
SENATE BILL 6434

State of Washington

56th Legislature

2000 Regular Session

By Senators Patterson, Costa, McCaslin, Heavey, Rossi, Hale, Goings, Winsley, McAuliffe, Benton, Gardner, Oke, Roach and Bauer

Read first time 01/17/2000. 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, 46.61.524, 10.05.010, and
3 46.01.260; reenacting and amending RCW 46.61.5055, 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 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) Except as provided in subsection (3) of this section, a person
4 who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who
5 has no prior offense within seven years shall be 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) Except as provided in subsection (3) of this section, a person
18 who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who
19 has one prior offense within seven years shall be 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))~~)
32 is 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.

15 **Sec. 7.** RCW 10.05.010 and 1998 c 208 s 1 are each amended to read
16 as follows:

17 (1) In a court of limited jurisdiction a person charged with a
18 misdemeanor or gross misdemeanor may petition the court to be
19 considered for a deferred prosecution program. The petition shall be
20 filed with the court at least seven days before the date set for trial
21 but, upon a written motion and affidavit establishing good cause for
22 the delay and failure to comply with this section, the court may waive
23 this requirement subject to the defendant's reimbursement to the court
24 of the witness fees and expenses due for subpoenaed witnesses who have
25 appeared on the date set for trial.

26 (2)(a) A person charged with any crime where breath or blood
27 alcohol concentration is an element of the offense, and the person's
28 alcohol concentration was at least .20, shall not be eligible for a
29 deferred prosecution program.

30 (b) Except when (a) of this subsection applies, a person charged
31 with a traffic infraction, misdemeanor, or gross misdemeanor under
32 Title 46 RCW shall not be eligible for a deferred prosecution program
33 unless the court makes specific findings pursuant to RCW 10.05.020.
34 Such person shall not be eligible for a deferred prosecution program
35 more than once. Separate offenses committed more than seven days apart
36 may not be consolidated in a single program.

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

3 (1) Except as provided in subsection (2) of this section, the
4 director, in his or her discretion, may destroy applications for
5 vehicle licenses, copies of vehicle licenses issued, applications for
6 drivers' licenses, copies of issued drivers' licenses, certificates of
7 title and registration or other documents, records or supporting papers
8 on file in his or her office which have been microfilmed or
9 photographed or are more than five years old. If the applications for
10 vehicle licenses are renewal applications, the director may destroy
11 such applications when the computer record thereof has been updated.

12 (2)(a) The director shall not destroy records of convictions or
13 adjudications of RCW 46.61.520 and 46.61.522 or records of deferred
14 prosecutions granted under RCW 10.05.120 and shall maintain such
15 records permanently on file.

16 (b) The director shall not (~~(, within fifteen years from the date of~~
17 ~~conviction or adjudication,)~~) destroy records of the following:

18 (i) Convictions or adjudications of the following offenses: RCW
19 46.61.502 or 46.61.504; or

20 (ii) If the offense was originally charged as one of the offenses
21 designated in (a) or (b)(i) of this subsection, convictions or
22 adjudications of the following offenses: RCW 46.61.500 or 46.61.5249
23 or any other violation that was originally charged as one of the
24 offenses designated in (a) or (b)(i) of this subsection.

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

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