
HOUSE BILL 2514

State of Washington 57th Legislature 2002 Regular Session

By Representatives Benson, Talcott, Ahern and Lovick

Read first time 01/18/2002. Referred to Committee on Judiciary.

1 AN ACT Relating to driving or physical control of a vehicle while
2 under the influence of intoxicating liquor or any drug; amending RCW
3 9.94A.640, 9.94A.525, 9.94A.650, 46.61.502, 46.61.504, and 46.61.5151;
4 reenacting and amending RCW 9.94A.030, 9.94A.515, and 46.61.5055; and
5 prescribing penalties.

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

7 **Sec. 1.** RCW 9.94A.030 and 2001 2nd sp.s. c 12 s 301, 2001 c 300 s
8 3, and 2001 c 7 s 2 are each reenacted and amended to read as follows:

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

11 (1) "Board" means the indeterminate sentence review board created
12 under chapter 9.95 RCW.

13 (2) "Collect," or any derivative thereof, "collect and remit," or
14 "collect and deliver," when used with reference to the department,
15 means that the department, either directly or through a collection
16 agreement authorized by RCW 9.94A.760, is responsible for monitoring
17 and enforcing the offender's sentence with regard to the legal
18 financial obligation, receiving payment thereof from the offender, and,

1 consistent with current law, delivering daily the entire payment to the
2 superior court clerk without depositing it in a departmental account.

3 (3) "Commission" means the sentencing guidelines commission.

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

8 (5) "Community custody" means that portion of an offender's
9 sentence of confinement in lieu of earned release time or imposed
10 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
11 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
12 community subject to controls placed on the offender's movement and
13 activities by the department. For offenders placed on community
14 custody for crimes committed on or after July 1, 2000, the department
15 shall assess the offender's risk of reoffense and may establish and
16 modify conditions of community custody, in addition to those imposed by
17 the court, based upon the risk to community safety.

18 (6) "Community custody range" means the minimum and maximum period
19 of community custody included as part of a sentence under RCW
20 9.94A.715, as established by the commission or the legislature under
21 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

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

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

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

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

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

20 (14) "Day fine" means a fine imposed by the sentencing court that
21 equals the difference between the offender's net daily income and the
22 reasonable obligations that the offender has for the support of the
23 offender and any dependents.

24 (15) "Day reporting" means a program of enhanced supervision
25 designed to monitor the offender's daily activities and compliance with
26 sentence conditions, and in which the offender is required to report
27 daily to a specific location designated by the department or the
28 sentencing court.

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

30 (17) "Determinate sentence" means a sentence that states with
31 exactitude the number of actual years, months, or days of total
32 confinement, of partial confinement, of community supervision, the
33 number of actual hours or days of community service work, or dollars or
34 terms of a legal financial obligation. The fact that an offender
35 through earned release can reduce the actual period of confinement
36 shall not affect the classification of the sentence as a determinate
37 sentence.

38 (18) "Disposable earnings" means that part of the earnings of an
39 offender remaining after the deduction from those earnings of any

1 amount required by law to be withheld. For the purposes of this
2 definition, "earnings" means compensation paid or payable for personal
3 services, whether denominated as wages, salary, commission, bonuses, or
4 otherwise, and, notwithstanding any other provision of law making the
5 payments exempt from garnishment, attachment, or other process to
6 satisfy a court-ordered legal financial obligation, specifically
7 includes periodic payments pursuant to pension or retirement programs,
8 or insurance policies of any type, but does not include payments made
9 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
10 or Title 74 RCW.

11 (19) "Drug offender sentencing alternative" is a sentencing option
12 available to persons convicted of a felony offense other than a violent
13 offense or a sex offense and who are eligible for the option under RCW
14 9.94A.660.

15 (20) "Drug offense" means:

16 (a) Any felony violation of chapter 69.50 RCW except possession of
17 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
18 controlled substance (RCW 69.50.403);

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

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

25 (21) "Earned release" means earned release from confinement as
26 provided in RCW 9.94A.728.

27 (22) "Escape" means:

28 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
29 first degree (RCW 9A.76.110), escape in the second degree (RCW
30 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
31 willful failure to return from work release (RCW 72.65.070), or willful
32 failure to be available for supervision by the department while in
33 community custody (RCW 72.09.310); or

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

37 (23) "Felony traffic offense" means:

38 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
39 46.61.522), eluding a police officer (RCW 46.61.024), ((or)) felony

1 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while
2 under the influence of intoxicating liquor or any drug (RCW
3 46.61.502(6)), or felony physical control of a vehicle while under the
4 influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

8 (24) "Fine" means a specific sum of money ordered by the sentencing
9 court to be paid by the offender to the court over a specific period of
10 time.

11 (25) "First-time offender" means any person who has no prior
12 convictions for a felony and is eligible for the first-time offender
13 waiver under RCW 9.94A.650.

14 (26) "Home detention" means a program of partial confinement
15 available to offenders wherein the offender is confined in a private
16 residence subject to electronic surveillance.

17 (27) "Legal financial obligation" means a sum of money that is
18 ordered by a superior court of the state of Washington for legal
19 financial obligations which may include restitution to the victim,
20 statutorily imposed crime victims' compensation fees as assessed
21 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
22 court-appointed attorneys' fees, and costs of defense, fines, and any
23 other financial obligation that is assessed to the offender as a result
24 of a felony conviction. Upon conviction for vehicular assault while
25 under the influence of intoxicating liquor or any drug, RCW
26 46.61.522(1)(b), or vehicular homicide while under the influence of
27 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
28 obligations may also include payment to a public agency of the expense
29 of an emergency response to the incident resulting in the conviction,
30 subject to RCW 38.52.430.

31 (28) "Most serious offense" means any of the following felonies or
32 a felony attempt to commit any of the following felonies:

33 (a) Any felony defined under any law as a class A felony or
34 criminal solicitation of or criminal conspiracy to commit a class A
35 felony;

36 (b) Assault in the second degree;

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

38 (d) Child molestation in the second degree;

39 (e) Controlled substance homicide;

- 1 (f) Extortion in the first degree;
- 2 (g) Incest when committed against a child under age fourteen;
- 3 (h) Indecent liberties;
- 4 (i) Kidnapping in the second degree;
- 5 (j) Leading organized crime;
- 6 (k) Manslaughter in the first degree;
- 7 (l) Manslaughter in the second degree;
- 8 (m) Promoting prostitution in the first degree;
- 9 (n) Rape in the third degree;
- 10 (o) Robbery in the second degree;
- 11 (p) Sexual exploitation;
- 12 (q) Vehicular assault, when caused by the operation or driving of
13 a vehicle by a person while under the influence of intoxicating liquor
14 or any drug or by the operation or driving of a vehicle in a reckless
15 manner;
- 16 (r) Vehicular homicide, when proximately caused by the driving of
17 any vehicle by any person while under the influence of intoxicating
18 liquor or any drug as defined by RCW 46.61.502, or by the operation of
19 any vehicle in a reckless manner;
- 20 (s) Any other class B felony offense with a finding of sexual
21 motivation;
- 22 (t) Any other felony with a deadly weapon verdict under RCW
23 9.94A.602;
- 24 (u) Any felony offense in effect at any time prior to December 2,
25 1993, that is comparable to a most serious offense under this
26 subsection, or any federal or out-of-state conviction for an offense
27 that under the laws of this state would be a felony classified as a
28 most serious offense under this subsection;
- 29 (v)(i) A prior conviction for indecent liberties under RCW
30 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
31 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
32 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
33 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- 34 (ii) A prior conviction for indecent liberties under RCW
35 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
36 if: (A) The crime was committed against a child under the age of
37 fourteen; or (B) the relationship between the victim and perpetrator is
38 included in the definition of indecent liberties under RCW
39 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,

1 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
2 through July 27, 1997.

3 (29) "Nonviolent offense" means an offense which is not a violent
4 offense.

5 (30) "Offender" means a person who has committed a felony
6 established by state law and is eighteen years of age or older or is
7 less than eighteen years of age but whose case is under superior court
8 jurisdiction under RCW 13.04.030 or has been transferred by the
9 appropriate juvenile court to a criminal court pursuant to RCW
10 13.40.110. Throughout this chapter, the terms "offender" and
11 "defendant" are used interchangeably.

12 (31) "Partial confinement" means confinement for no more than one
13 year in a facility or institution operated or utilized under contract
14 by the state or any other unit of government, or, if home detention or
15 work crew has been ordered by the court, in an approved residence, for
16 a substantial portion of each day with the balance of the day spent in
17 the community. Partial confinement includes work release, home
18 detention, work crew, and a combination of work crew and home
19 detention.

20 (32) "Persistent offender" is an offender who:

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

23 (ii) Has, before the commission of the offense under (a) of this
24 subsection, been convicted as an offender on at least two separate
25 occasions, whether in this state or elsewhere, of felonies that under
26 the laws of this state would be considered most serious offenses and
27 would be included in the offender score under RCW 9.94A.525; provided
28 that of the two or more previous convictions, at least one conviction
29 must have occurred before the commission of any of the other most
30 serious offenses for which the offender was previously convicted; or

31 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
32 of a child in the first degree, child molestation in the first degree,
33 rape in the second degree, rape of a child in the second degree, or
34 indecent liberties by forcible compulsion; (B) any of the following
35 offenses with a finding of sexual motivation: Murder in the first
36 degree, murder in the second degree, homicide by abuse, kidnapping in
37 the first degree, kidnapping in the second degree, assault in the first
38 degree, assault in the second degree, assault of a child in the first

1 degree, or burglary in the first degree; or (C) an attempt to commit
2 any crime listed in this subsection (32)(b)(i); and

3 (ii) Has, before the commission of the offense under (b)(i) of this
4 subsection, been convicted as an offender on at least one occasion,
5 whether in this state or elsewhere, of an offense listed in (b)(i) of
6 this subsection or any federal or out-of-state offense or offense under
7 prior Washington law that is comparable to the offenses listed in
8 (b)(i) of this subsection. A conviction for rape of a child in the
9 first degree constitutes a conviction under (b)(i) of this subsection
10 only when the offender was sixteen years of age or older when the
11 offender committed the offense. A conviction for rape of a child in
12 the second degree constitutes a conviction under (b)(i) of this
13 subsection only when the offender was eighteen years of age or older
14 when the offender committed the offense.

15 (33) "Postrelease supervision" is that portion of an offender's
16 community placement that is not community custody.

17 (34) "Restitution" means a specific sum of money ordered by the
18 sentencing court to be paid by the offender to the court over a
19 specified period of time as payment of damages. The sum may include
20 both public and private costs.

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

29 (36) "Serious traffic offense" means:

30 (a) Nonfelony driving while under the influence of intoxicating
31 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
32 while under the influence of intoxicating liquor or any drug (RCW
33 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
34 attended vehicle (RCW 46.52.020(5)); or

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

38 (37) "Serious violent offense" is a subcategory of violent offense
39 and means:

1 (a)(i) Murder in the first degree;
2 (ii) Homicide by abuse;
3 (iii) Murder in the second degree;
4 (iv) Manslaughter in the first degree;
5 (v) Assault in the first degree;
6 (vi) Kidnapping in the first degree;
7 (vii) Rape in the first degree;
8 (viii) Assault of a child in the first degree; or
9 (ix) An attempt, criminal solicitation, or criminal conspiracy to
10 commit one of these felonies; or

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

14 (38) "Sex offense" means:

15 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
16 RCW 9A.44.130(11);

17 (ii) A violation of RCW 9A.64.020;

18 (iii) A felony that is a violation of chapter 9.68A RCW other than
19 RCW 9.68A.070 or 9.68A.080; or

20 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
21 criminal solicitation, or criminal conspiracy to commit such crimes;

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

25 (c) A felony with a finding of sexual motivation under RCW
26 9.94A.835 or 13.40.135; or

27 (d) 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 sex
29 offense under (a) of this subsection.

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

33 (40) "Standard sentence range" means the sentencing court's
34 discretionary range in imposing a nonappealable sentence.

35 (41) "Statutory maximum sentence" means the maximum length of time
36 for which an offender may be confined as punishment for a crime as
37 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
38 crime, or other statute defining the maximum penalty for a crime.

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

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

11 (44) "Victim" means any person who has sustained emotional,
12 psychological, physical, or financial injury to person or property as
13 a direct result of the crime charged.

14 (45) "Violent offense" means:

15 (a) Any of the following felonies:

16 (i) Any felony defined under any law as a class A felony or an
17 attempt to commit a class A felony;

18 (ii) Criminal solicitation of or criminal conspiracy to commit a
19 class A felony;

20 (iii) Manslaughter in the first degree;

21 (iv) Manslaughter in the second degree;

22 (v) Indecent liberties if committed by forcible compulsion;

23 (vi) Kidnapping in the second degree;

24 (vii) Arson in the second degree;

25 (viii) Assault in the second degree;

26 (ix) Assault of a child in the second degree;

27 (x) Extortion in the first degree;

28 (xi) Robbery in the second degree;

29 (xii) Drive-by shooting;

30 (xiii) Vehicular assault, when caused by the operation or driving
31 of a vehicle by a person while under the influence of intoxicating
32 liquor or any drug or by the operation or driving of a vehicle in a
33 reckless manner; and

34 (xiv) Vehicular homicide, when proximately caused by the driving of
35 any vehicle by any person while under the influence of intoxicating
36 liquor or any drug as defined by RCW 46.61.502, or by the operation of
37 any vehicle in a reckless manner;

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

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

7 (46) "Work crew" means a program of partial confinement consisting
8 of civic improvement tasks for the benefit of the community that
9 complies with RCW 9.94A.725.

10 (47) "Work ethic camp" means an alternative incarceration program
11 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
12 the cost of corrections by requiring offenders to complete a
13 comprehensive array of real-world job and vocational experiences,
14 character-building work ethics training, life management skills
15 development, substance abuse rehabilitation, counseling, literacy
16 training, and basic adult education.

17 (48) "Work release" means a program of partial confinement
18 available to offenders who are employed or engaged as a student in a
19 regular course of study at school.

20 **Sec. 2.** RCW 9.94A.640 and 1987 c 486 s 7 are each amended to read
21 as follows:

22 (1) Every offender who has been discharged under RCW 9.94A.637 may
23 apply to the sentencing court for a vacation of the offender's record
24 of conviction. If the court finds the offender meets the tests
25 prescribed in subsection (2) of this section, the court may clear the
26 record of conviction by: (a) Permitting the offender to withdraw the
27 offender's plea of guilty and to enter a plea of not guilty; or (b) if
28 the offender has been convicted after a plea of not guilty, by the
29 court setting aside the verdict of guilty; and (c) by the court
30 dismissing the information or indictment against the offender.

31 (2) An offender may not have the record of conviction cleared if:
32 (a) There are any criminal charges against the offender pending in any
33 court of this state or another state, or in any federal court; (b) the
34 offense was a violent offense as defined in RCW 9.94A.030; (c) the
35 offense was a crime against persons as defined in RCW 43.43.830; (d)
36 the offender has been convicted of a new crime in this state, another
37 state, or federal court since the date of the offender's discharge
38 under RCW 9.94A.637; (e) the offense is a class B felony and less than

1 ten years have passed since the date the applicant was discharged under
2 RCW 9.94A.637; (~~and~~) (f) the offense was a class C felony, other than
3 a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and
4 less than five years have passed since the date the applicant was
5 discharged under RCW 9.94A.637; or (g) the offense was a class C felony
6 described in RCW 46.61.502(6) or 46.61.504(6) and less than seven years
7 have passed since the applicant was discharged under RCW 9.94A.637.

8 (3) Once the court vacates a record of conviction under subsection
9 (1) of this section, the fact that the offender has been convicted of
10 the offense shall not be included in the offender's criminal history
11 for purposes of determining a sentence in any subsequent conviction,
12 and the offender shall be released from all penalties and disabilities
13 resulting from the offense. For all purposes, including responding to
14 questions on employment applications, an offender whose conviction has
15 been vacated may state that the offender has never been convicted of
16 that crime. Nothing in this section affects or prevents the use of an
17 offender's prior conviction in a later criminal prosecution.

18 **Sec. 3.** RCW 9.94A.515 and 2001 2nd sp.s. c 12 s 361, 2001 c 300 s
19 4, 2001 c 217 s 12, and 2001 c 17 s 1 are each reenacted and amended to
20 read as follows:

21 TABLE 2

22 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

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

1 Rape of a Child 1 (RCW 9A.44.073)

2 XI Manslaughter 1 (RCW 9A.32.060)

3 Rape 2 (RCW 9A.44.050)

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

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

6 Indecent Liberties (with forcible

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

8 Kidnapping 1 (RCW 9A.40.020)

9 Leading Organized Crime (RCW

10 9A.82.060(1)(a))

11 Malicious explosion 3 (RCW 70.74.280(3))

12 Manufacture of methamphetamine (RCW

13 69.50.401(a)(1)(ii))

14 Over 18 and deliver heroin,

15 methamphetamine, a narcotic from

16 Schedule I or II, or flunitrazepam

17 from Schedule IV to someone under 18

18 (RCW 69.50.406)

19 Sexually Violent Predator Escape (RCW

20 9A.76.115)

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

22 Controlled Substance Homicide (RCW

23 69.50.415)

24 Explosive devices prohibited (RCW

25 70.74.180)

26 Hit and Run--Death (RCW 46.52.020(4)(a))

27 Homicide by Watercraft, by being under the

28 influence of intoxicating liquor or

29 any drug (RCW 79A.60.050)

30 Inciting Criminal Profiteering (RCW

31 9A.82.060(1)(b))

32 Malicious placement of an explosive 2 (RCW

33 70.74.270(2))

34 Over 18 and deliver narcotic from Schedule

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

36 flunitrazepam or methamphetamine, from

37 Schedule I-V to someone under 18 and 3

38 years junior (RCW 69.50.406)

1 Robbery 1 (RCW 9A.56.200)
2 Sexual Exploitation (RCW 9.68A.040)
3 Vehicular Homicide, by being under the
4 influence of intoxicating liquor or
5 any drug (RCW 46.61.520)

6 VIII Arson 1 (RCW 9A.48.020)
7 Deliver or possess with intent to deliver
8 methamphetamine (RCW
9 69.50.401(a)(1)(ii))
10 Homicide by Watercraft, by the operation of
11 any vessel in a reckless manner (RCW
12 79A.60.050)
13 Manslaughter 2 (RCW 9A.32.070)
14 Manufacture, deliver, or possess with
15 intent to deliver amphetamine (RCW
16 69.50.401(a)(1)(ii))
17 Manufacture, deliver, or possess with
18 intent to deliver heroin or cocaine
19 (RCW 69.50.401(a)(1)(i))
20 Possession of Ephedrine, Pseudoephedrine,
21 or Anhydrous Ammonia with intent to
22 manufacture methamphetamine (RCW
23 69.50.440)
24 Promoting Prostitution 1 (RCW 9A.88.070)
25 Selling for profit (controlled or
26 counterfeit) any controlled substance
27 (RCW 69.50.410)
28 Theft of Anhydrous Ammonia (RCW 69.55.010)
29 Vehicular Homicide, by the operation of any
30 vehicle in a reckless manner (RCW
31 46.61.520)

32 VII Burglary 1 (RCW 9A.52.020)
33 Child Molestation 2 (RCW 9A.44.086)
34 Dealing in depictions of minor engaged in
35 sexually explicit conduct (RCW
36 9.68A.050)
37 Drive-by Shooting (RCW 9A.36.045)

1 Homicide by Watercraft, by disregard for
2 the safety of others (RCW 79A.60.050)
3 Indecent Liberties (without forcible
4 compulsion) (RCW 9A.44.100(1) (b) and
5 (c))
6 Introducing Contraband 1 (RCW 9A.76.140)
7 Involving a minor in drug dealing (RCW
8 69.50.401(f))
9 Malicious placement of an explosive 3 (RCW
10 70.74.270(3))
11 Sending, bringing into state depictions of
12 minor engaged in sexually explicit
13 conduct (RCW 9.68A.060)
14 Unlawful Possession of a Firearm in the
15 first degree (RCW 9.41.040(1)(a))
16 Use of a Machine Gun in Commission of a
17 Felony (RCW 9.41.225)
18 Vehicular Homicide, by disregard for the
19 safety of others (RCW 46.61.520)

20 VI Bail Jumping with Murder 1 (RCW
21 9A.76.170(3)(a))
22 Bribery (RCW 9A.68.010)
23 Incest 1 (RCW 9A.64.020(1))
24 Intimidating a Judge (RCW 9A.72.160)
25 Intimidating a Juror/Witness (RCW
26 9A.72.110, 9A.72.130)
27 Malicious placement of an imitation device
28 2 (RCW 70.74.272(1)(b))
29 Manufacture, deliver, or possess with
30 intent to deliver narcotics from
31 Schedule I or II (except heroin or
32 cocaine) or flunitrazepam from
33 Schedule IV (RCW 69.50.401(a)(1)(i))
34 Rape of a Child 3 (RCW 9A.44.079)
35 Theft of a Firearm (RCW 9A.56.300)
36 Unlawful Storage of Anhydrous Ammonia (RCW
37 69.55.020)

1 V Abandonment of dependent person 1 (RCW
2 9A.42.060)
3 Advancing money or property for
4 extortionate extension of credit (RCW
5 9A.82.030)
6 Bail Jumping with class A Felony (RCW
7 9A.76.170(3)(b))
8 Child Molestation 3 (RCW 9A.44.089)
9 Criminal Mistreatment 1 (RCW 9A.42.020)
10 Custodial Sexual Misconduct 1 (RCW
11 9A.44.160)
12 Delivery of imitation controlled substance
13 by person eighteen or over to person
14 under eighteen (RCW 69.52.030(2))
15 Domestic Violence Court Order Violation
16 (RCW 10.99.040, 10.99.050, 26.09.300,
17 26.10.220, 26.26.138, 26.50.110,
18 26.52.070, or 74.34.145)
19 Driving While Under the Influence (RCW
20 46.61.502(6))
21 Extortion 1 (RCW 9A.56.120)
22 Extortionate Extension of Credit (RCW
23 9A.82.020)
24 Extortionate Means to Collect Extensions of
25 Credit (RCW 9A.82.040)
26 Incest 2 (RCW 9A.64.020(2))
27 Kidnapping 2 (RCW 9A.40.030)
28 Perjury 1 (RCW 9A.72.020)
29 Persistent prison misbehavior (RCW
30 9.94.070)
31 Physical Control of a Vehicle While Under
32 the Influence (RCW 46.61.504(6))
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 Stalking (RCW 9A.46.110)

4 IV Arson 2 (RCW 9A.48.030)
5 Assault 2 (RCW 9A.36.021)
6 Assault by Watercraft (RCW 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 (RCW 46.52.020(4)(b))
13 Hit and Run with Vessel--Injury Accident
14 (RCW 79A.60.200(3))
15 Identity Theft 1 (RCW 9.35.020(2)(a))
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, by being under the
38 influence of intoxicating liquor or
39 any drug, or by the operation or

1 driving of a vehicle in a reckless
2 manner (RCW 46.61.522)
3 Willful Failure to Return from Furlough
4 (RCW 72.66.060)

5 III Abandonment of dependent person 2 (RCW
6 9A.42.070)
7 Assault 3 (RCW 9A.36.031)
8 Assault of a Child 3 (RCW 9A.36.140)
9 Bail Jumping with class B or C Felony (RCW
10 9A.76.170(3)(c))
11 Burglary 2 (RCW 9A.52.030)
12 Communication with a Minor for Immoral
13 Purposes (RCW 9.68A.090)
14 Criminal Gang Intimidation (RCW 9A.46.120)
15 Criminal Mistreatment 2 (RCW 9A.42.030)
16 Custodial Assault (RCW 9A.36.100)
17 Delivery of a material in lieu of a
18 controlled substance (RCW
19 69.50.401(c))
20 Escape 2 (RCW 9A.76.120)
21 Extortion 2 (RCW 9A.56.130)
22 Harassment (RCW 9A.46.020)
23 Intimidating a Public Servant (RCW
24 9A.76.180)
25 Introducing Contraband 2 (RCW 9A.76.150)
26 Maintaining a Dwelling or Place for
27 Controlled Substances (RCW
28 69.50.402(a)(6))
29 Malicious Injury to Railroad Property (RCW
30 81.60.070)
31 Manufacture, deliver, or possess with
32 intent to deliver marijuana (RCW
33 69.50.401(a)(1)(iii))
34 Manufacture, distribute, or possess with
35 intent to distribute an imitation
36 controlled substance (RCW
37 69.52.030(1))
38 Patronizing a Juvenile Prostitute (RCW
39 9.68A.100)

1 Perjury 2 (RCW 9A.72.030)
2 Possession of Incendiary Device (RCW
3 9.40.120)
4 Possession of Machine Gun or Short-Barreled
5 Shotgun or Rifle (RCW 9.41.190)
6 Promoting Prostitution 2 (RCW 9A.88.080)
7 Recklessly Trafficking in Stolen Property
8 (RCW 9A.82.050(1))
9 Securities Act violation (RCW 21.20.400)
10 Tampering with a Witness (RCW 9A.72.120)
11 Telephone Harassment (subsequent conviction
12 or threat of death) (RCW 9.61.230)
13 Theft of Livestock 2 (RCW 9A.56.080)
14 Unlawful Imprisonment (RCW 9A.40.040)
15 Unlawful possession of firearm in the
16 second degree (RCW 9.41.040(1)(b))
17 Unlawful Use of Building for Drug Purposes
18 (RCW 69.53.010)
19 Vehicular Assault, by the operation or
20 driving of a vehicle with disregard
21 for the safety of others (RCW
22 46.61.522)
23 Willful Failure to Return from Work Release
24 (RCW 72.65.070)

25 II Computer Trespass 1 (RCW 9A.52.110)
26 Counterfeiting (RCW 9.16.035(3))
27 Create, deliver, or possess a counterfeit
28 controlled substance (RCW
29 69.50.401(b))
30 Escape from Community Custody (RCW
31 72.09.310)
32 Health Care False Claims (RCW 48.80.030)
33 Identity Theft 2 (RCW 9.35.020(2)(b))
34 Improperly Obtaining Financial Information
35 (RCW 9.35.010)
36 Malicious Mischief 1 (RCW 9A.48.070)
37 Possession of controlled substance that is
38 either heroin or narcotics from

1 Schedule I or II or flunitrazepam from
2 Schedule IV (RCW 69.50.401(d))
3 Possession of phencyclidine (PCP) (RCW
4 69.50.401(d))
5 Possession of Stolen Property 1 (RCW
6 9A.56.150)
7 Theft 1 (RCW 9A.56.030)
8 Theft of Rental, Leased, or Lease-purchased
9 Property (valued at one thousand five
10 hundred dollars or more) (RCW
11 9A.56.096(4))
12 Trafficking in Insurance Claims (RCW
13 48.30A.015)
14 Unlawful Practice of Law (RCW 2.48.180)
15 Unlicensed Practice of a Profession or
16 Business (RCW 18.130.190(7))
17 I Attempting to Elude a Pursuing Police
18 Vehicle (RCW 46.61.024)
19 False Verification for Welfare (RCW
20 74.08.055)
21 Forged Prescription (RCW 69.41.020)
22 Forged Prescription for a Controlled
23 Substance (RCW 69.50.403)
24 Forgery (RCW 9A.60.020)
25 Malicious Mischief 2 (RCW 9A.48.080)
26 Possess Controlled Substance that is a
27 Narcotic from Schedule III, IV, or V
28 or Non-narcotic from Schedule I-V
29 (except phencyclidine or
30 flunitrazepam) (RCW 69.50.401(d))
31 Possession of Stolen Property 2 (RCW
32 9A.56.160)
33 Reckless Burning 1 (RCW 9A.48.040)
34 Taking Motor Vehicle Without Permission
35 (RCW 9A.56.070)
36 Theft 2 (RCW 9A.56.040)
37 Theft of Rental, Leased, or Lease-purchased
38 Property (valued at two hundred fifty
39 dollars or more but less than one

1 thousand five hundred dollars) (RCW
2 9A.56.096(4))
3 Unlawful Issuance of Checks or Drafts (RCW
4 9A.56.060)
5 Unlawful Use of Food Stamps (RCW 9.91.140
6 (2) and (3))
7 Vehicle Prowl 1 (RCW 9A.52.095)

8 **Sec. 4.** RCW 9.94A.525 and 2001 c 264 s 5 are each amended to read
9 as follows:

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

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

14 (1) A prior conviction is a conviction which exists before the date
15 of sentencing for the offense for which the offender score is being
16 computed. Convictions entered or sentenced on the same date as the
17 conviction for which the offender score is being computed shall be
18 deemed "other current offenses" within the meaning of RCW 9.94A.589.

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

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

28 (c) Prior class C ((~~prior~~)) felony convictions other than sex
29 offenses and other than felony traffic offenses under RCW 46.61.502(6)
30 and 46.61.504(6) shall not be included in the offender score if, since
31 the last date of release from confinement (including full-time
32 residential treatment) pursuant to a felony conviction, if any, or
33 entry of judgment and sentence, the offender had spent five consecutive
34 years in the community without committing any crime that subsequently
35 results in a conviction.

36 (d) Prior class C felony traffic convictions under RCW 46.61.502(6)
37 and 46.61.504(6) and prior serious traffic convictions shall not be
38 included in the offender score if(~~(7)~~): (i) Since the last date of

1 release from confinement (including full-time residential treatment)
2 pursuant to a felony conviction, if any, or entry of judgment and
3 sentence, the offender spent five years in the community without
4 committing any crime that subsequently results in a conviction; and
5 (ii) if the present conviction is a felony traffic offense under RCW
6 46.61.502(6) and 46.61.504(6), the prior traffic or serious traffic
7 conviction is no longer a prior offense "within seven years" for
8 purposes of RCW 46.61.5055. This subsection applies to both adult and
9 juvenile prior convictions.

10 (3) Out-of-state convictions for offenses shall be classified
11 according to the comparable offense definitions and sentences provided
12 by Washington law. Federal convictions for offenses shall be
13 classified according to the comparable offense definitions and
14 sentences provided by Washington law. If there is no clearly
15 comparable offense under Washington law or the offense is one that is
16 usually considered subject to exclusive federal jurisdiction, the
17 offense shall be scored as a class C felony equivalent if it was a
18 felony under the relevant federal statute.

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

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

25 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
26 encompass the same criminal conduct, shall be counted as one offense,
27 the offense that yields the highest offender score. The current
28 sentencing court shall determine with respect to other prior adult
29 offenses for which sentences were served concurrently or prior juvenile
30 offenses for which sentences were served consecutively, whether those
31 offenses shall be counted as one offense or as separate offenses using
32 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
33 if the court finds that they shall be counted as one offense, then the
34 offense that yields the highest offender score shall be used. The
35 current sentencing court may presume that such other prior offenses
36 were not the same criminal conduct from sentences imposed on separate
37 dates, or in separate counties or jurisdictions, or in separate
38 complaints, indictments, or informations;

1 (ii) In the case of multiple prior convictions for offenses
2 committed before July 1, 1986, for the purpose of computing the
3 offender score, count all adult convictions served concurrently as one
4 offense, and count all juvenile convictions entered on the same date as
5 one offense. Use the conviction for the offense that yields the
6 highest offender score.

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

13 (6) If the present conviction is one of the anticipatory offenses
14 of criminal attempt, solicitation, or conspiracy, count each prior
15 conviction as if the present conviction were for a completed offense.
16 When these convictions are used as criminal history, score them the
17 same as a completed crime.

18 (7) If the present conviction is for a nonviolent offense and not
19 covered by subsection (11) or (12) of this section, count one point for
20 each adult prior felony conviction and one point for each juvenile
21 prior violent felony conviction and 1/2 point for each juvenile prior
22 nonviolent felony conviction.

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

28 (9) If the present conviction is for a serious violent offense,
29 count three points for prior adult and juvenile convictions for crimes
30 in this category, two points for each prior adult and juvenile violent
31 conviction (not already counted), one point for each prior adult
32 nonviolent felony conviction, and 1/2 point for each prior juvenile
33 nonviolent felony conviction.

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

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

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

14 (13) If the present conviction is for Escape from Community
15 Custody, RCW 72.09.310, count only prior escape convictions in the
16 offender score. Count adult prior escape convictions as one point and
17 juvenile prior escape convictions as 1/2 point.

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

21 (15) If the present conviction is for Burglary 2 or residential
22 burglary, count priors as in subsection (7) of this section; however,
23 count two points for each adult and juvenile prior Burglary 1
24 conviction, two points for each adult prior Burglary 2 or residential
25 burglary conviction, and one point for each juvenile prior Burglary 2
26 or residential burglary conviction.

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

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

32 **Sec. 5.** RCW 9.94A.650 and 2000 c 28 s 18 are each amended to read
33 as follows:

34 (1) This section applies to offenders who have never been
35 previously convicted of a felony in this state, federal court, or
36 another state, and who have never participated in a program of deferred
37 prosecution for a felony, and who are convicted of a felony that is
38 not:

1 (a) Classified as a violent offense or a sex offense under this
2 chapter;

3 (b) Manufacture, delivery, or possession with intent to manufacture
4 or deliver a controlled substance classified in Schedule I or II that
5 is a narcotic drug or flunitrazepam classified in Schedule IV;

6 (c) Manufacture, delivery, or possession with intent to deliver a
7 methamphetamine, its salts, isomers, and salts of its isomers as
8 defined in RCW 69.50.206(d)(2); ~~((or))~~

9 (d) The selling for profit of any controlled substance or
10 counterfeit substance classified in Schedule I, RCW 69.50.204, except
11 leaves and flowering tops of marijuana; or

12 (e) Driving while under the influence of intoxicating liquor or any
13 drug or physical control of a vehicle while under the influence of
14 intoxicating liquor or any drug.

15 (2) In sentencing a first-time offender the court may waive the
16 imposition of a sentence within the standard sentence range and impose
17 a sentence which may include up to ninety days of confinement in a
18 facility operated or utilized under contract by the county and a
19 requirement that the offender refrain from committing new offenses.
20 The sentence may also include a term of community supervision or
21 community custody as specified in subsection (3) of this section,
22 which, in addition to crime-related prohibitions, may include
23 requirements that the offender perform any one or more of the
24 following:

25 (a) Devote time to a specific employment or occupation;

26 (b) Undergo available outpatient treatment for up to the period
27 specified in subsection (3) of this section, or inpatient treatment not
28 to exceed the standard range of confinement for that offense;

29 (c) Pursue a prescribed, secular course of study or vocational
30 training;

31 (d) Remain within prescribed geographical boundaries and notify the
32 community corrections officer prior to any change in the offender's
33 address or employment;

34 (e) Report as directed to a community corrections officer; or

35 (f) Pay all court-ordered legal financial obligations as provided
36 in RCW 9.94A.030 and/or perform community service work.

37 (3) The terms and statuses applicable to sentences under subsection
38 (2) of this section are:

1 (a) For sentences imposed on or after July 25, 1999, for crimes
2 committed before July 1, 2000, up to one year of community supervision.
3 If treatment is ordered, the period of community supervision may
4 include up to the period of treatment, but shall not exceed two years;
5 and

6 (b) For crimes committed on or after July 1, 2000, up to one year
7 of community custody unless treatment is ordered, in which case the
8 period of community custody may include up to the period of treatment,
9 but shall not exceed two years. Any term of community custody imposed
10 under this section is subject to conditions and sanctions as authorized
11 in this section and in RCW 9.94A.715 (2) and (3).

12 (4) The department shall discharge from community supervision any
13 offender sentenced under this section before July 25, 1999, who has
14 served at least one year of community supervision and has completed any
15 treatment ordered by the court.

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

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

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

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

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

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

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

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

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

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

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

19 **Sec. 7.** RCW 46.61.504 and 1998 c 213 s 5 are each amended to read
20 as follows:

21 (1) A person is guilty of being in actual physical control of a
22 motor vehicle while under the influence of intoxicating liquor or any
23 drug if the person has actual physical control of a vehicle within this
24 state:

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

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

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

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

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

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

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

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

27 **Sec. 8.** RCW 46.61.5055 and 1999 c 324 s 5, 1999 c 274 s 6, and
28 1999 c 5 s 1 are each reenacted and amended to read as follows:

29 (1) A person who is convicted of a violation of RCW 46.61.502 or
30 46.61.504 and who has no prior offense within seven years shall be
31 punished as follows:

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

36 (i) By imprisonment for not less than one day nor more than one
37 year. Twenty-four consecutive hours of the imprisonment may not be
38 suspended or deferred unless the court finds that the imposition of

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

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

6 (2) A person who is convicted of a violation of RCW 46.61.502 or
7 46.61.504 and who has one prior offense within seven years shall be
8 punished as follows:

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

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

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

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

33 (b) In the case of a person whose alcohol concentration was at
34 least 0.15, or for whom by reason of the person's refusal to take a
35 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 forty-five days nor more than
38 one year and ninety days of electronic home monitoring. The offender
39 shall pay for the cost of the electronic monitoring. The county or

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

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

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

18 (3) A person who is convicted of a violation of RCW 46.61.502 or
19 46.61.504 and who has two or more prior offenses within seven years
20 shall be punished ((as follows:

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

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

1 ~~deferral and the facts upon which the suspension or deferral is based;~~
2 ~~and~~

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

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

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

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

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

32 ~~(iii) By a court ordered restriction under RCW 46.20.720)) in~~
33 ~~accordance with chapter 9.94A RCW. In addition, the court shall impose~~
34 ~~the restrictions set forth in RCW 46.20.720.~~

35 (4) In exercising its discretion in setting nonfelony penalties
36 within the limits allowed by this section, the court shall particularly
37 consider the following:

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

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

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

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

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

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

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

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

18 (b) If the person's alcohol concentration was at least 0.15, or if
19 by reason of the person's refusal to take a test offered under RCW
20 46.20.308 there is no test result indicating the person's alcohol
21 concentration:

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

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

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

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

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

35 (8)(a) In addition to any nonsuspendable and nondeferrable jail
36 sentence required by this section, whenever the court imposes less than
37 one year in jail, the court shall also suspend but shall not defer a
38 period of confinement for a period not exceeding five years. The court
39 shall impose conditions of probation that include: (i) Not driving a

1 motor vehicle within this state without a valid license to drive and
2 proof of financial responsibility for the future; (ii) not driving a
3 motor vehicle within this state while having an alcohol concentration
4 of 0.08 or more within two hours after driving; and (iii) not refusing
5 to submit to a test of his or her breath or blood to determine alcohol
6 concentration upon request of a law enforcement officer who has
7 reasonable grounds to believe the person was driving or was in actual
8 physical control of a motor vehicle within this state while under the
9 influence of intoxicating liquor. The court may impose conditions of
10 probation that include nonrepetition, installation of an ignition
11 interlock or other biological or technical device on the probationer's
12 motor vehicle, alcohol or drug treatment, supervised probation, or
13 other conditions that may be appropriate. The sentence may be imposed
14 in whole or in part upon violation of a condition of probation during
15 the suspension period.

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

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

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

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

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

35 (c) The court determines that there is reason to believe that the
36 offender would violate the conditions of the electronic home monitoring
37 penalty.

38 Whenever the mandatory minimum term of electronic home monitoring
39 is waived, the court shall state in writing the reason for granting the

1 waiver and the facts upon which the waiver is based, and shall impose
2 an alternative sentence with similar punitive consequences. The
3 alternative sentence may include, but is not limited to, additional
4 jail time, work crew, or work camp.

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

11 (10) An offender serving a sentence under this section, whether or
12 not a mandatory minimum term has expired, may be granted an
13 extraordinary medical placement by the jail administrator subject to
14 the standards and limitations set forth in RCW 9.94A.728(4).

15 (11) For purposes of this section:

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

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

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

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

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

25 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
26 9A.36.050 or an equivalent local ordinance, if the conviction is the
27 result of a charge that was originally filed as a violation of RCW
28 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
29 46.61.520 or 46.61.522;

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

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

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

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

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

5 **Sec. 9.** RCW 46.61.5151 and 1995 c 332 s 15 are each amended to
6 read as follows:

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

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