services shall
8 periodically review the costs of alcohol information schools and
9 treatment programs as part of the approval process.

10 (2) On a second or subsequent conviction, not otherwise prosecuted
11 as a felony violation, for driving or being in physical control of a
12 motor vehicle while under the influence of intoxicating liquor or drugs
13 within a five-year period a person shall be punished by imprisonment
14 for not less than seven days nor more than one year and by a fine of
15 not less than five hundred dollars and not more than two thousand
16 dollars. District courts and courts organized under chapter 35.20 RCW
17 are authorized to impose such fine. Unless the judge finds the person
18 to be indigent, five hundred dollars of the fine shall not be suspended
19 or deferred. The minimum jail sentence shall not be suspended or
20 deferred unless the judge finds that the imposition of the jail
21 sentence will pose a substantial risk to the defendant's physical or
22 mental well-being. Whenever the mandatory jail sentence is suspended
23 or deferred, the judge must state, in writing, the reason for granting
24 the suspension or deferral and the facts upon which the suspension or
25 deferral is based. If, at the time of the arrest on a second or
26 subsequent offense, the driver is without a license or permit because
27 of a previous suspension or revocation for a reason listed in RCW
28 46.20.342(1) (a) or (b), or because of a previous suspension or
29 revocation for a reason listed in RCW 46.20.342(1)(c) if the original
30 suspension or revocation was the result of a conviction of RCW
31 46.61.502 or 46.61.504, the minimum mandatory sentence shall be ninety
32 days in jail and a five hundred dollar fine. The penalty so imposed
33 shall not be suspended or deferred. The person shall, in addition, be
34 required to complete a diagnostic evaluation by an alcoholism agency
35 approved by the department of social and health services or a qualified
36 probation department approved by the department of social and health
37 services. The report shall be forwarded to the department of
38 licensing. If the person is found to have an alcohol or drug problem

1 requiring treatment, the person shall complete treatment at an approved
2 alcoholism treatment program or approved drug treatment center.

3 In addition to any nonsuspendable and nondeferrable jail sentence
4 required by this subsection, whenever the court imposes less than one
5 year in jail, the court shall also suspend but shall not defer a period
6 of confinement for a period not exceeding two years. The suspension of
7 the sentence may be conditioned upon nonrepetition, alcohol or drug
8 treatment, supervised probation, or other conditions that may be
9 appropriate. The sentence may be imposed in whole or in part upon
10 violation of a condition of suspension during the suspension period.

11 (3) A third or subsequent conviction for driving or being in
12 physical control of a motor vehicle while under the influence of
13 intoxicating liquor or drugs within a five-year period is a class C
14 felony punishable under chapter 9A.20 RCW.

15 (4) The license or permit to drive or any nonresident privilege of
16 any person convicted of driving or being in physical control of a motor
17 vehicle while under the influence of intoxicating liquor or drugs
18 shall:

19 (a) On the first conviction under either offense, be suspended by
20 the department until the person reaches age nineteen or for ninety
21 days, whichever is longer. The department of licensing shall determine
22 the person's eligibility for licensing based upon the reports provided
23 by the designated alcoholism agency or probation department and shall
24 deny reinstatement until enrollment and participation in an approved
25 program has been established and the person is otherwise qualified;

26 (b) On a second conviction under either offense within a five-year
27 period, be revoked by the department for one year. The department of
28 licensing shall determine the person's eligibility for licensing based
29 upon the reports provided by the designated alcoholism agency or
30 probation department and shall deny reinstatement until satisfactory
31 progress in an approved program has been established and the person is
32 otherwise qualified;

33 (c) On a third or subsequent conviction of driving or being in
34 physical control of a motor vehicle while under the influence of
35 intoxicating liquor or drugs, vehicular homicide, or vehicular assault,
36 or any combination thereof within a five-year period, be revoked by the
37 department for two years.

38 ~~((4))~~ (5) In any case provided for in this section, where a
39 driver's license is to be revoked or suspended, the revocation or

1 suspension shall be stayed and shall not take effect until after the
2 determination of any appeal from the conviction which may lawfully be
3 taken, but in case the conviction is sustained on appeal the revocation
4 or suspension takes effect as of the date that the conviction becomes
5 effective for other purposes.

6 ~~((+5+))~~ (6)(a) In addition to penalties set forth in this section,
7 a one hundred twenty-five dollar fee shall be assessed to a person who
8 is either convicted, sentenced to a lesser charge, or given deferred
9 prosecution, as a result of an arrest for violating RCW 46.61.502,
10 46.61.504, 46.61.520, or 46.61.522. This fee is for the purpose of
11 funding the Washington state toxicology laboratory and the Washington
12 state patrol breath test program.

13 (b) Upon a verified petition by the person assessed the fee, the
14 court may suspend payment of all or part of the fee if it finds that
15 the person does not have the ability to pay.

16 (c) When a minor has been adjudicated a juvenile offender for an
17 offense which, if committed by an adult, would constitute a violation
18 of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall
19 assess the one hundred twenty-five dollar fee under (a) of this
20 subsection. Upon a verified petition by a minor assessed the fee, the
21 court may suspend payment of all or part of the fee if it finds that
22 the minor does not have the ability to pay the fee.

23 ~~((+6+))~~ (7) The fee assessed under subsection ~~((+5+))~~ (6) of this
24 section shall be collected by the clerk of the court and distributed as
25 follows:

26 (a) Forty percent shall be subject to distribution under RCW
27 3.62.020, 3.62.040, or 10.82.040.

28 (b) If the case involves a blood test by the state toxicology
29 laboratory, the remainder of the fee shall be forwarded to the state
30 treasurer for deposit in the death investigations account to be used
31 solely for funding the state toxicology laboratory blood testing
32 program.

33 (c) Otherwise, the remainder of the fee shall be forwarded to the
34 state treasurer for deposit in the state patrol highway account to be
35 used solely for funding the Washington state patrol breath test
36 program.

37 **Sec. 4.** RCW 46.61.515 and 1993 c 501 s 7 are each amended to read
38 as follows:

1 (1) Unless otherwise specified, every person who is convicted of a
2 violation of RCW 46.61.502 or 46.61.504 shall be punished by
3 imprisonment for not less than twenty-four consecutive hours nor more
4 than one year, and by a fine of not less than two hundred fifty dollars
5 and not more than one thousand dollars. Unless the judge finds the
6 person to be indigent, two hundred fifty dollars of the fine shall not
7 be suspended or deferred. Twenty-four consecutive hours of the jail
8 sentence shall not be suspended or deferred unless the judge finds that
9 the imposition of the jail sentence will pose a substantial risk to the
10 defendant's physical or mental well-being. Whenever the mandatory jail
11 sentence is suspended or deferred, the judge must state, in writing,
12 the reason for granting the suspension or deferral and the facts upon
13 which the suspension or deferral is based. The court may impose
14 conditions of probation that may include nonrepetition, alcohol or drug
15 treatment, supervised probation, or other conditions that may be
16 appropriate. The convicted person shall, in addition, be required to
17 complete a course in an alcohol information school approved by the
18 department of social and health services or more intensive treatment in
19 a program approved by the department of social and health services, as
20 determined by the court. A diagnostic evaluation and treatment
21 recommendation shall be prepared under the direction of the court by an
22 alcoholism agency approved by the department of social and health
23 services or a qualified probation department approved by the department
24 of social and health services. A copy of the report shall be forwarded
25 to the department of licensing. Based on the diagnostic evaluation,
26 the court shall determine whether the convicted person shall be
27 required to complete a course in an alcohol information school approved
28 by the department of social and health services or more intensive
29 treatment in a program approved by the department of social and health
30 services. Standards for approval for alcohol treatment programs shall
31 be prescribed by rule under the administrative procedure act, chapter
32 34.05 RCW. The department of social and health services shall
33 periodically review the costs of alcohol information schools and
34 treatment programs as part of the approval process.

35 (2) On a second or subsequent conviction, not otherwise prosecuted
36 as a felony, for driving or being in physical control of a motor
37 vehicle while under the influence of intoxicating liquor or drugs
38 within a five-year period a person shall be punished by imprisonment
39 for not less than seven days nor more than one year and by a fine of

1 not less than five hundred dollars and not more than two thousand
2 dollars. District courts and courts organized under chapter 35.20 RCW
3 are authorized to impose such fine. Unless the judge finds the person
4 to be indigent, five hundred dollars of the fine shall not be suspended
5 or deferred. The minimum jail sentence shall not be suspended or
6 deferred unless the judge finds that the imposition of the jail
7 sentence will pose a substantial risk to the defendant's physical or
8 mental well-being. Whenever the mandatory jail sentence is suspended
9 or deferred, the judge must state, in writing, the reason for granting
10 the suspension or deferral and the facts upon which the suspension or
11 deferral is based. If, at the time of the arrest on a second or
12 subsequent offense, not otherwise prosecuted as a felony, the driver is
13 without a license or permit because of a previous suspension or
14 revocation for a reason listed in RCW 46.20.342(1) (a) or (b), or
15 because of a previous suspension or revocation for a reason listed in
16 RCW 46.20.342(1)(c) if the original suspension or revocation was the
17 result of a conviction of RCW 46.61.502 or 46.61.504, the minimum
18 mandatory sentence shall be ninety days in jail and a five hundred
19 dollar fine. The penalty so imposed shall not be suspended or
20 deferred. The person shall, in addition, be required to complete a
21 diagnostic evaluation by an alcoholism agency approved by the
22 department of social and health services or a qualified probation
23 department approved by the department of social and health services.
24 The report shall be forwarded to the department of licensing. If the
25 person is found to have an alcohol or drug problem requiring treatment,
26 the person shall complete treatment at an approved alcoholism treatment
27 program or approved drug treatment center.

28 In addition to any nonsuspendable and nondeferrable jail sentence
29 required by this subsection, whenever the court imposes less than one
30 year in jail, the court shall also suspend but shall not defer a period
31 of confinement for a period not exceeding two years. The suspension of
32 the sentence may be conditioned upon nonrepetition, alcohol or drug
33 treatment, supervised probation, or other conditions that may be
34 appropriate. The sentence may be imposed in whole or in part upon
35 violation of a condition of suspension during the suspension period.

36 (3) A third or subsequent conviction for driving or being in
37 physical control of a motor vehicle while under the influence of
38 intoxicating liquor or drugs within a five-year period is a class C
39 felony punishable under chapter 9A.20 RCW.

1 (4) The license or permit to drive or any nonresident privilege of
2 any person convicted of driving or being in physical control of a motor
3 vehicle while under the influence of intoxicating liquor or drugs
4 shall:

5 (a) On the first conviction under either offense, be suspended by
6 the department until the person reaches age nineteen or for ninety
7 days, whichever is longer. The department of licensing shall determine
8 the person's eligibility for licensing based upon the reports provided
9 by the designated alcoholism agency or probation department and shall
10 deny reinstatement until enrollment and participation in an approved
11 program has been established and the person is otherwise qualified;

12 (b) On a second conviction under either offense within a five-year
13 period, be revoked by the department for one year. The department of
14 licensing shall determine the person's eligibility for licensing based
15 upon the reports provided by the designated alcoholism agency or
16 probation department and shall deny reinstatement until satisfactory
17 progress in an approved program has been established and the person is
18 otherwise qualified;

19 (c) On a third or subsequent conviction of driving or being in
20 physical control of a motor vehicle while under the influence of
21 intoxicating liquor or drugs, vehicular homicide, or vehicular assault,
22 or any combination thereof within a five-year period, be revoked by the
23 department for two years.

24 (~~((4))~~) (5) In any case provided for in this section, where a
25 driver's license is to be revoked or suspended, the revocation or
26 suspension shall be stayed and shall not take effect until after the
27 determination of any appeal from the conviction which may lawfully be
28 taken, but in case the conviction is sustained on appeal the revocation
29 or suspension takes effect as of the date that the conviction becomes
30 effective for other purposes.

31 **Sec. 5.** RCW 46.61.524 and 1991 c 348 s 2 are each amended to read
32 as follows:

33 (1) A person convicted under RCW 46.61.520(1)(a) or 46.61.522(1)(b)
34 or of a felony violation of RCW 46.61.502 or 46.61.504 shall, as a
35 condition of community supervision imposed under RCW 9.94A.383 or
36 community placement imposed under RCW 9.94A.120(8), complete a
37 diagnostic evaluation by an alcohol or drug dependency agency approved
38 by the department of social and health services or a qualified

1 probation department, as defined under RCW 46.61.516 that has been
2 approved by the department of social and health services. This report
3 shall be forwarded to the department of licensing. If the person is
4 found to have an alcohol or drug problem that requires treatment, the
5 person shall complete treatment in a program approved by the department
6 of social and health services under chapter 70.96A RCW. If the person
7 is found not to have an alcohol or drug problem that requires
8 treatment, he or she shall complete a course in an information school
9 approved by the department of social and health services under chapter
10 70.96A RCW. The convicted person shall pay all costs for any
11 evaluation, education, or treatment required by this section, unless
12 the person is eligible for an existing program offered or approved by
13 the department of social and health services. Nothing in this act
14 requires the addition of new treatment or assessment facilities nor
15 affects the department of social and health services use of existing
16 programs and facilities authorized by law.

17 (2) As provided for under RCW 46.20.285, the department shall
18 revoke the license, permit to drive, or a nonresident privilege of a
19 person convicted of vehicular homicide under RCW 46.61.520 or vehicular
20 assault under RCW 46.61.522. The department shall determine the
21 eligibility of a person convicted of vehicular homicide under RCW
22 46.61.520(1)(a) or vehicular assault under (~~{RCW}~~) RCW
23 46.61.522(1)(b) to receive a license based upon the report provided by
24 the designated alcoholism treatment facility or probation department,
25 and shall deny reinstatement until satisfactory progress in an approved
26 program has been established and the person is otherwise qualified.

27 **Sec. 6.** RCW 9.94A.320 and 1992 c 145 s 4 and 1992 c 75 s 3 are
28 each reenacted and amended to read as follows:

29 TABLE 2

30 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

31	XV	Aggravated Murder 1 (RCW 10.95.020)
32	XIV	Murder 1 (RCW 9A.32.030)
33		Homicide by abuse (RCW 9A.32.055)
34	XIII	Murder 2 (RCW 9A.32.050)

1 XII Assault 1 (RCW 9A.36.011)
2 Assault of a Child 1 (RCW 9A.36.120)
3 XI Rape 1 (RCW 9A.44.040)
4 Rape of a Child 1 (RCW 9A.44.073)
5 X Kidnapping 1 (RCW 9A.40.020)
6 Rape 2 (RCW 9A.44.050)
7 Rape of a Child 2 (RCW 9A.44.076)
8 Child Molestation 1 (RCW 9A.44.083)
9 Damaging building, etc., by explosion with
10 threat to human being (RCW
11 70.74.280(1))
12 Over 18 and deliver heroin or narcotic
13 from Schedule I or II to someone
14 under 18 (RCW 69.50.406)
15 Leading Organized Crime (RCW
16 9A.82.060(1)(a))
17 IX Assault of a Child 2 (RCW 9A.36.130)
18 Robbery 1 (RCW 9A.56.200)
19 Manslaughter 1 (RCW 9A.32.060)
20 Explosive devices prohibited (RCW
21 70.74.180)
22 Indecent Liberties (with forcible
23 compulsion) (RCW 9A.44.100(1)(a))
24 Endangering life and property by
25 explosives with threat to human being
26 (RCW 70.74.270)
27 Over 18 and deliver narcotic from Schedule
28 III, IV, or V or a nonnarcotic from
29 Schedule I-V to someone under 18 and
30 3 years junior (RCW 69.50.406)
31 Controlled Substance Homicide (RCW
32 69.50.415)
33 Sexual Exploitation (RCW 9.68A.040)
34 Inciting Criminal Profiteering (RCW
35 9A.82.060(1)(b))

1 VIII Arson 1 (RCW 9A.48.020)
2 Promoting Prostitution 1 (RCW 9A.88.070)
3 Selling for profit (controlled or
4 counterfeit) any controlled substance
5 (RCW 69.50.410)
6 Manufacture, deliver, or possess with
7 intent to deliver heroin or cocaine
8 (RCW 69.50.401(a)(1)(i))
9 Manufacture, deliver, or possess with
10 intent to deliver methamphetamine
11 (RCW 69.50.401(a)(1)(ii))
12 Vehicular Homicide, by being under the
13 influence of intoxicating liquor or
14 any drug or by the operation of any
15 vehicle in a reckless manner (RCW
16 46.61.520)

17 VII Burglary 1 (RCW 9A.52.020)
18 Vehicular Homicide, by disregard for the
19 safety of others (RCW 46.61.520)
20 Introducing Contraband 1 (RCW 9A.76.140)
21 Indecent Liberties (without forcible
22 compulsion) (RCW 9A.44.100(1) (b) and
23 (c))
24 Child Molestation 2 (RCW 9A.44.086)
25 Dealing in depictions of minor engaged in
26 sexually explicit conduct (RCW
27 9.68A.050)
28 Sending, bringing into state depictions of
29 minor engaged in sexually explicit
30 conduct (RCW 9.68A.060)
31 Involving a minor in drug dealing (RCW
32 69.50.401(f))

33 VI Bribery (RCW 9A.68.010)
34 Manslaughter 2 (RCW 9A.32.070)
35 Rape of a Child 3 (RCW 9A.44.079)
36 Intimidating a Juror/Witness (RCW
37 9A.72.110, 9A.72.130)

1 Damaging building, etc., by explosion with
2 no threat to human being (RCW
3 70.74.280(2))
4 Endangering life and property by
5 explosives with no threat to human
6 being (RCW 70.74.270)
7 Incest 1 (RCW 9A.64.020(1))
8 Manufacture, deliver, or possess with
9 intent to deliver narcotics from
10 Schedule I or II (except heroin or
11 cocaine) (RCW 69.50.401(a)(1)(i))
12 Intimidating a Judge (RCW 9A.72.160)
13 Bail Jumping with Murder 1 (RCW
14 9A.76.170(2)(a))

15 V Criminal Mistreatment 1 (RCW 9A.42.020)
16 Rape 3 (RCW 9A.44.060)
17 Sexual Misconduct with a Minor 1 (RCW
18 9A.44.093)
19 Child Molestation 3 (RCW 9A.44.089)
20 Kidnapping 2 (RCW 9A.40.030)
21 Extortion 1 (RCW 9A.56.120)
22 Incest 2 (RCW 9A.64.020(2))
23 Perjury 1 (RCW 9A.72.020)
24 Extortionate Extension of Credit (RCW
25 9A.82.020)
26 Advancing money or property for
27 extortionate extension of credit (RCW
28 9A.82.030)
29 Extortionate Means to Collect Extensions
30 of Credit (RCW 9A.82.040)
31 Rendering Criminal Assistance 1 (RCW
32 9A.76.070)
33 Bail Jumping with class A Felony (RCW
34 9A.76.170(2)(b))
35 Delivery of imitation controlled substance
36 by person eighteen or over to person
37 under eighteen (RCW 69.52.030(2))

1 IV Residential Burglary (RCW 9A.52.025)
2 Theft of Livestock 1 (RCW 9A.56.080)
3 Robbery 2 (RCW 9A.56.210)
4 Assault 2 (RCW 9A.36.021)
5 Escape 1 (RCW 9A.76.110)
6 Arson 2 (RCW 9A.48.030)
7 Bribing a Witness/Bribe Received by
8 Witness (RCW 9A.72.090, 9A.72.100)
9 Malicious Harassment (RCW 9A.36.080)
10 Threats to Bomb (RCW 9.61.160)
11 Willful Failure to Return from Furlough
12 (RCW 72.66.060)
13 Hit and Run « Injury Accident (RCW
14 46.52.020(4))
15 Vehicular Assault (RCW 46.61.522)
16 Felony driving or physical control of a
17 motor vehicle while under the
18 influence of intoxicating liquor or
19 any drug (RCW 46.61.502(2) or
20 46.61.504(2))
21 Manufacture, deliver, or possess with
22 intent to deliver narcotics from
23 Schedule III, IV, or V or
24 nonnarcotics from Schedule I-V
25 (except marijuana or
26 methamphetamines) (RCW
27 69.50.401(a)(1)(ii) through (iv))
28 Influencing Outcome of Sporting Event (RCW
29 9A.82.070)
30 Use of Proceeds of Criminal Profiteering
31 (RCW 9A.82.080 (1) and (2))
32 Knowingly Trafficking in Stolen Property
33 (RCW 9A.82.050(2))
34 III Criminal mistreatment 2 (RCW 9A.42.030)
35 Extortion 2 (RCW 9A.56.130)
36 Unlawful Imprisonment (RCW 9A.40.040)
37 Assault 3 (RCW 9A.36.031)
38 Assault of a Child 3 (RCW 9A.36.140)
39 Custodial Assault (RCW 9A.36.100)

1 Unlawful possession of firearm or pistol by felon (RCW
2 9.41.040)
3 Harassment (RCW 9A.46.020)
4 Promoting Prostitution 2 (RCW 9A.88.080)
5 Willful Failure to Return from Work
6 Release (RCW 72.65.070)
7 Burglary 2 (RCW 9A.52.030)
8 Introducing Contraband 2 (RCW 9A.76.150)
9 Communication with a Minor for Immoral
10 Purposes (RCW 9.68A.090)
11 Patronizing a Juvenile Prostitute (RCW
12 9.68A.100)
13 Escape 2 (RCW 9A.76.120)
14 Perjury 2 (RCW 9A.72.030)
15 Bail Jumping with class B or C Felony (RCW
16 9A.76.170(2)(c))
17 Intimidating a Public Servant (RCW
18 9A.76.180)
19 Tampering with a Witness (RCW 9A.72.120)
20 Manufacture, deliver, or possess with
21 intent to deliver marijuana (RCW
22 69.50.401(a)(1)(ii))
23 Delivery of a material in lieu of a
24 controlled substance (RCW
25 69.50.401(c))
26 Manufacture, distribute, or possess with
27 intent to distribute an imitation
28 controlled substance (RCW
29 69.52.030(1))
30 Recklessly Trafficking in Stolen Property
31 (RCW 9A.82.050(1))
32 Theft of livestock 2 (RCW 9A.56.080)
33 Securities Act violation (RCW 21.20.400)
34 II Malicious Mischief 1 (RCW 9A.48.070)
35 Possession of Stolen Property 1 (RCW
36 9A.56.150)
37 Theft 1 (RCW 9A.56.030)

1 Possession of controlled substance that is
2 either heroin or narcotics from
3 Schedule I or II (RCW 69.50.401(d))
4 Possession of phencyclidine (PCP) (RCW
5 69.50.401(d))
6 Create, deliver, or possess a counterfeit
7 controlled substance (RCW
8 69.50.401(b))
9 Computer Trespass 1 (RCW 9A.52.110)
10 Reckless Endangerment 1 (RCW 9A.36.045)
11 Escape from Community Custody (RCW
12 72.09.310)

13 I Theft 2 (RCW 9A.56.040)
14 Possession of Stolen Property 2 (RCW
15 9A.56.160)
16 Forgery (RCW 9A.60.020)
17 Taking Motor Vehicle Without Permission
18 (RCW 9A.56.070)
19 Vehicle Prowl 1 (RCW 9A.52.095)
20 Attempting to Elude a Pursuing Police
21 Vehicle (RCW 46.61.024)
22 Malicious Mischief 2 (RCW 9A.48.080)
23 Reckless Burning 1 (RCW 9A.48.040)
24 Unlawful Issuance of Checks or Drafts (RCW
25 9A.56.060)
26 Unlawful Use of Food Stamps (RCW 9.91.140
27 (2) and (3))
28 False Verification for Welfare (RCW
29 74.08.055)
30 Forged Prescription (RCW 69.41.020)
31 Forged Prescription for a Controlled
32 Substance (RCW 69.50.403)
33 Possess Controlled Substance that is a
34 Narcotic from Schedule III, IV, or V
35 or Non-narcotic from Schedule I-V
36 (except phencyclidine) (RCW
37 69.50.401(d))

1 **Sec. 7.** RCW 9.94A.360 and 1992 c 145 s 10 and 1992 c 75 s 4 are
2 each reenacted and amended to read as follows:

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

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

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

12 (2) Except as provided in subsection (4) of this section, class A
13 and sex prior felony convictions shall always be included in the
14 offender score. Class B prior felony convictions other than sex
15 offenses shall not be included in the offender score, if since the last
16 date of release from confinement (including full-time residential
17 treatment) pursuant to a felony conviction, if any, or entry of
18 judgment and sentence, the offender had spent ten consecutive years in
19 the community without being convicted of any felonies. Class C prior
20 felony convictions other than sex offenses shall not be included in the
21 offender score if, since the last date of release from confinement
22 (including full-time residential treatment) pursuant to a felony
23 conviction, if any, or entry of judgment and sentence, the offender had
24 spent five consecutive years in the community without being convicted
25 of any felonies. Serious traffic convictions shall not be included in
26 the offender score if, since the last date of release from confinement
27 (including full-time residential treatment) pursuant to a felony
28 conviction, if any, or entry of judgment and sentence, the offender
29 spent five years in the community without being convicted of any
30 serious traffic or felony traffic offenses. This subsection applies to
31 both adult and juvenile prior convictions.

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

35 (4) Always include juvenile convictions for sex offenses. Include
36 other class A juvenile felonies only if the offender was 15 or older at
37 the time the juvenile offense was committed. Include other class B and
38 C juvenile felony convictions only if the offender was 15 or older at
39 the time the juvenile offense was committed and the offender was less

1 than 23 at the time the offense for which he or she is being sentenced
2 was committed.

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

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

8 (a) Prior adult offenses which were found, under RCW
9 9.94A.400(1)(a), to encompass the same criminal conduct, shall be
10 counted as one offense, the offense that yields the highest offender
11 score. The current sentencing court shall determine with respect to
12 other prior adult offenses for which sentences were served concurrently
13 whether those offenses shall be counted as one offense or as separate
14 offenses, and if the court finds that they shall be counted as one
15 offense, then the offense that yields the highest offender score shall
16 be used;

17 (b) Juvenile prior convictions entered or sentenced on the same
18 date shall count as one offense, the offense that yields the highest
19 offender score, except for juvenile prior convictions for violent
20 offenses with separate victims, which shall count as separate offenses;
21 and

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

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

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

36 (9) If the present conviction is for a violent offense and not
37 covered in subsection (10), (11), (12), or (13) of this section, count
38 two points for each prior adult and juvenile violent felony conviction,

1 one point for each prior adult nonviolent felony conviction, and 1/2
2 point for each prior juvenile nonviolent felony conviction.

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

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

15 (12) If the present conviction is for a felony traffic offense
16 count two points for each adult or juvenile prior conviction for
17 Vehicular Homicide ~~((or)), Vehicular Assault, or Felony Driving or~~
18 Physical Control of a Motor Vehicle While Under the Influence of
19 Intoxicating Liquor or any Drug; for each felony offense or serious
20 traffic offense, count one point for each adult and 1/2 point for each
21 juvenile prior conviction.

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

28 (14) If the present conviction is for Willful Failure to Return
29 from Furlough, RCW 72.66.060, Willful Failure to Return from Work
30 Release, RCW 72.65.070, or Escape from Community Custody, RCW
31 72.09.310, count only prior escape convictions in the offender score.
32 Count adult prior escape convictions as one point and juvenile prior
33 escape convictions as 1/2 point.

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

37 (16) If the present conviction is for Burglary 2 or residential
38 burglary, count priors as in subsection (8) of this section; however,
39 count two points for each adult and juvenile prior Burglary 1

1 conviction, two points for each adult prior Burglary 2 or residential
2 burglary conviction, and one point for each juvenile prior Burglary 2
3 or residential burglary conviction.

4 (17) If the present conviction is for a sex offense, count priors
5 as in subsections (8) through (16) of this section; however count three
6 points for each adult and juvenile prior sex offense conviction.

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

9 NEW SECTION. **Sec. 8.** Section 3 of this act shall expire June 30,
10 1995.

11 NEW SECTION. **Sec. 9.** Section 4 of this act shall take effect June
12 30, 1995.

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