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HOUSE BILL 2492

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State of Washington

56th Legislature

2000 Regular Session

By Representatives Schindler, Koster, Esser, Carrell, Sullivan, Crouse, Cairnes, Rockefeller, Veloria, Clements, Benson, D. Sommers and Hurst

Read first time 01/14/2000. Referred to Committee on Judiciary.

1 AN ACT Relating to driving while under the influence of alcohol or  
2 any drug; amending RCW 46.61.502, 46.61.504, and 46.61.524; reenacting  
3 and amending RCW 46.61.5055, 9.94A.320, and 9.94A.360; and prescribing  
4 penalties.

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

6 **Sec. 1.** 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

1 shall not constitute a defense against a charge of violating this  
2 section.

3 (3) It is an affirmative defense to a violation of subsection  
4 (1)(a) of this section which the defendant must prove by a  
5 preponderance of the evidence that the defendant consumed a sufficient  
6 quantity of alcohol after the time of driving and before the  
7 administration of an analysis of the person's breath or blood to cause  
8 the defendant's alcohol concentration to be 0.08 or more within two  
9 hours after driving. The court shall not admit evidence of this  
10 defense unless the defendant notifies the prosecution prior to the  
11 omnibus or pretrial hearing in the case of the defendant's intent to  
12 assert the affirmative defense.

13 (4) Analyses of blood or breath samples obtained more than two  
14 hours after the alleged driving may be used as evidence that within two  
15 hours of the alleged driving, a person had an alcohol concentration of  
16 0.08 or more in violation of subsection (1)(a) of this section, and in  
17 any case in which the analysis shows an alcohol concentration above  
18 0.00 may be used as evidence that a person was under the influence of  
19 or affected by intoxicating liquor or any drug in violation of  
20 subsection (1)(b) or (c) of this section.

21 (5) A violation of this section is a gross misdemeanor punishable  
22 pursuant to RCW 46.61.5055 except that a person is guilty of a class C  
23 felony punishable under chapter 9A.20 RCW if the person drives while  
24 under the influence of intoxicating liquor or any drug as defined by  
25 this section and has previously been convicted of driving or being in  
26 physical control of a motor vehicle while under the influence of  
27 intoxicating liquor or any drug on two or more prior occasions within  
28 a seven-year period.

29 **Sec. 2.** RCW 46.61.504 and 1998 c 213 s 5 are each amended to read  
30 as follows:

31 (1) A person is guilty of being in actual physical control of a  
32 motor vehicle while under the influence of intoxicating liquor or any  
33 drug if the person has actual physical control of a vehicle within this  
34 state:

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

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

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

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

11 (3) It is an affirmative defense to a violation of subsection  
12 (1)(a) of this section which the defendant must prove by a  
13 preponderance of the evidence that the defendant consumed a sufficient  
14 quantity of alcohol after the time of being in actual physical control  
15 of the vehicle and before the administration of an analysis of the  
16 person's breath or blood to cause the defendant's alcohol concentration  
17 to be 0.08 or more within two hours after being in such control. The  
18 court shall not admit evidence of this defense unless the defendant  
19 notifies the prosecution prior to the omnibus or pretrial hearing in  
20 the case of the defendant's intent to assert the affirmative defense.

21 (4) Analyses of blood or breath samples obtained more than two  
22 hours after the alleged being in actual physical control of a vehicle  
23 may be used as evidence that within two hours of the alleged being in  
24 such control, a person had an alcohol concentration of 0.08 or more in  
25 violation of subsection (1)(a) of this section, and in any case in  
26 which the analysis shows an alcohol concentration above 0.00 may be  
27 used as evidence that a person was under the influence of or affected  
28 by intoxicating liquor or any drug in violation of subsection (1)(b) or  
29 (c) of this section.

30 (5) A violation of this section is a gross misdemeanor punishable  
31 pursuant to RCW 46.61.5055 except that a person is guilty of a class C  
32 felony punishable under chapter 9A.20 RCW if the person is in actual  
33 physical control of a motor vehicle while under the influence of  
34 intoxicating liquor or any drug as defined by this section and has been  
35 previously convicted of being in physical control of a motor vehicle or  
36 driving a motor vehicle while under the influence of intoxicating  
37 liquor or any drug on two or more occasions within a seven-year period.

1       **Sec. 3.** RCW 46.61.5055 and 1999 c 324 s 5, 1999 c 274 s 6, and  
2 1999 c 5 s 1 are each reenacted and amended to read as follows:

3       (1) A person who is convicted of a violation of RCW 46.61.502 or  
4 46.61.504 and who has no prior offense within seven years shall be  
5 punished as follows:

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

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

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

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

35       (i) By imprisonment for not less than two days nor more than one  
36 year. Two consecutive days of the imprisonment may not be suspended or  
37 deferred unless the court finds that the imposition of this mandatory  
38 minimum sentence would impose a substantial risk to the offender's  
39 physical or mental well-being. Whenever the mandatory minimum sentence

1 is suspended or deferred, the court shall state in writing the reason  
2 for granting the suspension or deferral and the facts upon which the  
3 suspension or deferral is based. In lieu of the mandatory minimum term  
4 of imprisonment required under this subsection (1)(b)(i), the court may  
5 order not less than thirty days of electronic home monitoring. The  
6 offender shall pay the cost of electronic home monitoring. The county  
7 or municipality in which the penalty is being imposed shall determine  
8 the cost. The court may also require the offender's electronic home  
9 monitoring device to include an alcohol detection breathalyzer, and the  
10 court may restrict the amount of alcohol the offender may consume  
11 during the time the offender is on electronic home monitoring; and

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

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

17 (2) A person who is convicted of a violation of RCW 46.61.502 or  
18 46.61.504 and who has one prior offense within seven years shall be  
19 punished as follows:

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

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

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

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

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

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

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

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

30 (3) A person who is convicted of a violation of RCW 46.61.502 or  
31 46.61.504 and who has two or more prior offenses within seven years is  
32 guilty of a class C felony and shall be punished (~~as follows:~~

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

37 ~~(i) By imprisonment for not less than ninety days nor more than one~~  
38 ~~year and one hundred twenty days of electronic home monitoring. The~~  
39 ~~offender shall pay for the cost of the electronic monitoring. The~~

1 county or municipality where the penalty is being imposed shall  
2 determine the cost. The court may also require the offender's  
3 electronic home monitoring device include an alcohol detection  
4 breathalyzer, and may restrict the amount of alcohol the offender may  
5 consume during the time the offender is on electronic home monitoring.  
6 Ninety days of imprisonment and one hundred twenty days of electronic  
7 home monitoring may not be suspended or deferred unless the court finds  
8 that the imposition of this mandatory minimum sentence would impose a  
9 substantial risk to the offender's physical or mental well being.  
10 Whenever the mandatory minimum sentence is suspended or deferred, the  
11 court shall state in writing the reason for granting the suspension or  
12 deferral and the facts upon which the suspension or deferral is based;  
13 and

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

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

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

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

1       ~~(ii) By a fine of not less than one thousand five hundred dollars~~  
2 ~~nor more than five thousand dollars. One thousand five hundred dollars~~  
3 ~~of the fine may not be suspended or deferred unless the court finds the~~  
4 ~~offender to be indigent; and~~

5       ~~(iii) By a court ordered restriction under RCW 46.20.720)) pursuant~~  
6 ~~to chapter 9A.20 RCW.~~

7       (4) In exercising its discretion in setting penalties within the  
8 limits allowed by this section, the court shall particularly consider  
9 the following:

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

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

14       (5) An offender punishable under this section is subject to the  
15 alcohol assessment and treatment provisions of RCW 46.61.5056.

16       (6) The license, permit, or nonresident privilege of a person  
17 convicted of driving or being in physical control of a motor vehicle  
18 while under the influence of intoxicating liquor or drugs must:

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

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

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

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

29       (b) If the person's alcohol concentration was at least 0.15, or if  
30 by reason of the person's refusal to take a test offered under RCW  
31 46.20.308 there is no test result indicating the person's alcohol  
32 concentration:

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

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

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



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

4 (7) After expiration of any period of suspension, revocation, or  
5 denial of the offender's license, permit, or privilege to drive  
6 required by this section, the department shall place the offender's  
7 driving privilege in probationary status pursuant to RCW 46.20.355.

8 (8)(a) In addition to any nonsuspendable and nondeferrable jail  
9 sentence required by this section, whenever the court imposes less than  
10 one year in jail, the court shall also suspend but shall not defer a  
11 period of confinement for a period not exceeding five years. The court  
12 shall impose conditions of probation that include: (i) Not driving a  
13 motor vehicle within this state without a valid license to drive and  
14 proof of financial responsibility for the future; (ii) not driving a  
15 motor vehicle within this state while having an alcohol concentration  
16 of 0.08 or more within two hours after driving; and (iii) not refusing  
17 to submit to a test of his or her breath or blood to determine alcohol  
18 concentration upon request of a law enforcement officer who has  
19 reasonable grounds to believe the person was driving or was in actual  
20 physical control of a motor vehicle within this state while under the  
21 influence of intoxicating liquor. The court may impose conditions of  
22 probation that include nonrepetition, installation of an ignition  
23 interlock or other biological or technical device on the probationer's  
24 motor vehicle, alcohol or drug treatment, supervised probation, or  
25 other conditions that may be appropriate. The sentence may be imposed  
26 in whole or in part upon violation of a condition of probation during  
27 the suspension period.

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

32 (c) For each incident involving a violation of a mandatory  
33 condition of probation imposed under this subsection, the license,  
34 permit, or privilege to drive of the person shall be suspended by the  
35 court for thirty days or, if such license, permit, or privilege to  
36 drive already is suspended, revoked, or denied at the time the finding  
37 of probation violation is made, the suspension, revocation, or denial  
38 then in effect shall be extended by thirty days. The court shall  
39 notify the department of any suspension, revocation, or denial or any

1 extension of a suspension, revocation, or denial imposed under this  
2 subsection.

3 (9) A court may waive the electronic home monitoring requirements  
4 of this chapter when:

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

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

8 (c) The court determines that there is reason to believe that the  
9 offender would violate the conditions of the electronic home monitoring  
10 penalty.

11 Whenever the mandatory minimum term of electronic home monitoring  
12 is waived, the court shall state in writing the reason for granting the  
13 waiver and the facts upon which the waiver is based, and shall impose  
14 an alternative sentence with similar punitive consequences. The  
15 alternative sentence may include, but is not limited to, additional  
16 jail time, work crew, or work camp.

17 Whenever the combination of jail time and electronic home  
18 monitoring or alternative sentence would exceed three hundred sixty-  
19 five days, the offender shall serve the jail portion of the sentence  
20 first, and the electronic home monitoring or alternative portion of the  
21 sentence shall be reduced so that the combination does not exceed three  
22 hundred sixty-five days.

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

27 (11) For purposes of this section:

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

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

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

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

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

37 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
38 9A.36.050 or an equivalent local ordinance, if the conviction is the  
39 result of a charge that was originally filed as a violation of RCW

1 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
2 46.61.520 or 46.61.522;

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

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

9 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
10 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
11 ordinance, if the charge under which the deferred prosecution was  
12 granted was originally filed as a violation of RCW 46.61.502 or  
13 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
14 46.61.522; and

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

17 **Sec. 4.** RCW 46.61.524 and 1991 c 348 s 2 are each amended to read  
18 as follows:

19 (1) A person convicted under RCW 46.61.520(1)(a) or 46.61.522(1)(b)  
20 or of a felony violation of RCW 46.61.502 or 46.61.504 shall, as a  
21 condition of community (~~supervision~~) custody imposed under RCW  
22 9.94A.383 or community placement imposed under RCW 9.94A.120(~~(+8)~~)  
23 (9), complete a diagnostic evaluation by an alcohol or drug dependency  
24 agency approved by the department of social and health services or a  
25 qualified probation department, as defined under RCW 46.61.516 that has  
26 been approved by the department of social and health services. This  
27 report shall be forwarded to the department of licensing. If the  
28 person is found to have an alcohol or drug problem that requires  
29 treatment, the person shall complete treatment in a program approved by  
30 the department of social and health services under chapter 70.96A RCW.  
31 If the person is found not to have an alcohol or drug problem that  
32 requires treatment, he or she shall complete a course in an information  
33 school approved by the department of social and health services under  
34 chapter 70.96A RCW. The convicted person shall pay all costs for any  
35 evaluation, education, or treatment required by this section, unless  
36 the person is eligible for an existing program offered or approved by  
37 the department of social and health services. Nothing in chapter 348,  
38 Laws of 1991 requires the addition of new treatment or assessment

1 facilities nor affects the department of social and health services use  
2 of existing programs and facilities authorized by law.

3 (2) As provided for under RCW 46.20.285, the department shall  
4 revoke the license, permit to drive, or a nonresident privilege of a  
5 person convicted of vehicular homicide under RCW 46.61.520 or vehicular  
6 assault under RCW 46.61.522. The department shall determine the  
7 eligibility of a person convicted of vehicular homicide under RCW  
8 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to  
9 receive a license based upon the report provided by the designated  
10 alcoholism treatment facility or probation department, and shall deny  
11 reinstatement until satisfactory progress in an approved program has  
12 been established and the person is otherwise qualified.

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

15 TABLE 2

16 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

17	XVI	Aggravated Murder 1 (RCW 10.95.020)
18	XV	Homicide by abuse (RCW 9A.32.055)
19		Malicious explosion 1 (RCW 70.74.280(1))
20		Murder 1 (RCW 9A.32.030)
21	XIV	Murder 2 (RCW 9A.32.050)
22	XIII	Malicious explosion 2 (RCW 70.74.280(2))
23		Malicious placement of an explosive 1 (RCW
24		70.74.270(1))
25	XII	Assault 1 (RCW 9A.36.011)
26		Assault of a Child 1 (RCW 9A.36.120)
27		Malicious placement of an imitation device
28		1 (RCW 70.74.272(1)(a))
29		Rape 1 (RCW 9A.44.040)
30		Rape of a Child 1 (RCW 9A.44.073)
31	XI	Manslaughter 1 (RCW 9A.32.060)
32		Rape 2 (RCW 9A.44.050)
33		Rape of a Child 2 (RCW 9A.44.076)

1 X Child Molestation 1 (RCW 9A.44.083)  
2 Indecent Liberties (with forcible  
3 compulsion) (RCW 9A.44.100(1)(a))  
4 Kidnapping 1 (RCW 9A.40.020)  
5 Leading Organized Crime (RCW  
6 9A.82.060(1)(a))  
7 Malicious explosion 3 (RCW 70.74.280(3))  
8 Manufacture of methamphetamine (RCW  
9 69.50.401(a)(1)(ii))  
10 Over 18 and deliver heroin,  
11 methamphetamine, a narcotic from  
12 Schedule I or II, or flunitrazepam  
13 from Schedule IV to someone under 18  
14 (RCW 69.50.406)

15 IX Assault of a Child 2 (RCW 9A.36.130)  
16 Controlled Substance Homicide (RCW  
17 69.50.415)  
18 Explosive devices prohibited (RCW  
19 70.74.180)  
20 Homicide by Watercraft, by being under the  
21 influence of intoxicating liquor or  
22 any drug (RCW ((88.12.029))  
23 79A.60.050)  
24 Inciting Criminal Profiteering (RCW  
25 9A.82.060(1)(b))  
26 Malicious placement of an explosive 2 (RCW  
27 70.74.270(2))  
28 Over 18 and deliver narcotic from Schedule  
29 III, IV, or V or a nonnarcotic, except  
30 flunitrazepam or methamphetamine, from  
31 Schedule I-V to someone under 18 and 3  
32 years junior (RCW 69.50.406)  
33 Robbery 1 (RCW 9A.56.200)  
34 Sexual Exploitation (RCW 9.68A.040)  
35 Vehicular Homicide, by being under the  
36 influence of intoxicating liquor or  
37 any drug (RCW 46.61.520)

1 VIII Arson 1 (RCW 9A.48.020)  
2 Deliver or possess with intent to deliver  
3 methamphetamine (RCW  
4 69.50.401(a)(1)(ii))  
5 Homicide by Watercraft, by the operation of  
6 any vessel in a reckless manner (RCW  
7 ((~~88.12.029~~)) 79A.60.050)  
8 Manslaughter 2 (RCW 9A.32.070)  
9 Manufacture, deliver, or possess with  
10 intent to deliver amphetamine (RCW  
11 69.50.401(a)(1)(ii))  
12 Manufacture, deliver, or possess with  
13 intent to deliver heroin or cocaine  
14 (RCW 69.50.401(a)(1)(i))  
15 Possession of ephedrine or pseudoephedrine  
16 with intent to manufacture  
17 methamphetamine (RCW 69.50.440)  
18 Promoting Prostitution 1 (RCW 9A.88.070)  
19 Selling for profit (controlled or  
20 counterfeit) any controlled substance  
21 (RCW 69.50.410)  
22 Vehicular Homicide, by the operation of any  
23 vehicle in a reckless manner (RCW  
24 46.61.520)  
25 Felony driving or physical control of a  
26 motor vehicle while under the  
27 influence of intoxicating liquor or  
28 any drug (RCW 46.61.5055(3))  
29 VII Burglary 1 (RCW 9A.52.020)  
30 Child Molestation 2 (RCW 9A.44.086)  
31 Dealing in depictions of minor engaged in  
32 sexually explicit conduct (RCW  
33 9.68A.050)  
34 Drive-by Shooting (RCW 9A.36.045)  
35 Homicide by Watercraft, by disregard for  
36 the safety of others (RCW  
37 ((~~88.12.029~~)) 79A.60.050)

1 Indecent Liberties (without forcible  
2 compulsion) (RCW 9A.44.100(1) (b) and  
3 (c))  
4 Introducing Contraband 1 (RCW 9A.76.140)  
5 Involving a minor in drug dealing (RCW  
6 69.50.401(f))  
7 Malicious placement of an explosive 3 (RCW  
8 70.74.270(3))  
9 Sending, bringing into state depictions of  
10 minor engaged in sexually explicit  
11 conduct (RCW 9.68A.060)  
12 Unlawful Possession of a Firearm in the  
13 first degree (RCW 9.41.040(1)(a))  
14 Use of a Machine Gun in Commission of a  
15 Felony (RCW 9.41.225)  
16 Vehicular Homicide, by disregard for the  
17 safety of others (RCW 46.61.520)

18 VI Bail Jumping with Murder 1 (RCW  
19 9A.76.170(2)(a))  
20 Bribery (RCW 9A.68.010)  
21 Incest 1 (RCW 9A.64.020(1))  
22 Intimidating a Judge (RCW 9A.72.160)  
23 Intimidating a Juror/Witness (RCW  
24 9A.72.110, 9A.72.130)  
25 Malicious placement of an imitation device  
26 2 (RCW 70.74.272(1)(b))  
27 Manufacture, deliver, or possess with  
28 intent to deliver narcotics from  
29 Schedule I or II (except heroin or  
30 cocaine) or flunitrazepam from  
31 Schedule IV (RCW 69.50.401(a)(1)(i))  
32 Rape of a Child 3 (RCW 9A.44.079)  
33 Theft of a Firearm (RCW 9A.56.300)

34 V Abandonment of dependent person 1 (RCW  
35 9A.42.060)  
36 Advancing money or property for  
37 extortionate extension of credit (RCW  
38 9A.82.030)

1 Bail Jumping with class A Felony (RCW  
2 9A.76.170(2)(b))  
3 Child Molestation 3 (RCW 9A.44.089)  
4 Criminal Mistreatment 1 (RCW 9A.42.020)  
5 Custodial Sexual Misconduct 1 (RCW  
6 9A.44.160)  
7 Delivery of imitation controlled substance  
8 by person eighteen or over to person  
9 under eighteen (RCW 69.52.030(2))  
10 Extortion 1 (RCW 9A.56.120)  
11 Extortionate Extension of Credit (RCW  
12 9A.82.020)  
13 Extortionate Means to Collect Extensions of  
14 Credit (RCW 9A.82.040)  
15 Incest 2 (RCW 9A.64.020(2))  
16 Kidnapping 2 (RCW 9A.40.030)  
17 On and after July 1, 2000: No-Contact  
18 Order Violation: Domestic Violence  
19 Pretrial Condition (RCW 10.99.040(4)  
20 (b) and (c))  
21 On and after July 1, 2000: No-Contact  
22 Order Violation: Domestic Violence  
23 Sentence Condition (RCW 10.99.050(2))  
24 On and after July 1, 2000: Protection  
25 Order Violation: Domestic Violence  
26 Civil Action (RCW 26.50.110 (4) and  
27 (5))  
28 On and after July 1, 2000: Stalking (RCW  
29 9A.46.110)  
30 Perjury 1 (RCW 9A.72.020)  
31 Persistent prison misbehavior (RCW  
32 9.94.070)  
33 Possession of a Stolen Firearm (RCW  
34 9A.56.310)  
35 Rape 3 (RCW 9A.44.060)  
36 Rendering Criminal Assistance 1 (RCW  
37 9A.76.070)  
38 Sexual Misconduct with a Minor 1 (RCW  
39 9A.44.093)



1 Sexually Violating Human Remains (RCW  
2 9A.44.105)

3 IV Arson 2 (RCW 9A.48.030)  
4 Assault 2 (RCW 9A.36.021)  
5 Assault by Watercraft (RCW ((~~88.12.032~~))  
6 79A.60.060)  
7 Bribing a Witness/Bribe Received by Witness  
8 (RCW 9A.72.090, 9A.72.100)  
9 Commercial Bribery (RCW 9A.68.060)  
10 Counterfeiting (RCW 9.16.035(4))  
11 Escape 1 (RCW 9A.76.110)  
12 Hit and Run--Injury Accident (RCW  
13 46.52.020(4))  
14 Hit and Run with Vessel--Injury Accident  
15 (RCW ((~~88.12.155(3)~~)) 79A.60.200(3))  
16 Indecent Exposure to Person Under Age  
17 Fourteen (subsequent sex offense) (RCW  
18 9A.88.010)  
19 Influencing Outcome of Sporting Event (RCW  
20 9A.82.070)  
21 Knowingly Trafficking in Stolen Property  
22 (RCW 9A.82.050(2))  
23 Malicious Harassment (RCW 9A.36.080)  
24 Manufacture, deliver, or possess with  
25 intent to deliver narcotics from  
26 Schedule III, IV, or V or nonnarcotics  
27 from Schedule I-V (except marijuana,  
28 amphetamine, methamphetamines, or  
29 flunitrazepam) (RCW 69.50.401(a)(1)  
30 (iii) through (v))  
31 Residential Burglary (RCW 9A.52.025)  
32 Robbery 2 (RCW 9A.56.210)  
33 Theft of Livestock 1 (RCW 9A.56.080)  
34 Threats to Bomb (RCW 9.61.160)  
35 Use of Proceeds of Criminal Profiteering  
36 (RCW 9A.82.080 (1) and (2))  
37 Vehicular Assault (RCW 46.61.522)  
38 Willful Failure to Return from Furlough  
39 (RCW 72.66.060)

1     III           Abandonment of dependent person 2 (RCW  
2                   9A.42.070)  
3           Assault 3 (RCW 9A.36.031)  
4           Assault of a Child 3 (RCW 9A.36.140)  
5           Bail Jumping with class B or C Felony (RCW  
6                   9A.76.170(2)(c))  
7           Burglary 2 (RCW 9A.52.030)  
8           Communication with a Minor for Immoral  
9                   Purposes (RCW 9.68A.090)  
10          Criminal Gang Intimidation (RCW 9A.46.120)  
11          Criminal Mistreatment 2 (RCW 9A.42.030)  
12          Custodial Assault (RCW 9A.36.100)  
13          Delivery of a material in lieu of a  
14                   controlled substance (RCW  
15                   69.50.401(c))  
16          Escape 2 (RCW 9A.76.120)  
17          Extortion 2 (RCW 9A.56.130)  
18          Harassment (RCW 9A.46.020)  
19          Intimidating a Public Servant (RCW  
20                   9A.76.180)  
21          Introducing Contraband 2 (RCW 9A.76.150)  
22          Maintaining a Dwelling or Place for  
23                   Controlled Substances (RCW  
24                   69.50.402(a)(6))  
25          Malicious Injury to Railroad Property (RCW  
26                   81.60.070)  
27          Manufacture, deliver, or possess with  
28                   intent to deliver marijuana (RCW  
29                   69.50.401(a)(1)(iii))  
30          Manufacture, distribute, or possess with  
31                   intent to distribute an imitation  
32                   controlled substance (RCW  
33                   69.52.030(1))  
34          Patronizing a Juvenile Prostitute (RCW  
35                   9.68A.100)  
36          Perjury 2 (RCW 9A.72.030)  
37          Possession of Incendiary Device (RCW  
38                   9.40.120)

1 Possession of Machine Gun or Short-Barreled  
2 Shotgun or Rifle (RCW 9.41.190)  
3 Promoting Prostitution 2 (RCW 9A.88.080)  
4 Recklessly Trafficking in Stolen Property  
5 (RCW 9A.82.050(1))  
6 Securities Act violation (RCW 21.20.400)  
7 Tampering with a Witness (RCW 9A.72.120)  
8 Telephone Harassment (subsequent conviction  
9 or threat of death) (RCW 9.61.230)  
10 Theft of Livestock 2 (RCW 9A.56.080)  
11 Unlawful Imprisonment (RCW 9A.40.040)  
12 Unlawful possession of firearm in the  
13 second degree (RCW 9.41.040(1)(b))  
14 Unlawful Use of Building for Drug Purposes  
15 (RCW 69.53.010)  
16 Willful Failure to Return from Work Release  
17 (RCW 72.65.070)

18 II Computer Trespass 1 (RCW 9A.52.110)  
19 Counterfeiting (RCW 9.16.035(3))  
20 Create, deliver, or possess a counterfeit  
21 controlled substance (RCW  
22 69.50.401(b))  
23 Escape from Community Custody (RCW  
24 72.09.310)  
25 Health Care False Claims (RCW 48.80.030)  
26 Malicious Mischief 1 (RCW 9A.48.070)  
27 Possession of controlled substance that is  
28 either heroin or narcotics from  
29 Schedule I or II or flunitrazepam from  
30 Schedule IV (RCW 69.50.401(d))  
31 Possession of phencyclidine (PCP) (RCW  
32 69.50.401(d))  
33 Possession of Stolen Property 1 (RCW  
34 9A.56.150)  
35 Theft 1 (RCW 9A.56.030)  
36 Theft of Rental, Leased, or Lease-purchased  
37 Property (valued at one thousand five  
38 hundred dollars or more) (RCW  
39 9A.56.096(4))

1 Trafficking in Insurance Claims (RCW  
2 48.30A.015)  
3 Unlawful Practice of Law (RCW 2.48.180)  
4 Unlicensed Practice of a Profession or  
5 Business (RCW 18.130.190(7))  
6 I Attempting to Elude a Pursuing Police  
7 Vehicle (RCW 46.61.024)  
8 False Verification for Welfare (RCW  
9 74.08.055)  
10 Forged Prescription (RCW 69.41.020)  
11 Forged Prescription for a Controlled  
12 Substance (RCW 69.50.403)  
13 Forgery (RCW 9A.60.020)  
14 Malicious Mischief 2 (RCW 9A.48.080)  
15 Possess Controlled Substance that is a  
16 Narcotic from Schedule III, IV, or V  
17 or Non-narcotic from Schedule I-V  
18 (except phencyclidine or  
19 flunitrazepam) (RCW 69.50.401(d))  
20 Possession of Stolen Property 2 (RCW  
21 9A.56.160)  
22 Reckless Burning 1 (RCW 9A.48.040)  
23 Taking Motor Vehicle Without Permission  
24 (RCW 9A.56.070)  
25 Theft 2 (RCW 9A.56.040)  
26 Theft of Rental, Leased, or Lease-purchased  
27 Property (valued at two hundred fifty  
28 dollars or more but less than one  
29 thousand five hundred dollars) (RCW  
30 9A.56.096(4))  
31 Unlawful Issuance of Checks or Drafts (RCW  
32 9A.56.060)  
33 Unlawful Use of Food Stamps (RCW 9.91.140  
34 (2) and (3))  
35 Vehicle Prowl 1 (RCW 9A.52.095)

36 **Sec. 6.** RCW 9.94A.360 and 1999 c 352 s 10 and 1999 c 331 s 1 are  
37 each reenacted and amended to read as follows:

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

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

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

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

30 (3) Out-of-state convictions for offenses shall be classified  
31 according to the comparable offense definitions and sentences provided  
32 by Washington law. Federal convictions for offenses shall be  
33 classified according to the comparable offense definitions and  
34 sentences provided by Washington law. If there is no clearly  
35 comparable offense under Washington law or the offense is one that is  
36 usually considered subject to exclusive federal jurisdiction, the  
37 offense shall be scored as a class C felony equivalent if it was a  
38 felony under the relevant federal statute.

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

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

7 (i) Prior offenses which were found, under RCW 9.94A.400(1)(a), to  
8 encompass the same criminal conduct, shall be counted as one offense,  
9 the offense that yields the highest offender score. The current  
10 sentencing court shall determine with respect to other prior adult  
11 offenses for which sentences were served concurrently or prior juvenile  
12 offenses for which sentences were served consecutively, whether those  
13 offenses shall be counted as one offense or as separate offenses using  
14 the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and  
15 if the court finds that they shall be counted as one offense, then the  
16 offense that yields the highest offender score shall be used. The  
17 current sentencing court may presume that such other prior offenses  
18 were not the same criminal conduct from sentences imposed on separate  
19 dates, or in separate counties or jurisdictions, or in separate  
20 complaints, indictments, or informations;

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

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

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

36 (7) If the present conviction is for a nonviolent offense and not  
37 covered by subsection (11) or (12) of this section, count one point for  
38 each adult prior felony conviction and one point for each juvenile

1 prior violent felony conviction and 1/2 point for each juvenile prior  
2 nonviolent felony conviction.

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

8 (9) If the present conviction is for a serious violent offense,  
9 count three points for prior adult and juvenile convictions for crimes  
10 in this category, two points for each prior adult and juvenile violent  
11 conviction (not already counted), one point for each prior adult  
12 nonviolent felony conviction, and 1/2 point for each prior juvenile  
13 nonviolent felony conviction.

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

19 (11) If the present conviction is for a felony traffic offense  
20 count two points for each adult or juvenile prior conviction for  
21 Vehicular Homicide ((or)), Vehicular Assault, or Felony Driving or  
22 Physical Control of a Motor Vehicle While Under the Influence of  
23 Intoxicating Liquor or any Drug; for each felony offense count one  
24 point for each adult and 1/2 point for each juvenile prior conviction;  
25 for each serious traffic offense, other than those used for an  
26 enhancement pursuant to RCW 46.61.520(2), count one point for each  
27 adult and 1/2 point for each juvenile prior conviction.

28 (12) If the present conviction is for a drug offense count three  
29 points for each adult prior felony drug offense conviction and two  
30 points for each juvenile drug offense. All other adult and juvenile  
31 felonies are scored as in subsection (8) of this section if the current  
32 drug offense is violent, or as in subsection (7) of this section if the  
33 current drug offense is nonviolent.

34 (13) If the present conviction is for Willful Failure to Return  
35 from Furlough, RCW 72.66.060, Willful Failure to Return from Work  
36 Release, RCW 72.65.070, or Escape from Community Custody, RCW  
37 72.09.310, count only prior escape convictions in the offender score.  
38 Count adult prior escape convictions as one point and juvenile prior  
39 escape convictions as 1/2 point.

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

4 (15) If the present conviction is for Burglary 2 or residential  
5 burglary, count priors as in subsection (7) of this section; however,  
6 count two points for each adult and juvenile prior Burglary 1  
7 conviction, two points for each adult prior Burglary 2 or residential  
8 burglary conviction, and one point for each juvenile prior Burglary 2  
9 or residential burglary conviction.

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

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

--- END ---