

---

HOUSE BILL 2354

---

State of Washington

56th Legislature

2000 Regular Session

By Representatives McDonald, Ruderman, Carrell, Mielke, Sullivan and Conway

Read first time 01/11/2000. Referred to Committee on Judiciary.

1 AN ACT Relating to driving or physical control of a vehicle while  
2 under the influence of intoxicating liquor or any drug; amending RCW  
3 9.94A.185, 9.94A.230, 46.20.720, 46.61.502, 46.61.504, and 46.61.5151;  
4 reenacting and amending RCW 9.94A.030, 9.94A.320, 9.94A.360, and  
5 46.61.5055; and prescribing penalties.

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

7 **Sec. 1.** RCW 9.94A.030 and 1999 c 352 s 8, 1999 c 197 s 1, and 1999  
8 c 196 s 2 are each reenacted and amended to read as follows:

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

11 (1) "Collect," or any derivative thereof, "collect and remit," or  
12 "collect and deliver," when used with reference to the department of  
13 corrections, means that the department, either directly or through a  
14 collection agreement authorized by RCW 9.94A.145, is responsible for  
15 monitoring and enforcing the offender's sentence with regard to the  
16 legal financial obligation, receiving payment thereof from the  
17 offender, and, consistent with current law, delivering daily the entire  
18 payment to the superior court clerk without depositing it in a  
19 departmental account.

1 (2) "Commission" means the sentencing guidelines commission.

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

6 (4) "Community custody" means that portion of an offender's  
7 sentence of confinement in lieu of earned release time or imposed  
8 pursuant to RCW 9.94A.120 (5), (6), (7), (8), (10), or (11), or RCW  
9 9.94A.383, served in the community subject to controls placed on the  
10 offender's movement and activities by the department of corrections.  
11 For offenders placed on community custody for crimes committed on or  
12 after July 1, 2000, the department shall assess the offender's risk of  
13 reoffense and may establish and modify conditions of community custody,  
14 in addition to those imposed by the court, based upon the risk to  
15 community safety.

16 (5) "Community custody range" means the minimum and maximum period  
17 of community custody included as part of a sentence under RCW  
18 9.94A.120(11), as established by the sentencing guidelines commission  
19 or the legislature under RCW 9.94A.040, for crimes committed on or  
20 after July 1, 2000.

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

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

31 (8) "Community supervision" means a period of time during which a  
32 convicted offender is subject to crime-related prohibitions and other  
33 sentence conditions imposed by a court pursuant to this chapter or RCW  
34 16.52.200(6) or 46.61.524. For first-time offenders, the supervision  
35 may include crime-related prohibitions and other conditions imposed  
36 pursuant to RCW 9.94A.120(5). Where the court finds that any offender  
37 has a chemical dependency that has contributed to his or her offense,  
38 the conditions of supervision may, subject to available resources,  
39 include treatment. For purposes of the interstate compact for out-of-

1 state supervision of parolees and probationers, RCW 9.95.270, community  
2 supervision is the functional equivalent of probation and should be  
3 considered the same as probation by other states.

4 (9) "Confinement" means total or partial confinement as defined in  
5 this section.

6 (10) "Conviction" means an adjudication of guilt pursuant to Titles  
7 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
8 acceptance of a plea of guilty.

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

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

30 (13) "Criminal history" means the list of a defendant's prior  
31 convictions and juvenile adjudications, whether in this state, in  
32 federal court, or elsewhere. The history shall include, where known,  
33 for each conviction (a) whether the defendant has been placed on  
34 probation and the length and terms thereof; and (b) whether the  
35 defendant has been incarcerated and the length of incarceration.

36 (14) "Day fine" means a fine imposed by the sentencing judge that  
37 equals the difference between the offender's net daily income and the  
38 reasonable obligations that the offender has for the support of the  
39 offender and any dependents.

1 (15) "Day reporting" means a program of enhanced supervision  
2 designed to monitor the defendant's daily activities and compliance  
3 with sentence conditions, and in which the defendant is required to  
4 report daily to a specific location designated by the department or the  
5 sentencing judge.

6 (16) "Department" means the department of corrections.

7 (17) "Determinate sentence" means a sentence that states with  
8 exactitude the number of actual years, months, or days of total  
9 confinement, of partial confinement, of community supervision, the  
10 number of actual hours or days of community service work, or dollars or  
11 terms of a legal financial obligation. The fact that an offender  
12 through "earned release" can reduce the actual period of confinement  
13 shall not affect the classification of the sentence as a determinate  
14 sentence.

15 (18) "Disposable earnings" means that part of the earnings of an  
16 individual remaining after the deduction from those earnings of any  
17 amount required by law to be withheld. For the purposes of this  
18 definition, "earnings" means compensation paid or payable for personal  
19 services, whether denominated as wages, salary, commission, bonuses, or  
20 otherwise, and, notwithstanding any other provision of law making the  
21 payments exempt from garnishment, attachment, or other process to  
22 satisfy a court-ordered legal financial obligation, specifically  
23 includes periodic payments pursuant to pension or retirement programs,  
24 or insurance policies of any type, but does not include payments made  
25 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
26 or Title 74 RCW.

27 (19) "Drug offense" means:

28 (a) Any felony violation of chapter 69.50 RCW except possession of  
29 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
30 controlled substance (RCW 69.50.403);

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

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

37 (20) "Escape" means:

38 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
39 second degree (RCW 9A.76.120), willful failure to return from furlough

1 (RCW 72.66.060), willful failure to return from work release (RCW  
2 72.65.070), or willful failure to be available for supervision by the  
3 department while in community custody (RCW 72.09.310); or

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

7 (21) "Felony traffic offense" means:

8 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
9 46.61.522), eluding a police officer (RCW 46.61.024), ~~((or))~~ felony  
10 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while  
11 under the influence of intoxicating liquor or any drug (RCW  
12 46.61.502(6)), or felony physical control of a vehicle while under the  
13 influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

17 (22) "Fines" means the requirement that the offender pay a specific  
18 sum of money over a specific period of time to the court.

19 (23) "First-time offender" means any person who is convicted of a  
20 felony (a) not classified as a violent offense or a sex offense under  
21 this chapter, ~~((or))~~ (b) that is not the manufacture, delivery, or  
22 possession with intent to manufacture or deliver a controlled substance  
23 classified in Schedule I or II that is a narcotic drug or flunitrazepam  
24 classified in Schedule IV, nor the manufacture, delivery, or possession  
25 with intent to deliver methamphetamine, its salts, isomers, and salts  
26 of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for  
27 profit of any controlled substance or counterfeit substance classified  
28 in Schedule I, RCW 69.50.204, except leaves and flowering tops of  
29 marihuana, or (c) that is not driving while under the influence of  
30 intoxicating liquor or any drug or physical control of a vehicle while  
31 under the influence of intoxicating liquor or any drug, who previously  
32 has never been convicted of a felony in this state, federal court, or  
33 another state, and who has never participated in a program of deferred  
34 prosecution for a felony offense.

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

1 (25) "Most serious offense" means any of the following felonies or  
2 a felony attempt to commit any of the following felonies, as now  
3 existing or hereafter amended:

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

7 (b) Assault in the second degree;

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

9 (d) Child molestation in the second degree;

10 (e) Controlled substance homicide;

11 (f) Extortion in the first degree;

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

13 (h) Indecent liberties;

14 (i) Kidnapping in the second degree;

15 (j) Leading organized crime;

16 (k) Manslaughter in the first degree;

17 (l) Manslaughter in the second degree;

18 (m) Promoting prostitution in the first degree;

19 (n) Rape in the third degree;

20 (o) Robbery in the second degree;

21 (p) Sexual exploitation;

22 (q) Vehicular assault;

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

27 (s) Any other class B felony offense with a finding of sexual  
28 motivation, as "sexual motivation" is defined under this section;

29 (t) Any other felony with a deadly weapon verdict under RCW  
30 9.94A.125;

31 (u) Any felony offense in effect at any time prior to December 2,  
32 1993, that is comparable to a most serious offense under this  
33 subsection, or any federal or out-of-state conviction for an offense  
34 that under the laws of this state would be a felony classified as a  
35 most serious offense under this subsection;

36 (v)(i) A prior conviction for indecent liberties under RCW  
37 (~~9A.88.100~~) 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975  
38 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a),  
39 (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and

1 RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,  
2 until July 1, 1988;

3 (ii) A prior conviction for indecent liberties under RCW  
4 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
5 if: (A) The crime was committed against a child under the age of  
6 fourteen; or (B) the relationship between the victim and perpetrator is  
7 included in the definition of indecent liberties under RCW  
8 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
9 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
10 through July 27, 1997.

11 (26) "Nonviolent offense" means an offense which is not a violent  
12 offense.

13 (27) "Offender" means a person who has committed a felony  
14 established by state law and is eighteen years of age or older or is  
15 less than eighteen years of age but whose case is under superior court  
16 jurisdiction under RCW 13.04.030 or has been transferred by the  
17 appropriate juvenile court to a criminal court pursuant to RCW  
18 13.40.110. Throughout this chapter, the terms "offender" and  
19 "defendant" are used interchangeably.

20 (28) "Partial confinement" means confinement for no more than one  
21 year in a facility or institution operated or utilized under contract  
22 by the state or any other unit of government, or, if home detention or  
23 work crew has been ordered by the court, in an approved residence, for  
24 a substantial portion of each day with the balance of the day spent in  
25 the community. Partial confinement includes work release, home  
26 detention, work crew, and a combination of work crew and home detention  
27 as defined in this section.

28 (29) "Persistent offender" is an offender who:

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

31 (ii) Has, before the commission of the offense under (a) of this  
32 subsection, been convicted as an offender on at least two separate  
33 occasions, whether in this state or elsewhere, of felonies that under  
34 the laws of this state would be considered most serious offenses and  
35 would be included in the offender score under RCW 9.94A.360; provided  
36 that of the two or more previous convictions, at least one conviction  
37 must have occurred before the commission of any of the other most  
38 serious offenses for which the offender was previously convicted; or

1 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
2 of a child in the first degree, child molestation in the first degree,  
3 rape in the second degree, rape of a child in the second degree, or  
4 indecent liberties by forcible compulsion; (B) murder in the first  
5 degree, murder in the second degree, homicide by abuse, kidnapping in  
6 the first degree, kidnapping in the second degree, assault in the first  
7 degree, assault in the second degree, assault of a child in the first  
8 degree, or burglary in the first degree, with a finding of sexual  
9 motivation; or (C) an attempt to commit any crime listed in this  
10 subsection (29)(b)(i); and

11 (ii) Has, before the commission of the offense under (b)(i) of this  
12 subsection, been convicted as an offender on at least one occasion,  
13 whether in this state or elsewhere, of an offense listed in (b)(i) of  
14 this subsection. A conviction for rape of a child in the first degree  
15 constitutes a conviction under subsection (29)(b)(i) only when the  
16 offender was sixteen years of age or older when the offender committed  
17 the offense. A conviction for rape of a child in the second degree  
18 constitutes a conviction under subsection (29)(b)(i) only when the  
19 offender was eighteen years of age or older when the offender committed  
20 the offense.

21 (30) "Postrelease supervision" is that portion of an offender's  
22 community placement that is not community custody.

23 (31) "Restitution" means the requirement that the offender pay a  
24 specific sum of money over a specific period of time to the court as  
25 payment of damages. The sum may include both public and private costs.  
26 The imposition of a restitution order does not preclude civil redress.

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

35 (33) "Serious traffic offense" means:

36 (a) Nonfelony driving while under the influence of intoxicating  
37 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
38 while under the influence of intoxicating liquor or any drug (RCW

1 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
2 attended vehicle (RCW 46.52.020(5)); or

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

6 (34) "Serious violent offense" is a subcategory of violent offense  
7 and means:

8 (a) Murder in the first degree, homicide by abuse, murder in the  
9 second degree, manslaughter in the first degree, assault in the first  
10 degree, kidnapping in the first degree, or rape in the first degree,  
11 assault of a child in the first degree, or an attempt, criminal  
12 solicitation, or criminal conspiracy to commit one of these felonies;  
13 or

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

17 (35) "Sentence range" means the sentencing court's discretionary  
18 range in imposing a nonappealable sentence.

19 (36) "Sex offense" means:

20 (a) A felony that is a violation of chapter 9A.44 RCW, other than  
21 RCW 9A.44.130(~~(+10)~~) (11), or RCW 9A.64.020 or 9.68A.090 or a felony  
22 that is, under chapter 9A.28 RCW, a criminal attempt, criminal  
23 solicitation, or criminal conspiracy to commit such crimes;

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

27 (c) A felony with a finding of sexual motivation under RCW  
28 9.94A.127 or 13.40.135; or

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

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

35 (38) "Total confinement" means confinement inside the physical  
36 boundaries of a facility or institution operated or utilized under  
37 contract by the state or any other unit of government for twenty-four  
38 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

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

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

10 (41) "Violent offense" means:

11 (a) Any of the following felonies, as now existing or hereafter  
12 amended: Any felony defined under any law as a class A felony or an  
13 attempt to commit a class A felony, criminal solicitation of or  
14 criminal conspiracy to commit a class A felony, manslaughter in the  
15 first degree, manslaughter in the second degree, indecent liberties if  
16 committed by forcible compulsion, kidnapping in the second degree,  
17 arson in the second degree, assault in the second degree, assault of a  
18 child in the second degree, extortion in the first degree, robbery in  
19 the second degree, drive-by shooting, vehicular assault, and vehicular  
20 homicide, when proximately caused by the driving of any vehicle by any  
21 person while under the influence of intoxicating liquor or any drug as  
22 defined by RCW 46.61.502, or by the operation of any vehicle in a  
23 reckless manner;

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

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

30 (42) "Work crew" means a program of partial confinement consisting  
31 of civic improvement tasks for the benefit of the community of not less  
32 than thirty-five hours per week that complies with RCW 9.94A.135. The  
33 civic improvement tasks shall have minimal negative impact on existing  
34 private industries or the labor force in the county where the service  
35 or labor is performed. The civic improvement tasks shall not affect  
36 employment opportunities for people with developmental disabilities  
37 contracted through sheltered workshops as defined in RCW 82.04.385.  
38 Only those offenders sentenced to a facility operated or utilized under  
39 contract by a county or the state, or sanctioned under RCW 9.94A.205,

1 are eligible to participate on a work crew. Offenders sentenced for a  
2 sex offense as defined in subsection (36) of this section are not  
3 eligible for the work crew program.

4 (43) "Work ethic camp" means an alternative incarceration program  
5 designed to reduce recidivism and lower the cost of corrections by  
6 requiring offenders to complete a comprehensive array of real-world job  
7 and vocational experiences, character-building work ethics training,  
8 life management skills development, substance abuse rehabilitation,  
9 counseling, literacy training, and basic adult education.

10 (44) "Work release" means a program of partial confinement  
11 available to offenders who are employed or engaged as a student in a  
12 regular course of study at school. Participation in work release shall  
13 be conditioned upon the offender attending work or school at regularly  
14 defined hours and abiding by the rules of the work release facility.

15 **Sec. 2.** RCW 9.94A.185 and 1995 c 108 s 2 are each amended to read  
16 as follows:

17 (1) Home detention may not be imposed for offenders convicted of a  
18 violent offense, any sex offense, any drug offense, reckless burning in  
19 the first or second degree as defined in RCW 9A.48.040 or 9A.48.050,  
20 assault in the third degree as defined in RCW 9A.36.031, assault of a  
21 child in the third degree, unlawful imprisonment as defined in RCW  
22 9A.40.040, or harassment as defined in RCW 9A.46.020.

23 (2) Home detention may be imposed for:

24 (a) Offenders convicted of possession of a controlled substance  
25 under RCW 69.50.401(d) or forged prescription for a controlled  
26 substance under RCW 69.50.403 if the offender fulfills the  
27 participation conditions set forth in this subsection [section] and is  
28 monitored for drug use by a treatment alternatives to street crime  
29 program or a comparable court or agency-referred program((-))i

30 ((-1) Home detention may be imposed for)) (b) Offenders convicted  
31 of burglary in the second degree as defined in RCW 9A.52.030 or  
32 residential burglary conditioned upon the offender: ((-a)) (i)  
33 Successfully completing twenty-one days in a work release program,  
34 ((-b)) (ii) having no convictions for burglary in the second degree or  
35 residential burglary during the preceding two years and not more than  
36 two prior convictions for burglary or residential burglary, ((-c))  
37 (iii) having no convictions for a violent felony offense during the  
38 preceding two years and not more than two prior convictions for a

1 violent felony offense, ~~((d))~~ (iv) having no prior charges of escape,  
2 and ~~((e))~~ (v) fulfilling the other conditions of the home detention  
3 program~~((f))~~;

4 ~~((2) Participation in a home detention program shall be~~  
5 ~~conditioned upon: (a) The offender obtaining or maintaining current~~  
6 ~~employment or attending a regular course of school study at regularly~~  
7 ~~defined hours, or the offender performing parental duties to offspring~~  
8 ~~or minors normally in the custody of the offender, (b) abiding by the~~  
9 ~~rules of the home detention program, and (c) compliance with court-~~  
10 ~~ordered legal financial obligations. The home detention program may~~  
11 ~~also be made available to))~~

12 (c) Offenders whose charges and convictions do not otherwise  
13 disqualify them if medical or health-related conditions, concerns or  
14 treatment would be better addressed under the home detention program,  
15 or where the health and welfare of the offender, other inmates, or  
16 staff would be jeopardized by the offender's incarceration.  
17 Participation in the home detention program for medical or health-  
18 related reasons is conditioned on the offender abiding by the rules of  
19 the home detention program and complying with court-ordered  
20 restitution; and

21 (d) Offenders convicted of felony driving while under the influence  
22 of intoxicating liquor or any drug as defined in RCW 46.61.502(6) or  
23 felony physical control of a vehicle while under the influence of  
24 intoxicating liquor or any drug as defined in RCW 46.61.504(6).

25 (3) Participation in a home detention program shall be conditioned  
26 upon: (a) The offender obtaining or maintaining current employment or  
27 attending a regular course of school study at regularly defined hours,  
28 or the offender performing parental duties to offspring or minors  
29 normally in the custody of the offender, (b) abiding by the rules of  
30 the home detention program, and (c) compliance with court-ordered legal  
31 financial obligations.

32 **Sec. 3.** RCW 9.94A.230 and 1987 c 486 s 7 are each amended to read  
33 as follows:

34 (1) Every offender who has been discharged under RCW 9.94A.220 may  
35 apply to the sentencing court for a vacation of the offender's record  
36 of conviction. If the court finds the offender meets the tests  
37 prescribed in subsection (2) of this section, the court may clear the  
38 record of conviction by: (a) Permitting the offender to withdraw the

1 offender's plea of guilty and to enter a plea of not guilty; or (b) if  
2 the offender has been convicted after a plea of not guilty, by the  
3 court setting aside the verdict of guilty; and (c) by the court  
4 dismissing the information or indictment against the offender.

5 (2) An offender may not have the record of conviction cleared if:

6 (a) There are any criminal charges against the offender pending in any  
7 court of this state or another state, or in any federal court; (b) the  
8 offense was a violent offense as defined in RCW 9.94A.030; (c) the  
9 offense was a crime against persons as defined in RCW 43.43.830; (d)  
10 the offender has been convicted of a new crime in this state, another  
11 state, or federal court since the date of the offender's discharge  
12 under RCW 9.94A.220; (e) the offense is a class B felony and less than  
13 ten years have passed since the date the applicant was discharged under  
14 RCW 9.94A.220; ((and)) (f) the offense was a class C felony, other than  
15 a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and  
16 less than five years have passed since the date the applicant was  
17 discharged under RCW 9.94A.220; or (g) the offense was a class C felony  
18 described in RCW 46.61.502(6) or 46.61.504(6) and less than seven years  
19 have passed since the applicant was discharged under RCW 9.94A.220.

20 (3) Once the court vacates a record of conviction under subsection  
21 (1) of this section, the fact that the offender has been convicted of  
22 the offense shall not be included in the offender's criminal history  
23 for purposes of determining a sentence in any subsequent conviction,  
24 and the offender shall be released from all penalties and disabilities  
25 resulting from the offense. For all purposes, including responding to  
26 questions on employment applications, an offender whose conviction has  
27 been vacated may state that the offender has never been convicted of  
28 that crime. Nothing in this section affects or prevents the use of an  
29 offender's prior conviction in a later criminal prosecution.

30 **Sec. 4.** RCW 9.94A.320 and 1999 c 352 s 3, 1999 c 322 s 5, and 1999  
31 c 45 s 4 are each reenacted and amended to read as follows:

32 TABLE 2

33 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

34	XVI	Aggravated Murder 1 (RCW 10.95.020)
35	XV	Homicide by abuse (RCW 9A.32.055)
36		Malicious explosion 1 (RCW 70.74.280(1))

1 Murder 1 (RCW 9A.32.030)  
2 XIV Murder 2 (RCW 9A.32.050)  
3 XIII Malicious explosion 2 (RCW 70.74.280(2))  
4 Malicious placement of an explosive 1 (RCW  
5 70.74.270(1))  
6 XII Assault 1 (RCW 9A.36.011)  
7 Assault of a Child 1 (RCW 9A.36.120)  
8 Malicious placement of an imitation device  
9 1 (RCW 70.74.272(1)(a))  
10 Rape 1 (RCW 9A.44.040)  
11 Rape of a Child 1 (RCW 9A.44.073)  
12 XI Manslaughter 1 (RCW 9A.32.060)  
13 Rape 2 (RCW 9A.44.050)  
14 Rape of a Child 2 (RCW 9A.44.076)  
15 X Child Molestation 1 (RCW 9A.44.083)  
16 Indecent Liberties (with forcible  
17 compulsion) (RCW 9A.44.100(1)(a))  
18 Kidnapping 1 (RCW 9A.40.020)  
19 Leading Organized Crime (RCW  
20 9A.82.060(1)(a))  
21 Malicious explosion 3 (RCW 70.74.280(3))  
22 Manufacture of methamphetamine (RCW  
23 69.50.401(a)(1)(ii))  
24 Over 18 and deliver heroin,  
25 methamphetamine, a narcotic from  
26 Schedule I or II, or flunitrazepam  
27 from Schedule IV to someone under 18  
28 (RCW 69.50.406)  
29 IX Assault of a Child 2 (RCW 9A.36.130)  
30 Controlled Substance Homicide (RCW  
31 69.50.415)  
32 Explosive devices prohibited (RCW  
33 70.74.180)  
34 Homicide by Watercraft, by being under the  
35 influence of intoxicating liquor or

1 any drug (RCW ((88.12.029))  
2 79A.60.050)  
3 Inciting Criminal Profiteering (RCW  
4 9A.82.060(1)(b))  
5 Malicious placement of an explosive 2 (RCW  
6 70.74.270(2))  
7 Over 18 and deliver narcotic from Schedule  
8 III, IV, or V or a nonnarcotic, except  
9 flunitrazepam or methamphetamine, from  
10 Schedule I-V to someone under 18 and 3  
11 years junior (RCW 69.50.406)  
12 Robbery 1 (RCW 9A.56.200)  
13 Sexual Exploitation (RCW 9.68A.040)  
14 Vehicular Homicide, by being under the  
15 influence of intoxicating liquor or  
16 any drug (RCW 46.61.520)

17 VIII Arson 1 (RCW 9A.48.020)  
18 Deliver or possess with intent to deliver  
19 m e t h a m p h e t a m i n e ( R C W  
20 69.50.401(a)(1)(ii))  
21 Homicide by Watercraft, by the operation of  
22 any vessel in a reckless manner (RCW  
23 ((88.12.029)) 79A.60.050)  
24 Manslaughter 2 (RCW 9A.32.070)  
25 Manufacture, deliver, or possess with  
26 intent to deliver amphetamine (RCW  
27 69.50.401(a)(1)(ii))  
28 Manufacture, deliver, or possess with  
29 intent to deliver heroin or cocaine  
30 (RCW 69.50.401(a)(1)(i))  
31 Possession of ephedrine or pseudoephedrine  
32 with intent to manufacture  
33 methamphetamine (RCW 69.50.440)  
34 Promoting Prostitution 1 (RCW 9A.88.070)  
35 Selling for profit (controlled or  
36 counterfeit) any controlled substance  
37 (RCW 69.50.410)

1 Vehicular Homicide, by the operation of any  
2 vehicle in a reckless manner (RCW  
3 46.61.520)

4 VII Burglary 1 (RCW 9A.52.020)  
5 Child Molestation 2 (RCW 9A.44.086)  
6 Dealing in depictions of minor engaged in  
7 sexually explicit conduct (RCW  
8 9.68A.050)  
9 Drive-by Shooting (RCW 9A.36.045)  
10 Homicide by Watercraft, by disregard for  
11 the safety of others (RCW  
12 ((88.12.029)) 79A.60.050)  
13 Indecent Liberties (without forcible  
14 compulsion) (RCW 9A.44.100(1) (b) and  
15 (c))  
16 Introducing Contraband 1 (RCW 9A.76.140)  
17 Involving a minor in drug dealing (RCW  
18 69.50.401(f))  
19 Malicious placement of an explosive 3 (RCW  
20 70.74.270(3))  
21 Sending, bringing into state depictions of  
22 minor engaged in sexually explicit  
23 conduct (RCW 9.68A.060)  
24 Unlawful Possession of a Firearm in the  
25 first degree (RCW 9.41.040(1)(a))  
26 Use of a Machine Gun in Commission of a  
27 Felony (RCW 9.41.225)  
28 Vehicular Homicide, by disregard for the  
29 safety of others (RCW 46.61.520)

30 VI Bail Jumping with Murder 1 (RCW  
31 9A.76.170(2)(a))  
32 Bribery (RCW 9A.68.010)  
33 Incest 1 (RCW 9A.64.020(1))  
34 Intimidating a Judge (RCW 9A.72.160)  
35 Intimidating a Juror/Witness (RCW  
36 9A.72.110, 9A.72.130)  
37 Malicious placement of an imitation device  
38 2 (RCW 70.74.272(1)(b))

1 Manufacture, deliver, or possess with  
2 intent to deliver narcotics from  
3 Schedule I or II (except heroin or  
4 cocaine) or flunitrazepam from  
5 Schedule IV (RCW 69.50.401(a)(1)(i))  
6 Rape of a Child 3 (RCW 9A.44.079)  
7 Theft of a Firearm (RCW 9A.56.300)

8 V Abandonment of dependent person 1 (RCW  
9 9A.42.060)

10 Advancing money or property for  
11 extortionate extension of credit (RCW  
12 9A.82.030)

13 Bail Jumping with class A Felony (RCW  
14 9A.76.170(2)(b))

15 Child Molestation 3 (RCW 9A.44.089)

16 Criminal Mistreatment 1 (RCW 9A.42.020)

17 Custodial Sexual Misconduct 1 (RCW  
18 9A.44.160)

19 Delivery of imitation controlled substance  
20 by person eighteen or over to person  
21 under eighteen (RCW 69.52.030(2))

22 Extortion 1 (RCW 9A.56.120)

23 Extortionate Extension of Credit (RCW  
24 9A.82.020)

25 Extortionate Means to Collect Extensions of  
26 Credit (RCW 9A.82.040)

27 Incest 2 (RCW 9A.64.020(2))

28 Kidnapping 2 (RCW 9A.40.030)

29 On and after July 1, 2000: No-Contact  
30 Order Violation: Domestic Violence  
31 Pretrial Condition (RCW 10.99.040(4)  
32 (b) and (c))

33 On and after July 1, 2000: No-Contact  
34 Order Violation: Domestic Violence  
35 Sentence Condition (RCW 10.99.050(2))

1 On and after July 1, 2000: Protection  
2 Order Violation: Domestic Violence  
3 Civil Action (RCW 26.50.110 (4) and  
4 (5))  
5 On and after July 1, 2000: Stalking (RCW  
6 9A.46.110)  
7 Perjury 1 (RCW 9A.72.020)  
8 Persistent prison misbehavior (RCW  
9 9.94.070)  
10 Possession of a Stolen Firearm (RCW  
11 9A.56.310)  
12 Rape 3 (RCW 9A.44.060)  
13 Rendering Criminal Assistance 1 (RCW  
14 9A.76.070)  
15 Sexual Misconduct with a Minor 1 (RCW  
16 9A.44.093)  
17 Sexually Violating Human Remains (RCW  
18 9A.44.105)  
19 IV Arson 2 (RCW 9A.48.030)  
20 Assault 2 (RCW 9A.36.021)  
21 Assault by Watercraft (RCW ((~~88.12.032~~))  
22 79A.60.060)  
23 Bribing a Witness/Bribe Received by Witness  
24 (RCW 9A.72.090, 9A.72.100)  
25 Commercial Bribery (RCW 9A.68.060)  
26 Counterfeiting (RCW 9.16.035(4))  
27 Driving While Under the Influence (RCW  
28 46.61.502(6))  
29 Escape 1 (RCW 9A.76.110)  
30 Hit and Run--Injury Accident (RCW  
31 46.52.020(4))  
32 Hit and Run with Vessel--Injury Accident  
33 (RCW ((~~88.12.155(3)~~)) 79A.60.200(3))  
34 Indecent Exposure to Person Under Age  
35 Fourteen (subsequent sex offense) (RCW  
36 9A.88.010)  
37 Influencing Outcome of Sporting Event (RCW  
38 9A.82.070)

1            Knowingly Trafficking in Stolen Property  
2                            (RCW 9A.82.050(2))  
3            Malicious Harassment (RCW 9A.36.080)  
4            Manufacture, deliver, or possess with  
5                            intent to deliver narcotics from  
6                            Schedule III, IV, or V or nonnarcotics  
7                            from Schedule I-V (except marijuana,  
8                            amphetamine, methamphetamines, or  
9                            flunitrazepam) (RCW 69.50.401(a)(1)  
10                            (iii) through (v))  
11            Physical Control of a Vehicle While Under  
12                            the Influence (RCW 46.61.504(6))  
13            Residential Burglary (RCW 9A.52.025)  
14            Robbery 2 (RCW 9A.56.210)  
15            Theft of Livestock 1 (RCW 9A.56.080)  
16            Threats to Bomb (RCW 9.61.160)  
17            Use of Proceeds of Criminal Profiteering  
18                            (RCW 9A.82.080 (1) and (2))  
19            Vehicular Assault (RCW 46.61.522)  
20            Willful Failure to Return from Furlough  
21                            (RCW 72.66.060)

22    III            Abandonment of dependent person 2 (RCW  
23                            9A.42.070)  
24            Assault 3 (RCW 9A.36.031)  
25            Assault of a Child 3 (RCW 9A.36.140)  
26            Bail Jumping with class B or C Felony (RCW  
27                            9A.76.170(2)(c))  
28            Burglary 2 (RCW 9A.52.030)  
29            Communication with a Minor for Immoral  
30                            Purposes (RCW 9.68A.090)  
31            Criminal Gang Intimidation (RCW 9A.46.120)  
32            Criminal Mistreatment 2 (RCW 9A.42.030)  
33            Custodial Assault (RCW 9A.36.100)  
34            Delivery of a material in lieu of a  
35                            controlled substance (RCW  
36                            69.50.401(c))  
37            Escape 2 (RCW 9A.76.120)  
38            Extortion 2 (RCW 9A.56.130)  
39            Harassment (RCW 9A.46.020)

1 Intimidating a Public Servant (RCW  
2 9A.76.180)  
3 Introducing Contraband 2 (RCW 9A.76.150)  
4 Maintaining a Dwelling or Place for  
5 Controlled Substances (RCW  
6 69.50.402(a)(6))  
7 Malicious Injury to Railroad Property (RCW  
8 81.60.070)  
9 Manufacture, deliver, or possess with  
10 intent to deliver marijuana (RCW  
11 69.50.401(a)(1)(iii))  
12 Manufacture, distribute, or possess with  
13 intent to distribute an imitation  
14 controlled substance (RCW  
15 69.52.030(1))  
16 Patronizing a Juvenile Prostitute (RCW  
17 9.68A.100)  
18 Perjury 2 (RCW 9A.72.030)  
19 Possession of Incendiary Device (RCW  
20 9.40.120)  
21 Possession of Machine Gun or Short-Barreled  
22 Shotgun or Rifle (RCW 9.41.190)  
23 Promoting Prostitution 2 (RCW 9A.88.080)  
24 Recklessly Trafficking in Stolen Property  
25 (RCW 9A.82.050(1))  
26 Securities Act violation (RCW 21.20.400)  
27 Tampering with a Witness (RCW 9A.72.120)  
28 Telephone Harassment (subsequent conviction  
29 or threat of death) (RCW 9.61.230)  
30 Theft of Livestock 2 (RCW 9A.56.080)  
31 Unlawful Imprisonment (RCW 9A.40.040)  
32 Unlawful possession of firearm in the  
33 second degree (RCW 9.41.040(1)(b))  
34 Unlawful Use of Building for Drug Purposes  
35 (RCW 69.53.010)  
36 Willful Failure to Return from Work Release  
37 (RCW 72.65.070)

1       II       Computer Trespass 1 (RCW 9A.52.110)  
2       Counterfeiting (RCW 9.16.035(3))  
3       Create, deliver, or possess a counterfeit  
4               controlled substance (RCW  
5               69.50.401(b))  
6       Escape from Community Custody (RCW  
7               72.09.310)  
8       Health Care False Claims (RCW 48.80.030)  
9       Malicious Mischief 1 (RCW 9A.48.070)  
10      Possession of controlled substance that is  
11               either heroin or narcotics from  
12               Schedule I or II or flunitrazepam from  
13               Schedule IV (RCW 69.50.401(d))  
14      Possession of phencyclidine (PCP) (RCW  
15               69.50.401(d))  
16      Possession of Stolen Property 1 (RCW  
17               9A.56.150)  
18      Theft 1 (RCW 9A.56.030)  
19      Theft of Rental, Leased, or Lease-purchased  
20               Property (valued at one thousand five  
21               hundred dollars or more) (RCW  
22               9A.56.096(4))  
23      Trafficking in Insurance Claims (RCW  
24               48.30A.015)  
25      Unlawful Practice of Law (RCW 2.48.180)  
26      Unlicensed Practice of a Profession or  
27               Business (RCW 18.130.190(7))  
28      I       Attempting to Elude a Pursuing Police  
29               Vehicle (RCW 46.61.024)  
30      False Verification for Welfare (RCW  
31               74.08.055)  
32      Forged Prescription (RCW 69.41.020)  
33      Forged Prescription for a Controlled  
34               Substance (RCW 69.50.403)  
35      Forgery (RCW 9A.60.020)  
36      Malicious Mischief 2 (RCW 9A.48.080)  
37      Possess Controlled Substance that is a  
38               Narcotic from Schedule III, IV, or V  
39               or Non-narcotic from Schedule I-V

1 (except phencyclidine or  
2 flunitrazepam) (RCW 69.50.401(d))  
3 Possession of Stolen Property 2 (RCW  
4 9A.56.160)  
5 Reckless Burning 1 (RCW 9A.48.040)  
6 Taking Motor Vehicle Without Permission  
7 (RCW 9A.56.070)  
8 Theft 2 (RCW 9A.56.040)  
9 Theft of Rental, Leased, or Lease-purchased  
10 Property (valued at two hundred fifty  
11 dollars or more but less than one  
12 thousand five hundred dollars) (RCW  
13 9A.56.096(4))  
14 Unlawful Issuance of Checks or Drafts (RCW  
15 9A.56.060)  
16 Unlawful Use of Food Stamps (RCW 9.91.140  
17 (2) and (3))  
18 Vehicle Prowl 1 (RCW 9A.52.095)

19 **Sec. 5.** RCW 9.94A.360 and 1999 c 352 s 10 and 1999 c 331 s 1 are  
20 each reenacted and amended to read as follows:

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

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

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

30 (2)(a) Prior class A and prior sex (~~((prior))~~) felony convictions  
31 shall always be included in the offender score.

32 (b) Prior class B (~~((prior))~~) felony convictions other than sex  
33 offenses shall not be included in the offender score, if since the last  
34 date of release from confinement (including full-time residential  
35 treatment) pursuant to a felony conviction, if any, or entry of  
36 judgment and sentence, the offender had spent ten consecutive years in  
37 the community without committing any crime that subsequently results in  
38 a conviction.

1       (c) Prior class C (~~prior~~) felony convictions other than sex  
2 offenses and felony traffic offenses shall not be included in the  
3 offender score if, since the last date of release from confinement  
4 (including full-time residential treatment) pursuant to a felony  
5 conviction, if any, or entry of judgment and sentence, the offender had  
6 spent five consecutive years in the community without committing any  
7 crime that subsequently results in a conviction.

8       (d) Prior class C felony traffic convictions and prior nonfelony  
9 serious traffic convictions shall not be included in the offender score  
10 if((~~7~~)): (i) Since the last date of release from confinement  
11 (including full-time residential treatment) pursuant to a felony  
12 conviction, if any, or entry of judgment and sentence, the offender  
13 spent five years in the community without committing any crime that  
14 subsequently results in a conviction; and (ii) if the present  
15 conviction is a felony traffic offense, the prior traffic or serious  
16 traffic conviction is no longer a prior offense "within seven years"  
17 for purposes of RCW 46.61.5055. This subsection applies to both adult  
18 and juvenile prior convictions.

19       (3) Out-of-state convictions for offenses shall be classified  
20 according to the comparable offense definitions and sentences provided  
21 by Washington law. Federal convictions for offenses shall be  
22 classified according to the comparable offense definitions and  
23 sentences provided by Washington law. If there is no clearly  
24 comparable offense under Washington law or the offense is one that is  
25 usually considered subject to exclusive federal jurisdiction, the  
26 offense shall be scored as a class C felony equivalent if it was a  
27 felony under the relevant federal statute.

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

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

34       (i) Prior offenses which were found, under RCW 9.94A.400(1)(a), to  
35 encompass the same criminal conduct, shall be counted as one offense,  
36 the offense that yields the highest offender score. The current  
37 sentencing court shall determine with respect to other prior adult  
38 offenses for which sentences were served concurrently or prior juvenile  
39 offenses for which sentences were served consecutively, whether those

1 offenses shall be counted as one offense or as separate offenses using  
2 the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and  
3 if the court finds that they shall be counted as one offense, then the  
4 offense that yields the highest offender score shall be used. The  
5 current sentencing court may presume that such other prior offenses  
6 were not the same criminal conduct from sentences imposed on separate  
7 dates, or in separate counties or jurisdictions, or in separate  
8 complaints, indictments, or informations;

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

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

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

24 (7) If the present conviction is for a nonviolent offense and not  
25 covered by subsection (11) or (12) of this section, count one point for  
26 each adult prior felony conviction and one point for each juvenile  
27 prior violent felony conviction and 1/2 point for each juvenile prior  
28 nonviolent felony conviction.

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

34 (9) If the present conviction is for a serious violent offense,  
35 count three points for prior adult and juvenile convictions for crimes  
36 in this category, two points for each prior adult and juvenile violent  
37 conviction (not already counted), one point for each prior adult  
38 nonviolent felony conviction, and 1/2 point for each prior juvenile  
39 nonviolent felony conviction.

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

6 (11) If the present conviction is for a felony traffic offense  
7 count two points for each adult or juvenile prior conviction for  
8 Vehicular Homicide or Vehicular Assault; for each felony offense count  
9 one point for each adult and 1/2 point for each juvenile prior  
10 conviction; for each serious traffic offense, other than those used for  
11 an enhancement pursuant to RCW 46.61.520(2), count one point for each  
12 adult and 1/2 point for each juvenile prior conviction.

13 (12) If the present conviction is for a drug offense count three  
14 points for each adult prior felony drug offense conviction and two  
15 points for each juvenile drug offense. All other adult and juvenile  
16 felonies are scored as in subsection (8) of this section if the current  
17 drug offense is violent, or as in subsection (7) of this section if the  
18 current drug offense is nonviolent.

19 (13) If the present conviction is for Willful Failure to Return  
20 from Furlough, RCW 72.66.060, Willful Failure to Return from Work  
21 Release, RCW 72.65.070, or Escape from Community Custody, RCW  
22 72.09.310, count only prior escape convictions in the offender score.  
23 Count adult prior escape convictions as one point and juvenile prior  
24 escape convictions as 1/2 point.

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

28 (15) If the present conviction is for Burglary 2 or residential  
29 burglary, count priors as in subsection (7) of this section; however,  
30 count two points for each adult and juvenile prior Burglary 1  
31 conviction, two points for each adult prior Burglary 2 or residential  
32 burglary conviction, and one point for each juvenile prior Burglary 2  
33 or residential burglary conviction.

34 (16) If the present conviction is for a sex offense, count priors  
35 as in subsections (7) through (15) of this section; however count three  
36 points for each adult and juvenile prior sex offense conviction.

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

1       **Sec. 6.** RCW 46.20.720 and 1999 c 331 s 3 are each amended to read  
2 as follows:

3       (1) The court may order that after a period of suspension,  
4 revocation, or denial of driving privileges, and for up to as long as  
5 the court has jurisdiction, any person convicted of any offense  
6 involving the use, consumption, or possession of alcohol while  
7 operating a motor vehicle may drive only a motor vehicle equipped with  
8 a functioning ignition interlock or other biological or technical  
9 device.

10       (2) If a person is convicted of a violation of RCW 46.61.502 or  
11 46.61.504 or an equivalent local ordinance and it is: (a) The person's  
12 first conviction or a deferred prosecution under chapter 10.05 RCW and  
13 his or her alcohol concentration was at least 0.15, or by reason of the  
14 person's refusal to take a test offered pursuant to RCW 46.20.308 there  
15 is no test result indicating the person's alcohol concentration; or (b)  
16 the person's second or subsequent conviction; or (c) the person's first  
17 conviction and the person has a previous deferred prosecution under  
18 chapter 10.05 RCW or it is a deferred prosecution under chapter 10.05  
19 RCW and the person has a previous conviction, the court shall order  
20 that after any applicable period of suspension, revocation, or denial  
21 of driving privileges, the person may drive only a motor vehicle  
22 equipped with a functioning ignition interlock or other biological or  
23 technical device. The court may waive the requirement for the use of  
24 such a device if the court makes a specific finding in writing that  
25 such devices are not reasonably available in the local area. Nothing  
26 in this section may be interpreted as entitling a person to more than  
27 one deferred prosecution.

28       (3) The court shall establish a specific calibration setting at  
29 which the ignition interlock or other biological or technical device  
30 will prevent the motor vehicle from being started and the period of  
31 time that the person shall be subject to the restriction. In the case  
32 of a person under subsection (2) of this section, the period of time of  
33 the restriction will be as follows:

34       (a) For a person (i) who is subject to RCW 46.61.5055 (1)(b), (2),  
35 (~~(3)~~) (3), or (4), or who is subject to a deferred prosecution program  
36 under chapter 10.05 RCW, and (ii) who has not previously been  
37 restricted under this section, a period of not less than one year;

38       (b) For a person who has previously been restricted under (a) of  
39 this subsection, a period of not less than five years;

1 (c) For a person who has previously been restricted under (b) of  
2 this subsection, a period of not less than ten years.

3 For purposes of this section, "convicted" means being found guilty  
4 of an offense or being placed on a deferred prosecution program under  
5 chapter 10.05 RCW.

6 **Sec. 7.** RCW 46.61.502 and 1998 c 213 s 3 are each amended to read  
7 as follows:

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

11 (a) And the person has, within two hours after driving, an alcohol  
12 concentration of 0.08 or higher as shown by analysis of the person's  
13 breath or blood made under RCW 46.61.506; or

14 (b) While the person is under the influence of or affected by  
15 intoxicating liquor or any drug; or

16 (c) While the person is under the combined influence of or affected  
17 by intoxicating liquor and any drug.

18 (2) The fact that a person charged with a violation of this section  
19 is or has been entitled to use a drug under the laws of this state  
20 shall not constitute a defense against a charge of violating this  
21 section.

22 (3) It is an affirmative defense to a violation of subsection  
23 (1)(a) of this section which the defendant must prove by a  
24 preponderance of the evidence that the defendant consumed a sufficient  
25 quantity of alcohol after the time of driving and before the  
26 administration of an analysis of the person's breath or blood to cause  
27 the defendant's alcohol concentration to be 0.08 or more within two  
28 hours after driving. The court shall not admit evidence of this  
29 defense unless the defendant notifies the prosecution prior to the  
30 omnibus or pretrial hearing in the case of the defendant's intent to  
31 assert the affirmative defense.

32 (4) Analyses of blood or breath samples obtained more than two  
33 hours after the alleged driving may be used as evidence that within two  
34 hours of the alleged driving, a person had an alcohol concentration of  
35 0.08 or more in violation of subsection (1)(a) of this section, and in  
36 any case in which the analysis shows an alcohol concentration above  
37 0.00 may be used as evidence that a person was under the influence of

1 or affected by intoxicating liquor or any drug in violation of  
2 subsection (1)(b) or (c) of this section.

3 (5) Except as provided in subsection (6) of this section, a  
4 violation of this section is a gross misdemeanor.

5 (6) A violation of this section by a person who has three or more  
6 prior offenses within seven years is punishable as a class C felony  
7 according to chapter 9A.20 RCW. For the purposes of this subsection,  
8 the definitions of "prior offense" and "within seven years" contained  
9 in RCW 46.61.5055 apply.

10 **Sec. 8.** RCW 46.61.504 and 1998 c 213 s 5 are each amended to read  
11 as follows:

12 (1) A person is guilty of being in actual physical control of a  
13 motor vehicle while under the influence of intoxicating liquor or any  
14 drug if the person has actual physical control of a vehicle within this  
15 state:

16 (a) And the person has, within two hours after being in actual  
17 physical control of the vehicle, an alcohol concentration of 0.08 or  
18 higher as shown by analysis of the person's breath or blood made under  
19 RCW 46.61.506; or

20 (b) While the person is under the influence of or affected by  
21 intoxicating liquor or any drug; or

22 (c) While the person is under the combined influence of or affected  
23 by intoxicating liquor and any drug.

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

30 (3) It is an affirmative defense to a violation of subsection  
31 (1)(a) of this section which the defendant must prove by a  
32 preponderance of the evidence that the defendant consumed a sufficient  
33 quantity of alcohol after the time of being in actual physical control  
34 of the vehicle and before the administration of an analysis of the  
35 person's breath or blood to cause the defendant's alcohol concentration  
36 to be 0.08 or more within two hours after being in such control. The  
37 court shall not admit evidence of this defense unless the defendant

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

3 (4) Analyses of blood or breath samples obtained more than two  
4 hours after the alleged being in actual physical control of a vehicle  
5 may be used as evidence that within two hours of the alleged being in  
6 such control, a person had an alcohol concentration of 0.08 or more in  
7 violation of subsection (1)(a) of this section, and in any case in  
8 which the analysis shows an alcohol concentration above 0.00 may be  
9 used as evidence that a person was under the influence of or affected  
10 by intoxicating liquor or any drug in violation of subsection (1)(b) or  
11 (c) of this section.

12 (5) Except as provided in subsection (6) of this section, a  
13 violation of this section is a gross misdemeanor.

14 (6) A violation of this section by a person who has three or more  
15 prior offenses within seven years is punishable as a class C felony  
16 according to chapter 9A.20 RCW. For the purposes of this subsection,  
17 the definitions of "prior offense" and "within seven years" contained  
18 in RCW 46.61.5055 apply.

19 **Sec. 9.** RCW 46.61.5055 and 1999 c 324 s 5, 1999 c 274 s 6, and  
20 1999 c 5 s 1 are each reenacted and amended to read as follows:

21 (1) A person who is convicted of a violation of RCW 46.61.502 or  
22 46.61.504 and who has no prior offense within seven years shall be  
23 punished as follows:

24 (a) In the case of a person whose alcohol concentration was less  
25 than 0.15, or for whom for reasons other than the person's refusal to  
26 take a test offered pursuant to RCW 46.20.308 there is no test result  
27 indicating the person's alcohol concentration:

28 (i) By imprisonment for not less than one day nor more than one  
29 year. Twenty-four consecutive hours of the imprisonment may not be  
30 suspended or deferred unless the court finds that the imposition of  
31 this mandatory minimum sentence would impose a substantial risk to the  
32 offender's physical or mental well-being. Whenever the mandatory  
33 minimum sentence is suspended or deferred, the court shall state in  
34 writing the reason for granting the suspension or deferral and the  
35 facts upon which the suspension or deferral is based. In lieu of the  
36 mandatory minimum term of imprisonment required under this subsection  
37 (1)(a)(i), the court may order not less than fifteen days of electronic  
38 home monitoring. The offender shall pay the cost of electronic home

1 monitoring. The county or municipality in which the penalty is being  
2 imposed shall determine the cost. The court may also require the  
3 offender's electronic home monitoring device to include an alcohol  
4 detection breathalyzer, and the court may restrict the amount of  
5 alcohol the offender may consume during the time the offender is on  
6 electronic home monitoring; and

7 (ii) By a fine of not less than three hundred fifty dollars nor  
8 more than five thousand dollars. Three hundred fifty dollars of the  
9 fine may not be suspended or deferred unless the court finds the  
10 offender to be indigent; or

11 (b) In the case of a person whose alcohol concentration was at  
12 least 0.15, or for whom by reason of the person's refusal to take a  
13 test offered pursuant to RCW 46.20.308 there is no test result  
14 indicating the person's alcohol concentration:

15 (i) By imprisonment for not less than two days nor more than one  
16 year. Two consecutive days of the imprisonment may not be suspended or  
17 deferred unless the court finds that the imposition of this mandatory  
18 minimum sentence would impose a substantial risk to the offender's  
19 physical or mental well-being. Whenever the mandatory minimum sentence  
20 is suspended or deferred, the court shall state in writing the reason  
21 for granting the suspension or deferral and the facts upon which the  
22 suspension or deferral is based. In lieu of the mandatory minimum term  
23 of imprisonment required under this subsection (1)(b)(i), the court may  
24 order not less than thirty days of electronic home monitoring. The  
25 offender shall pay the cost of electronic home monitoring. The county  
26 or municipality in which the penalty is being imposed shall determine  
27 the cost. The court may also require the offender's electronic home  
28 monitoring device to include an alcohol detection breathalyzer, and the  
29 court may restrict the amount of alcohol the offender may consume  
30 during the time the offender is on electronic home monitoring; and

31 (ii) By a fine of not less than five hundred dollars nor more than  
32 five thousand dollars. Five hundred dollars of the fine may not be  
33 suspended or deferred unless the court finds the offender to be  
34 indigent; and

35 (iii) By a court-ordered restriction under RCW 46.20.720.

36 (2) A person who is convicted of a violation of RCW 46.61.502 or  
37 46.61.504 and who has one prior offense within seven years shall be  
38 punished as follows:

1 (a) In the case of a person whose alcohol concentration was less  
2 than 0.15, or for whom for reasons other than the person's refusal to  
3 take a test offered pursuant to RCW 46.20.308 there is no test result  
4 indicating the person's alcohol concentration:

5 (i) By imprisonment for not less than thirty days nor more than one  
6 year and sixty days of electronic home monitoring. The offender shall  
7 pay for the cost of the electronic monitoring. The county or  
8 municipality where the penalty is being imposed shall determine the  
9 cost. The court may also require the offender's electronic home  
10 monitoring device include an alcohol detection breathalyzer, and may  
11 restrict the amount of alcohol the offender may consume during the time  
12 the offender is on electronic home monitoring. Thirty days of  
13 imprisonment and sixty days of electronic home monitoring may not be  
14 suspended or deferred unless the court finds that the imposition of  
15 this mandatory minimum sentence would impose a substantial risk to the  
16 offender's physical or mental well-being. Whenever the mandatory  
17 minimum sentence is suspended or deferred, the court shall state in  
18 writing the reason for granting the suspension or deferral and the  
19 facts upon which the suspension or deferral is based; and

20 (ii) By a fine of not less than five hundred dollars nor more than  
21 five thousand dollars. Five hundred dollars of the fine may not be  
22 suspended or deferred unless the court finds the offender to be  
23 indigent; and

24 (iii) By a court-ordered restriction under RCW 46.20.720; or

25 (b) In the case of a person whose alcohol concentration was at  
26 least 0.15, or for whom by reason of the person's refusal to take a  
27 test offered pursuant to RCW 46.20.308 there is no test result  
28 indicating the person's alcohol concentration:

29 (i) By imprisonment for not less than forty-five days nor more than  
30 one year and ninety days of electronic home monitoring. The offender  
31 shall pay for the cost of the electronic monitoring. The county or  
32 municipality where the penalty is being imposed shall determine the  
33 cost. The court may also require the offender's electronic home  
34 monitoring device include an alcohol detection breathalyzer, and may  
35 restrict the amount of alcohol the offender may consume during the time  
36 the offender is on electronic home monitoring. Forty-five days of  
37 imprisonment and ninety days of electronic home monitoring may not be  
38 suspended or deferred unless the court finds that the imposition of  
39 this mandatory minimum sentence would impose a substantial risk to the

1 offender's physical or mental well-being. Whenever the mandatory  
2 minimum sentence is suspended or deferred, the court shall state in  
3 writing the reason for granting the suspension or deferral and the  
4 facts upon which the suspension or deferral is based; and

5 (ii) By a fine of not less than seven hundred fifty dollars nor  
6 more than five thousand dollars. Seven hundred fifty dollars of the  
7 fine may not be suspended or deferred unless the court finds the  
8 offender to be indigent; and

9 (iii) By a court-ordered restriction under RCW 46.20.720.

10 (3) A person who is convicted of a violation of RCW 46.61.502 or  
11 46.61.504 and who has two (~~or more~~) prior offenses within seven years  
12 shall be punished as follows:

13 (a) In the case of a person whose alcohol concentration was less  
14 than 0.15, or for whom for reasons other than the person's refusal to  
15 take a test offered pursuant to RCW 46.20.308 there is no test result  
16 indicating the person's alcohol concentration:

17 (i) By imprisonment for not less than ninety days nor more than one  
18 year and one hundred twenty days of electronic home monitoring. The  
19 offender shall pay for the cost of the electronic monitoring. The  
20 county or municipality where the penalty is being imposed shall  
21 determine the cost. The court may also require the offender's  
22 electronic home monitoring device include an alcohol detection  
23 breathalyzer, and may restrict the amount of alcohol the offender may  
24 consume during the time the offender is on electronic home monitoring.  
25 Ninety days of imprisonment and one hundred twenty days of electronic  
26 home monitoring may not be suspended or deferred unless the court finds  
27 that the imposition of this mandatory minimum sentence would impose a  
28 substantial risk to the offender's physical or mental well-being.  
29 Whenever the mandatory minimum sentence is suspended or deferred, the  
30 court shall state in writing the reason for granting the suspension or  
31 deferral and the facts upon which the suspension or deferral is based;  
32 and

33 (ii) By a fine of not less than one thousand dollars nor more than  
34 five thousand dollars. One thousand dollars of the fine may not be  
35 suspended or deferred unless the court finds the offender to be  
36 indigent; and

37 (iii) By a court-ordered restriction under RCW 46.20.720; or

38 (b) In the case of a person whose alcohol concentration was at  
39 least 0.15, or for whom by reason of the person's refusal to take a

1 test offered pursuant to RCW 46.20.308 there is no test result  
2 indicating the person's alcohol concentration:

3 (i) By imprisonment for not less than one hundred twenty days nor  
4 more than one year and one hundred fifty days of electronic home  
5 monitoring. The offender shall pay for the cost of the electronic  
6 monitoring. The county or municipality where the penalty is being  
7 imposed shall determine the cost. The court may also require the  
8 offender's electronic home monitoring device include an alcohol  
9 detection breathalyzer, and may restrict the amount of alcohol the  
10 offender may consume during the time the offender is on electronic home  
11 monitoring. One hundred twenty days of imprisonment and one hundred  
12 fifty days of electronic home monitoring may not be suspended or  
13 deferred unless the court finds that the imposition of this mandatory  
14 minimum sentence would impose a substantial risk to the offender's  
15 physical or mental well-being. Whenever the mandatory minimum sentence  
16 is suspended or deferred, the court shall state in writing the reason  
17 for granting the suspension or deferral and the facts upon which the  
18 suspension or deferral is based; and

19 (ii) By a fine of not less than one thousand five hundred dollars  
20 nor more than five thousand dollars. One thousand five hundred dollars  
21 of the fine may not be suspended or deferred unless the court finds the  
22 offender to be indigent; and

23 (iii) By a court-ordered restriction under RCW 46.20.720.

24 (4) A person who is convicted of a violation of RCW 46.61.502 or  
25 46.61.504 and who has three or more prior offenses within seven years  
26 shall be punished in accordance with chapter 9.94A RCW. In addition,  
27 the court shall impose the restrictions set forth in RCW 46.20.720 and  
28 may sentence the offender to a term of home detention, as defined in  
29 RCW 9.94A.030. Any term of home detention shall be served  
30 consecutively to the term of total confinement.

31 (5) In exercising its discretion in setting nonfelony penalties  
32 within the limits allowed by this section, the court shall particularly  
33 consider the following:

34 (a) Whether the person's driving at the time of the offense was  
35 responsible for injury or damage to another or another's property; and

36 (b) Whether the person was driving or in physical control of a  
37 vehicle with one or more passengers at the time of the offense.

38 ~~((+5))~~ (6) An offender punishable under this section is subject to  
39 the alcohol assessment and treatment provisions of RCW 46.61.5056.

1       (~~(6)~~) (7) The license, permit, or nonresident privilege of a  
2 person convicted of driving or being in physical control of a motor  
3 vehicle while under the influence of intoxicating liquor or drugs must:

4       (a) If the person's alcohol concentration was less than 0.15, or if  
5 for reasons other than the person's refusal to take a test offered  
6 under RCW 46.20.308 there is no test result indicating the person's  
7 alcohol concentration:

8       (i) Where there has been no prior offense within seven years, be  
9 suspended or denied by the department for ninety days;

10       (ii) Where there has been one prior offense within seven years, be  
11 revoked or denied by the department for two years; or

12       (iii) Where there have been two or more prior offenses within seven  
13 years, be revoked or denied by the department for three years;

14       (b) If the person's alcohol concentration was at least 0.15, or if  
15 by reason of the person's refusal to take a test offered under RCW  
16 46.20.308 there is no test result indicating the person's alcohol  
17 concentration:

18       (i) Where there has been no prior offense within seven years, be  
19 revoked or denied by the department for one year;

20       (ii) Where there has been one prior offense within seven years, be  
21 revoked or denied by the department for nine hundred days; or

22       (iii) Where there have been two or more prior offenses within seven  
23 years, be revoked or denied by the department for four years.

24       For purposes of this subsection, the department shall refer to the  
25 driver's record maintained under RCW 46.52.120 when determining the  
26 existence of prior offenses.

27       (~~(7)~~) (8) After expiration of any period of suspension,  
28 revocation, or denial of the offender's license, permit, or privilege  
29 to drive required by this section, the department shall place the  
30 offender's driving privilege in probationary status pursuant to RCW  
31 46.20.355.

32       (~~(8)~~) (9)(a) In addition to any nonsuspendable and nondeferrable  
33 jail sentence required by this section, whenever the court imposes less  
34 than one year in jail, the court shall also suspend but shall not defer  
35 a period of confinement for a period not exceeding five years. The  
36 court shall impose conditions of probation that include: (i) Not  
37 driving a motor vehicle within this state without a valid license to  
38 drive and proof of financial responsibility for the future; (ii) not  
39 driving a motor vehicle within this state while having an alcohol

1 concentration of 0.08 or more within two hours after driving; and (iii)  
2 not refusing to submit to a test of his or her breath or blood to  
3 determine alcohol concentration upon request of a law enforcement  
4 officer who has reasonable grounds to believe the person was driving or  
5 was in actual physical control of a motor vehicle within this state  
6 while under the influence of intoxicating liquor. The court may impose  
7 conditions of probation that include nonrepetition, installation of an  
8 ignition interlock or other biological or technical device on the  
9 probationer's motor vehicle, alcohol or drug treatment, supervised  
10 probation, or other conditions that may be appropriate. The sentence  
11 may be imposed in whole or in part upon violation of a condition of  
12 probation during the suspension period.

13 (b) For each violation of mandatory conditions of probation under  
14 (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall  
15 order the convicted person to be confined for thirty days, which shall  
16 not be suspended or deferred.

17 (c) For each incident involving a violation of a mandatory  
18 condition of probation imposed under this subsection, the license,  
19 permit, or privilege to drive of the person shall be suspended by the  
20 court for thirty days or, if such license, permit, or privilege to  
21 drive already is suspended, revoked, or denied at the time the finding  
22 of probation violation is made, the suspension, revocation, or denial  
23 then in effect shall be extended by thirty days. The court shall  
24 notify the department of any suspension, revocation, or denial or any  
25 extension of a suspension, revocation, or denial imposed under this  
26 subsection.

27 (~~(+9)~~) (10) A court may waive the electronic home monitoring  
28 requirements of this chapter when:

29 (a) The offender does not have a dwelling, telephone service, or  
30 any other necessity to operate an electronic home monitoring system;

31 (b) The offender does not reside in the state of Washington; or

32 (c) The court determines that there is reason to believe that the  
33 offender would violate the conditions of the electronic home monitoring  
34 penalty.

35 Whenever the mandatory minimum term of electronic home monitoring  
36 is waived, the court shall state in writing the reason for granting the  
37 waiver and the facts upon which the waiver is based, and shall impose  
38 an alternative sentence with similar punitive consequences. The

1 alternative sentence may include, but is not limited to, additional  
2 jail time, work crew, or work camp.

3 Whenever the combination of jail time and electronic home  
4 monitoring or alternative sentence would exceed three hundred sixty-  
5 five days, the offender shall serve the jail portion of the sentence  
6 first, and the electronic home monitoring or alternative portion of the  
7 sentence shall be reduced so that the combination does not exceed three  
8 hundred sixty-five days.

9 ~~((10))~~ (11) An offender serving a sentence under this section,  
10 whether or not a mandatory minimum term has expired, may be granted an  
11 extraordinary medical placement by the jail administrator subject to  
12 the standards and limitations set forth in RCW 9.94A.150(4).

13 ~~((11))~~ (12) For purposes of this section:

14 (a) A "prior offense" means any of the following:

15 (i) A conviction for a violation of RCW 46.61.502 or an equivalent  
16 local ordinance;

17 (ii) A conviction for a violation of RCW 46.61.504 or an equivalent  
18 local ordinance;

19 (iii) A conviction for a violation of RCW 46.61.520 committed while  
20 under the influence of intoxicating liquor or any drug;

21 (iv) A conviction for a violation of RCW 46.61.522 committed while  
22 under the influence of intoxicating liquor or any drug;

23 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
24 9A.36.050 or an equivalent local ordinance, if the conviction is the  
25 result of a charge that was originally filed as a violation of RCW  
26 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
27 46.61.520 or 46.61.522;

28 (vi) An out-of-state conviction for a violation that would have  
29 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this  
30 subsection if committed in this state;

31 (vii) A deferred prosecution under chapter 10.05 RCW granted in a  
32 prosecution for a violation of RCW 46.61.502, 46.61.504, or an  
33 equivalent local ordinance; or

34 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
35 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
36 ordinance, if the charge under which the deferred prosecution was  
37 granted was originally filed as a violation of RCW 46.61.502 or  
38 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
39 46.61.522; and

1 (b) "Within seven years" means that the arrest for a prior offense  
2 occurred within seven years of the arrest for the current offense.

3 **Sec. 10.** RCW 46.61.5151 and 1995 c 332 s 15 are each amended to  
4 read as follows:

5 A sentencing court may allow (~~(persons convicted of violating)~~) a  
6 person who is convicted of a nonfelony violation of RCW 46.61.502 or  
7 46.61.504 to fulfill the terms of the sentence provided in RCW  
8 46.61.5055 in nonconsecutive or intermittent time periods. However, a  
9 term of confinement of one year or more shall be served consecutively  
10 and any mandatory minimum sentence under RCW 46.61.5055 shall be served  
11 consecutively unless suspended or deferred as otherwise provided by  
12 law.

--- END ---