
SUBSTITUTE SENATE BILL 6434

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Patterson, Costa, McCaslin, Heavey, Rossi, Hale, Goings, Winsley, McAuliffe, Benton, Gardner, Oke, Roach and Bauer)

Read first time 02/04/2000.

1 AN ACT Relating to driving while under the influence of alcohol or
2 any drug; amending RCW 46.61.502, 46.61.504, 46.61.524, and 46.01.260;
3 reenacting and amending RCW 46.61.5055, 9.94A.030, 9.94A.320, and
4 9.94A.360; and prescribing 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 three or more prior offenses as defined in RCW
26 46.61.5055 within a seven-year period, or the person has a previous
27 conviction of felony driving or being in actual physical control while
28 under the influence as defined in this section, vehicular assault (RCW
29 46.61.522), or vehicular homicide (RCW 46.61.520). For the purposes of
30 this subsection, the definitions of "prior offense" and "within seven
31 years" contained in RCW 46.61.5055 apply.

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

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

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

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

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

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

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

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

34 (5) A violation of this section is a gross misdemeanor punishable
35 pursuant to RCW 46.61.5055 except that a person is guilty of a class C
36 felony punishable under chapter 9A.20 RCW if the person is in actual
37 physical control of a motor vehicle while under the influence of
38 intoxicating liquor or any drug as defined by this section and has
39 three or more prior offenses within a seven-year period, or the person

1 has a previous conviction of felony driving or being in actual physical
2 control while under the influence as defined in this section, vehicular
3 assault (RCW 46.61.522), or vehicular homicide (RCW 46.61.520). For
4 the purposes of this subsection, the definitions of "prior offense" and
5 "within seven years" contained in RCW 46.61.5055 apply.

6 **Sec. 3.** RCW 46.61.5055 and 1999 c 324 s 5, 1999 c 274 s 6, and
7 1999 c 5 s 1 are each reenacted and amended to read as follows:

8 (1) Except as provided in subsection (3) of this section, a person
9 who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who
10 has no prior offense within seven years shall be punished as follows:

11 (a) In the case of a person whose alcohol concentration was less
12 than 0.15, or for whom for reasons other than the person's refusal to
13 take a 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 one day nor more than one
16 year. Twenty-four consecutive hours of the imprisonment may not be
17 suspended or deferred unless the court finds that the imposition of
18 this mandatory minimum sentence would impose a substantial risk to the
19 offender's physical or mental well-being. Whenever the mandatory
20 minimum sentence is suspended or deferred, the court shall state in
21 writing the reason for granting the suspension or deferral and the
22 facts upon which the suspension or deferral is based. In lieu of the
23 mandatory minimum term of imprisonment required under this subsection
24 (1)(a)(i), the court may order not less than fifteen days of electronic
25 home monitoring. The offender shall pay the cost of electronic home
26 monitoring. The county or municipality in which the penalty is being
27 imposed shall determine the cost. The court may also require the
28 offender's electronic home monitoring device to include an alcohol
29 detection breathalyzer, and the court may restrict the amount of
30 alcohol the offender may consume during the time the offender is on
31 electronic home monitoring; and

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

36 (b) In the case of a person whose alcohol concentration was at
37 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 two days nor more than one
4 year. Two consecutive days of the imprisonment may not be suspended or
5 deferred unless the court finds that the imposition of this mandatory
6 minimum sentence would impose a substantial risk to the offender's
7 physical or mental well-being. Whenever the mandatory minimum sentence
8 is suspended or deferred, the court shall state in writing the reason
9 for granting the suspension or deferral and the facts upon which the
10 suspension or deferral is based. In lieu of the mandatory minimum term
11 of imprisonment required under this subsection (1)(b)(i), the court may
12 order not less than thirty days of electronic home monitoring. The
13 offender shall pay the cost of electronic home monitoring. The county
14 or municipality in which the penalty is being imposed shall determine
15 the cost. The court may also require the offender's electronic home
16 monitoring device to include an alcohol detection breathalyzer, and the
17 court may restrict the amount of alcohol the offender may consume
18 during the time the offender is on electronic home monitoring; and

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

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

24 (2) Except as provided in subsection (3) of this section, a person
25 who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who
26 has one prior offense within seven years shall be punished as follows:

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

31 (i) By imprisonment for not less than thirty days nor more than one
32 year and sixty days of electronic home monitoring. The offender shall
33 pay for the cost of the electronic monitoring. The county or
34 municipality where the penalty is being imposed shall determine the
35 cost. The court may also require the offender's electronic home
36 monitoring device include an alcohol detection breathalyzer, and may
37 restrict the amount of alcohol the offender may consume during the time
38 the offender is on electronic home monitoring. Thirty days of
39 imprisonment and sixty days of electronic home monitoring may not be

1 suspended or deferred unless the court finds that the imposition of
2 this mandatory minimum sentence would impose a substantial risk to the
3 offender's physical or mental well-being. Whenever the mandatory
4 minimum sentence is suspended or deferred, the court shall state in
5 writing the reason for granting the suspension or deferral and the
6 facts upon which the suspension or deferral is based; and

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

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

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

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

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

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

36 (3) A person who is convicted of a violation of RCW 46.61.502 or
37 46.61.504 and who has (~~two~~) three or more prior offenses within seven
38 years or has a previous conviction of felony driving or being in actual
39 physical control while under the influence as defined in this section,

1 vehicular assault (RCW 46.61.522), or vehicular homicide (RCW
2 46.61.520), is guilty of a class C felony and shall be punished ((as
3 follows:

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

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

24 ~~(ii) By a fine of not less than one thousand dollars nor more than~~
25 ~~five thousand dollars. One thousand dollars of the fine may not be~~
26 ~~suspended or deferred unless the court finds the offender to be~~
27 ~~indigent; and~~

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

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

33 ~~(i) By imprisonment for not less than one hundred twenty days nor~~
34 ~~more than one year and one hundred fifty days of electronic home~~
35 ~~monitoring. The offender shall pay for the cost of the electronic~~
36 ~~monitoring. The county or municipality where the penalty is being~~
37 ~~imposed shall determine the cost. The court may also require the~~
38 ~~offender's electronic home monitoring device include an alcohol~~
39 ~~detection breathalyzer, and may restrict the amount of alcohol the~~

1 offender may consume during the time the offender is on electronic home
2 monitoring. One hundred twenty days of imprisonment and one hundred
3 fifty days of electronic home monitoring may not be suspended or
4 deferred unless the court finds that the imposition of this mandatory
5 minimum sentence would impose a substantial risk to the offender's
6 physical or mental well being. Whenever the mandatory minimum sentence
7 is suspended or deferred, the court shall state in writing the reason
8 for granting the suspension or deferral and the facts upon which the
9 suspension or deferral is based; and

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

14 (iii) By a court ordered restriction under RCW 46.20.720)) pursuant
15 to chapter 9A.20 RCW. For the purposes of this subsection, the
16 definitions of "prior offense" and "within seven years" contained in
17 RCW 46.61.5055 apply.

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

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

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

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

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

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

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

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

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

1 (b) If the person's alcohol concentration was at least 0.15, or if
2 by reason of the person's refusal to take a test offered under RCW
3 46.20.308 there is no test result indicating the person's alcohol
4 concentration:

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

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

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

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

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

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

38 (b) For each violation of mandatory conditions of probation under
39 (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall

1 order the convicted person to be confined for thirty days, which shall
2 not be suspended or deferred.

3 (c) For each incident involving a violation of a mandatory
4 condition of probation imposed under this subsection, the license,
5 permit, or privilege to drive of the person shall be suspended by the
6 court for thirty days or, if such license, permit, or privilege to
7 drive already is suspended, revoked, or denied at the time the finding
8 of probation violation is made, the suspension, revocation, or denial
9 then in effect shall be extended by thirty days. The court shall
10 notify the department of any suspension, revocation, or denial or any
11 extension of a suspension, revocation, or denial imposed under this
12 subsection.

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

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

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

18 (c) The court determines that there is reason to believe that the
19 offender would violate the conditions of the electronic home monitoring
20 penalty.

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

27 Whenever the combination of jail time and electronic home
28 monitoring or alternative sentence would exceed three hundred sixty-
29 five days, the offender shall serve the jail portion of the sentence
30 first, and the electronic home monitoring or alternative portion of the
31 sentence shall be reduced so that the combination does not exceed three
32 hundred sixty-five days.

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

37 (11) For purposes of this section:

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

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

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

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

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

9 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
10 9A.36.050 or an equivalent local ordinance, if the conviction is the
11 result of a charge that was originally filed as a violation of RCW
12 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
13 46.61.520 or 46.61.522;

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

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

20 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
21 prosecution for a violation of RCW 46.61.5249, or an equivalent local
22 ordinance, if the charge under which the deferred prosecution was
23 granted was originally filed as a violation of RCW 46.61.502 or
24 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
25 46.61.522; and

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

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

30 (1) A person convicted under RCW 46.61.520(1)(a) or 46.61.522(1)(b)
31 or of a felony violation of RCW 46.61.502 or 46.61.504 shall, as a
32 condition of community (~~supervision~~) custody imposed under RCW
33 9.94A.383 or community placement imposed under RCW 9.94A.120(~~(+8)~~)
34 (9), complete a diagnostic evaluation by an alcohol or drug dependency
35 agency approved by the department of social and health services or a
36 qualified probation department, as defined under RCW 46.61.516 that has
37 been approved by the department of social and health services. This
38 report shall be forwarded to the department of licensing. If the

1 person is found to have an alcohol or drug problem that requires
2 treatment, the person shall complete treatment in a program approved by
3 the department of social and health services under chapter 70.96A RCW.
4 If the person is found not to have an alcohol or drug problem that
5 requires treatment, he or she shall complete a course in an information
6 school approved by the department of social and health services under
7 chapter 70.96A RCW. The convicted person shall pay all costs for any
8 evaluation, education, or treatment required by this section, unless
9 the person is eligible for an existing program offered or approved by
10 the department of social and health services. Nothing in chapter 348,
11 Laws of 1991 requires the addition of new treatment or assessment
12 facilities nor affects the department of social and health services use
13 of existing programs and facilities authorized by law.

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

24 **Sec. 5.** RCW 9.94A.030 and 1999 c 352 s 8, 1999 c 197 s 1, and 1999
25 c 196 s 2 are each reenacted and amended to read as follows:

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

28 (1) "Collect," or any derivative thereof, "collect and remit," or
29 "collect and deliver," when used with reference to the department of
30 corrections, means that the department, either directly or through a
31 collection agreement authorized by RCW 9.94A.145, is responsible for
32 monitoring and enforcing the offender's sentence with regard to the
33 legal financial obligation, receiving payment thereof from the
34 offender, and, consistent with current law, delivering daily the entire
35 payment to the superior court clerk without depositing it in a
36 departmental account.

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

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

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

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

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

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

30 (8) "Community supervision" means a period of time during which a
31 convicted offender is subject to crime-related prohibitions and other
32 sentence conditions imposed by a court pursuant to this chapter or RCW
33 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
34 may include crime-related prohibitions and other conditions imposed
35 pursuant to RCW 9.94A.120(5). Where the court finds that any offender
36 has a chemical dependency that has contributed to his or her offense,
37 the conditions of supervision may, subject to available resources,
38 include treatment. For purposes of the interstate compact for out-of-
39 state supervision of parolees and probationers, RCW 9.95.270, community

1 supervision is the functional equivalent of probation and should be
2 considered the same as probation by other states.

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

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

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

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

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

35 (14) "Day fine" means a fine imposed by the sentencing judge that
36 equals the difference between the offender's net daily income and the
37 reasonable obligations that the offender has for the support of the
38 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 under
11 the influence (RCW 46.61.502), or felony being in actual physical
12 control of a motor vehicle while under the influence (RCW 46.61.504);
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 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 felony driving under the influence
30 contrary to RCW 46.61.502 or felony being in actual physical control of
31 a motor vehicle while under the influence contrary to RCW 46.61.504,
32 who previously has never been convicted of a felony in this state,
33 federal court, or another state, and who has never participated in a
34 program of deferred 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(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
38 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as

1 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
2 (a), (b), and (d) as it existed from June 11, 1986, 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) Driving while under the influence of intoxicating liquor or any
37 drug (RCW 46.61.502), actual physical control while under the influence
38 of intoxicating liquor or any drug (RCW 46.61.504), any violation of
39 RCW 46.61.5055(11)(a) (vii) or (viii), reckless driving (RCW

1 46.61.500), first degree negligent driving (RCW 46.61.5249), or hit-
2 and-run an 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. 6.** RCW 9.94A.320 and 1999 c 352 s 3, 1999 c 322 s 5, and 1999
16 c 45 s 4 are each reenacted and amended to read as follows:

17 TABLE 2

18 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

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

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

2 X Child Molestation 1 (RCW 9A.44.083)

3 Indecent Liberties (with forcible

4 compulsion) (RCW 9A.44.100(1)(a))

5 Kidnapping 1 (RCW 9A.40.020)

6 Leading Organized Crime (RCW

7 9A.82.060(1)(a))

8 Malicious explosion 3 (RCW 70.74.280(3))

9 Manufacture of methamphetamine (RCW

10 69.50.401(a)(1)(ii))

11 Over 18 and deliver heroin,

12 methamphetamine, a narcotic from

13 Schedule I or II, or flunitrazepam

14 from Schedule IV to someone under 18

15 (RCW 69.50.406)

16 IX Assault of a Child 2 (RCW 9A.36.130)

17 Controlled Substance Homicide (RCW

18 69.50.415)

19 Explosive devices prohibited (RCW

20 70.74.180)

21 Homicide by Watercraft, by being under the

22 influence of intoxicating liquor or

23 any drug (RCW ((88.12.029))

24 79A.60.050)

25 Inciting Criminal Profiteering (RCW

26 9A.82.060(1)(b))

27 Malicious placement of an explosive 2 (RCW

28 70.74.270(2))

29 Over 18 and deliver narcotic from Schedule

30 III, IV, or V or a nonnarcotic, except

31 flunitrazepam or methamphetamine, from

32 Schedule I-V to someone under 18 and 3

33 years junior (RCW 69.50.406)

34 Robbery 1 (RCW 9A.56.200)

35 Sexual Exploitation (RCW 9.68A.040)

36 Vehicular Homicide, by being under the

37 influence of intoxicating liquor or

38 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 VII Burglary 1 (RCW 9A.52.020)
26 Child Molestation 2 (RCW 9A.44.086)
27 Dealing in depictions of minor engaged in
28 sexually explicit conduct (RCW
29 9.68A.050)
30 Drive-by Shooting (RCW 9A.36.045)
31 Homicide by Watercraft, by disregard for
32 the safety of others (RCW
33 ((~~88.12.029~~)) 79A.60.050)
34 Indecent Liberties (without forcible
35 compulsion) (RCW 9A.44.100(1) (b) and
36 (c))
37 Introducing Contraband 1 (RCW 9A.76.140)

1 Involving a minor in drug dealing (RCW
2 69.50.401(f))
3 Malicious placement of an explosive 3 (RCW
4 70.74.270(3))
5 Sending, bringing into state depictions of
6 minor engaged in sexually explicit
7 conduct (RCW 9.68A.060)
8 Unlawful Possession of a Firearm in the
9 first degree (RCW 9.41.040(1)(a))
10 Use of a Machine Gun in Commission of a
11 Felony (RCW 9.41.225)
12 Vehicular Homicide, by disregard for the
13 safety of others (RCW 46.61.520)

14 VI Bail Jumping with Murder 1 (RCW
15 9A.76.170(2)(a))
16 Bribery (RCW 9A.68.010)
17 Incest 1 (RCW 9A.64.020(1))
18 Intimidating a Judge (RCW 9A.72.160)
19 Intimidating a Juror/Witness (RCW
20 9A.72.110, 9A.72.130)
21 Malicious placement of an imitation device
22 2 (RCW 70.74.272(1)(b))
23 Manufacture, deliver, or possess with
24 intent to deliver narcotics from
25 Schedule I or II (except heroin or
26 cocaine) or flunitrazepam from
27 Schedule IV (RCW 69.50.401(a)(1)(i))
28 Rape of a Child 3 (RCW 9A.44.079)
29 Theft of a Firearm (RCW 9A.56.300)

30 V Abandonment of dependent person 1 (RCW
31 9A.42.060)
32 Advancing money or property for
33 extortionate extension of credit (RCW
34 9A.82.030)
35 Bail Jumping with class A Felony (RCW
36 9A.76.170(2)(b))
37 Child Molestation 3 (RCW 9A.44.089)
38 Criminal Mistreatment 1 (RCW 9A.42.020)

1 Custodial Sexual Misconduct 1 (RCW
2 9A.44.160)
3 Delivery of imitation controlled substance
4 by person eighteen or over to person
5 under eighteen (RCW 69.52.030(2))
6 Extortion 1 (RCW 9A.56.120)
7 Extortionate Extension of Credit (RCW
8 9A.82.020)
9 Extortionate Means to Collect Extensions of
10 Credit (RCW 9A.82.040)
11 Incest 2 (RCW 9A.64.020(2))
12 Kidnapping 2 (RCW 9A.40.030)
13 On and after July 1, 2000: No-Contact
14 Order Violation: Domestic Violence
15 Pretrial Condition (RCW 10.99.040(4)
16 (b) and (c))
17 On and after July 1, 2000: No-Contact
18 Order Violation: Domestic Violence
19 Sentence Condition (RCW 10.99.050(2))
20 On and after July 1, 2000: Protection
21 Order Violation: Domestic Violence
22 Civil Action (RCW 26.50.110 (4) and
23 (5))
24 On and after July 1, 2000: Stalking (RCW
25 9A.46.110)
26 Perjury 1 (RCW 9A.72.020)
27 Persistent prison misbehavior (RCW
28 9.94.070)
29 Possession of a Stolen Firearm (RCW
30 9A.56.310)
31 Rape 3 (RCW 9A.44.060)
32 Rendering Criminal Assistance 1 (RCW
33 9A.76.070)
34 Sexual Misconduct with a Minor 1 (RCW
35 9A.44.093)
36 Sexually Violating Human Remains (RCW
37 9A.44.105)

1 IV Arson 2 (RCW 9A.48.030)
2 Assault 2 (RCW 9A.36.021)
3 Assault by Watercraft (RCW ((~~88.12.032~~))
4 79A.60.060)
5 Bribing a Witness/Bribe Received by Witness
6 (RCW 9A.72.090, 9A.72.100)
7 Commercial Bribery (RCW 9A.68.060)
8 Counterfeiting (RCW 9.16.035(4))
9 Escape 1 (RCW 9A.76.110)
10 Hit and Run--Injury Accident (RCW
11 46.52.020(4))
12 Hit and Run with Vessel--Injury Accident
13 (RCW ((~~88.12.155(3)~~)) 79A.60.200(3))
14 Indecent Exposure to Person Under Age
15 Fourteen (subsequent sex offense) (RCW
16 9A.88.010)
17 Influencing Outcome of Sporting Event (RCW
18 9A.82.070)
19 Knowingly Trafficking in Stolen Property
20 (RCW 9A.82.050(2))
21 Malicious Harassment (RCW 9A.36.080)
22 Manufacture, deliver, or possess with
23 intent to deliver narcotics from
24 Schedule III, IV, or V or nonnarcotics
25 from Schedule I-V (except marijuana,
26 amphetamine, methamphetamines, or
27 flunitrazepam) (RCW 69.50.401(a)(1)
28 (iii) through (v))
29 Residential Burglary (RCW 9A.52.025)
30 Robbery 2 (RCW 9A.56.210)
31 Theft of Livestock 1 (RCW 9A.56.080)
32 Threats to Bomb (RCW 9.61.160)
33 Use of Proceeds of Criminal Profiteering
34 (RCW 9A.82.080 (1) and (2))
35 Vehicular Assault (RCW 46.61.522)
36 Willful Failure to Return from Furlough
37 (RCW 72.66.060)
38 III Abandonment of dependent person 2 (RCW
39 9A.42.070)

1 Assault 3 (RCW 9A.36.031)
2 Assault of a Child 3 (RCW 9A.36.140)
3 Bail Jumping with class B or C Felony (RCW
4 9A.76.170(2)(c))
5 Burglary 2 (RCW 9A.52.030)
6 Communication with a Minor for Immoral
7 Purposes (RCW 9.68A.090)
8 Criminal Gang Intimidation (RCW 9A.46.120)
9 Criminal Mistreatment 2 (RCW 9A.42.030)
10 Custodial Assault (RCW 9A.36.100)
11 Delivery of a material in lieu of a
12 controlled substance (RCW
13 69.50.401(c))
14 Escape 2 (RCW 9A.76.120)
15 Extortion 2 (RCW 9A.56.130)
16 Harassment (RCW 9A.46.020)
17 Intimidating a Public Servant (RCW
18 9A.76.180)
19 Introducing Contraband 2 (RCW 9A.76.150)
20 Maintaining a Dwelling or Place for
21 Controlled Substances (RCW
22 69.50.402(a)(6))
23 Malicious Injury to Railroad Property (RCW
24 81.60.070)
25 Manufacture, deliver, or possess with
26 intent to deliver marijuana (RCW
27 69.50.401(a)(1)(iii))
28 Manufacture, distribute, or possess with
29 intent to distribute an imitation
30 controlled substance (RCW
31 69.52.030(1))
32 Patronizing a Juvenile Prostitute (RCW
33 9.68A.100)
34 Perjury 2 (RCW 9A.72.030)
35 Possession of Incendiary Device (RCW
36 9.40.120)
37 Possession of Machine Gun or Short-Barreled
38 Shotgun or Rifle (RCW 9.41.190)

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

16 II Computer Trespass 1 (RCW 9A.52.110)
17 Counterfeiting (RCW 9.16.035(3))
18 Create, deliver, or possess a counterfeit
19 controlled substance (RCW
20 69.50.401(b))
21 Escape from Community Custody (RCW
22 72.09.310)
23 Felony driving or physical control of a
24 motor vehicle while under the
25 influence of intoxicating liquor or
26 any drug (RCW 46.61.5055(3))
27 Health Care False Claims (RCW 48.80.030)
28 Malicious Mischief 1 (RCW 9A.48.070)
29 Possession of controlled substance that is
30 either heroin or narcotics from
31 Schedule I or II or flunitrazepam from
32 Schedule IV (RCW 69.50.401(d))
33 Possession of phencyclidine (PCP) (RCW
34 69.50.401(d))
35 Possession of Stolen Property 1 (RCW
36 9A.56.150)
37 Theft 1 (RCW 9A.56.030)
38 Theft of Rental, Leased, or Lease-purchased
39 Property (valued at one thousand five

1 hundred dollars or more) (RCW
2 9A.56.096(4))
3 Trafficking in Insurance Claims (RCW
4 48.30A.015)
5 Unlawful Practice of Law (RCW 2.48.180)
6 Unlicensed Practice of a Profession or
7 Business (RCW 18.130.190(7))

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

1 **Sec. 7.** RCW 9.94A.360 and 1999 c 352 s 10 and 1999 c 331 s 1 are
2 each reenacted and amended to read as follows:

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

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

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

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

32 (3) Out-of-state convictions for offenses shall be classified
33 according to the comparable offense definitions and sentences provided
34 by Washington law. Federal convictions for offenses shall be
35 classified according to the comparable offense definitions and
36 sentences provided by Washington law. If there is no clearly
37 comparable offense under Washington law or the offense is one that is
38 usually considered subject to exclusive federal jurisdiction, the

1 offense shall be scored as a class C felony equivalent if it was a
2 felony under the relevant federal statute.

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

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

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

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

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

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

38 (7) If the present conviction is for a nonviolent offense and not
39 covered by subsection (11) or (12) of this section, count one point for

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

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

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

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

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

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

35 (13) If the present conviction is for Willful Failure to Return
36 from Furlough, RCW 72.66.060, Willful Failure to Return from Work
37 Release, RCW 72.65.070, or Escape from Community Custody, RCW
38 72.09.310, count only prior escape convictions in the offender score.

1 Count adult prior escape convictions as one point and juvenile prior
2 escape convictions as 1/2 point.

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

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

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

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

17 **Sec. 8.** RCW 46.01.260 and 1999 c 86 s 2 are each amended to read
18 as follows:

19 (1) Except as provided in subsection (2) of this section, the
20 director, in his or her discretion, may destroy applications for
21 vehicle licenses, copies of vehicle licenses issued, applications for
22 drivers' licenses, copies of issued drivers' licenses, certificates of
23 title and registration or other documents, records or supporting papers
24 on file in his or her office which have been microfilmed or
25 photographed or are more than five years old. If the applications for
26 vehicle licenses are renewal applications, the director may destroy
27 such applications when the computer record thereof has been updated.

28 (2)(a) The director shall not destroy records of convictions or
29 adjudications of RCW 46.61.520 and 46.61.522 or records of deferred
30 prosecutions granted under RCW 10.05.120 and shall maintain such
31 records permanently on file.

32 (b) The director shall not, (~~within fifteen years from the date of~~
33 ~~conviction or adjudication~~)) for at least fifty years or until the
34 death of the subject of the records, destroy records of the following:

35 (i) Convictions or adjudications of the following offenses: RCW
36 46.61.502 or 46.61.504; or

37 (ii) If the offense was originally charged as one of the offenses
38 designated in (a) or (b)(i) of this subsection, convictions or

1 adjudications of the following offenses: RCW 46.61.500 or 46.61.5249
2 or any other violation that was originally charged as one of the
3 offenses designated in (a) or (b)(i) of this subsection.

4 (c) For purposes of RCW 46.52.101 and 46.52.130, offenses subject
5 to this subsection shall be considered "alcohol-related" offenses.

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