
SENATE BILL 5843

State of Washington

57th Legislature

2001 Regular Session

By Senators Costa, Long, Carlson, Zarelli, Franklin, Hargrove, Rasmussen and Oke

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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, 9.94A.360, and
3 9.94A.650; reenacting and amending RCW 46.61.5055 and 9.94A.320; and
4 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, or the person has a previous conviction of felony
29 driving or being in actual physical control while under the influence
30 of intoxicating liquor or any drug, vehicular assault (RCW 46.61.522),
31 or vehicular homicide (RCW 46.61.520).

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

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

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

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

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

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

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

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

34 (5) A violation of this section is a gross misdemeanor punishable
35 pursuant to RCW 46.61.5055 except that a person is guilty of a class C
36 felony punishable under chapter 9A.20 RCW if the person is in actual
37 physical control of a motor vehicle while under the influence of
38 intoxicating liquor or any drug as defined by this section and has been
39 previously convicted of being in physical control of a motor vehicle or

1 driving a motor vehicle while under the influence of intoxicating
2 liquor or any drug on two or more occasions within a seven-year period,
3 or the person has a previous conviction of felony driving or being in
4 actual physical control while under the influence of intoxicating
5 liquor or any drug, vehicular assault (RCW 46.61.522), or vehicular
6 homicide (RCW 46.61.520).

7 **Sec. 3.** RCW 46.61.5055 and 1999 c 324 s 5, 1999 c 274 s 6, and
8 1999 c 5 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (iii) By a court ordered restriction under RCW 46.20.720)) pursuant
15 to chapter 9A.20 RCW.

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

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

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

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

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

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

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

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

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

38 (b) If the person's alcohol concentration was at least 0.15, or if
39 by reason of the person's refusal to take a test offered under RCW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (11) For purposes of this section:

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

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

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

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

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

7 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
8 9A.36.050 or an equivalent local ordinance, if the conviction is the
9 result of a charge that was originally filed as a violation of RCW
10 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
11 46.61.520 or 46.61.522;

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

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

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

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

26 **Sec. 4.** RCW 46.61.524 and 2000 c 28 s 40 are each amended to read
27 as follows:

28 (1) A person convicted under RCW 46.61.520(1)(a) or 46.61.522(1)(b)
29 or of a felony violation of RCW 46.61.502 or 46.61.504 shall, as a
30 condition of community (~~supervision~~) custody imposed under RCW
31 9.94A.383 or community placement imposed under RCW 9.94A.660, complete
32 a diagnostic evaluation by an alcohol or drug dependency agency
33 approved by the department of social and health services or a qualified
34 probation department, as defined under RCW 46.61.516 that has been
35 approved by the department of social and health services. This report
36 shall be forwarded to the department of licensing. If the person is
37 found to have an alcohol or drug problem that requires treatment, the
38 person shall complete treatment in a program approved by the department

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

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

22 **Sec. 5.** RCW 9.94A.320 and 2000 c 225 s 5, 2000 c 119 s 17, and
23 2000 c 66 s 2 are each reenacted and amended to read as follows:

24 TABLE 2

25 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

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

1 Malicious placement of an imitation device
2 1 (RCW 70.74.272(1)(a))
3 Rape 1 (RCW 9A.44.040)
4 Rape of a Child 1 (RCW 9A.44.073)
5 XI Manslaughter 1 (RCW 9A.32.060)
6 Rape 2 (RCW 9A.44.050)
7 Rape of a Child 2 (RCW 9A.44.076)
8 X Child Molestation 1 (RCW 9A.44.083)
9 Indecent Liberties (with forcible
10 compulsion) (RCW 9A.44.100(1)(a))
11 Kidnapping 1 (RCW 9A.40.020)
12 Leading Organized Crime (RCW
13 9A.82.060(1)(a))
14 Malicious explosion 3 (RCW 70.74.280(3))
15 Manufacture of methamphetamine (RCW
16 69.50.401(a)(1)(ii))
17 Over 18 and deliver heroin,
18 methamphetamine, a narcotic from
19 Schedule I or II, or flunitrazepam
20 from Schedule IV to someone under 18
21 (RCW 69.50.406)
22 IX Assault of a Child 2 (RCW 9A.36.130)
23 Controlled Substance Homicide (RCW
24 69.50.415)
25 Explosive devices prohibited (RCW
26 70.74.180)
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 Hit and Run--Death (RCW 46.52.020(4)(a))
11 Homicide by Watercraft, by the operation of
12 any vessel in a reckless manner (RCW
13 79A.60.050)
14 Manslaughter 2 (RCW 9A.32.070)
15 Manufacture, deliver, or possess with
16 intent to deliver amphetamine (RCW
17 69.50.401(a)(1)(ii))
18 Manufacture, deliver, or possess with
19 intent to deliver heroin or cocaine
20 (RCW 69.50.401(a)(1)(i))
21 Possession of Ephedrine, Pseudoephedrine,
22 or Anhydrous Ammonia with intent to
23 manufacture methamphetamine (RCW
24 69.50.440)
25 Promoting Prostitution 1 (RCW 9A.88.070)
26 Selling for profit (controlled or
27 counterfeit) any controlled substance
28 (RCW 69.50.410)
29 Theft of Anhydrous Ammonia (RCW 69.55.010)
30 Vehicular Homicide, by the operation of any
31 vehicle in a reckless manner (RCW
32 46.61.520)

33 VII Burglary 1 (RCW 9A.52.020)
34 Child Molestation 2 (RCW 9A.44.086)
35 Dealing in depictions of minor engaged in
36 sexually explicit conduct (RCW
37 9.68A.050)
38 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(2)(a))
22 Bribery (RCW 9A.68.010)
23 Felony driving or physical control of a
24 motor vehicle while under the
25 influence of intoxicating liquor or
26 any drug (RCW 46.61.5055(3))
27 Incest 1 (RCW 9A.64.020(1))
28 Intimidating a Judge (RCW 9A.72.160)
29 Intimidating a Juror/Witness (RCW
30 9A.72.110, 9A.72.130)
31 Malicious placement of an imitation device
32 2 (RCW 70.74.272(1)(b))
33 Manufacture, deliver, or possess with
34 intent to deliver narcotics from
35 Schedule I or II (except heroin or
36 cocaine) or flunitrazepam from
37 Schedule IV (RCW 69.50.401(a)(1)(i))
38 Rape of a Child 3 (RCW 9A.44.079)
39 Theft of a Firearm (RCW 9A.56.300)

1 Unlawful Storage of Anhydrous Ammonia (RCW
2 69.55.020)

3 V Abandonment of dependent person 1 (RCW
4 9A.42.060)

5 Advancing money or property for
6 extortionate extension of credit (RCW
7 9A.82.030)

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

10 Child Molestation 3 (RCW 9A.44.089)

11 Criminal Mistreatment 1 (RCW 9A.42.020)

12 Custodial Sexual Misconduct 1 (RCW
13 9A.44.160)

14 Delivery of imitation controlled substance
15 by person eighteen or over to person
16 under eighteen (RCW 69.52.030(2))

17 Domestic Violence Court Order Violation
18 (RCW 10.99.040, 10.99.050, 26.09.300,
19 26.10.220, 26.26.138, 26.50.110,
20 26.52.070, or 74.34.145)

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 Possession of a Stolen Firearm (RCW
32 9A.56.310)

33 Rape 3 (RCW 9A.44.060)

34 Rendering Criminal Assistance 1 (RCW
35 9A.76.070)

36 Sexual Misconduct with a Minor 1 (RCW
37 9A.44.093)

38 Sexually Violating Human Remains (RCW
39 9A.44.105)

1 Stalking (RCW 9A.46.110)

2 IV Arson 2 (RCW 9A.48.030)

3 Assault 2 (RCW 9A.36.021)

4 Assault by Watercraft (RCW 79A.60.060)

5 Bribing a Witness/Bribe Received by Witness

6 (RCW 9A.72.090, 9A.72.100)

7 Commercial Bribery (RCW 9A.68.060)

8 Counterfeiting (RCW 9.16.035(4))

9 Escape 1 (RCW 9A.76.110)

10 Hit and Run--Injury (RCW 46.52.020(4)(b))

11 Hit and Run with Vessel--Injury Accident

12 (RCW 79A.60.200(3))

13 Indecent Exposure to Person Under Age

14 Fourteen (subsequent sex offense) (RCW

15 9A.88.010)

16 Influencing Outcome of Sporting Event (RCW

17 9A.82.070)

18 Knowingly Trafficking in Stolen Property

19 (RCW 9A.82.050(2))

20 Malicious Harassment (RCW 9A.36.080)

21 Manufacture, deliver, or possess with

22 intent to deliver narcotics from

23 Schedule III, IV, or V or nonnarcotics

24 from Schedule I-V (except marijuana,

25 amphetamine, methamphetamines, or

26 flunitrazepam) (RCW 69.50.401(a)(1)

27 (iii) through (v))

28 Residential Burglary (RCW 9A.52.025)

29 Robbery 2 (RCW 9A.56.210)

30 Theft of Livestock 1 (RCW 9A.56.080)

31 Threats to Bomb (RCW 9.61.160)

32 Use of Proceeds of Criminal Profiteering

33 (RCW 9A.82.080 (1) and (2))

34 Vehicular Assault (RCW 46.61.522)

35 Willful Failure to Return from Furlough

36 (RCW 72.66.060)

37 III Abandonment of dependent person 2 (RCW

38 9A.42.070)

1 Assault 3 (RCW 9A.36.031)
2 Assault of a Child 3 (RCW 9A.36.140)
3 Bail Jumping with class B or C Felony (RCW
4 9A.76.170(2)(c))
5 Burglary 2 (RCW 9A.52.030)
6 Communication with a Minor for Immoral
7 Purposes (RCW 9.68A.090)
8 Criminal Gang Intimidation (RCW 9A.46.120)
9 Criminal Mistreatment 2 (RCW 9A.42.030)
10 Custodial Assault (RCW 9A.36.100)
11 Delivery of a material in lieu of a
12 controlled substance (RCW
13 69.50.401(c))
14 Escape 2 (RCW 9A.76.120)
15 Extortion 2 (RCW 9A.56.130)
16 Harassment (RCW 9A.46.020)
17 Intimidating a Public Servant (RCW
18 9A.76.180)
19 Introducing Contraband 2 (RCW 9A.76.150)
20 Maintaining a Dwelling or Place for
21 Controlled Substances (RCW
22 69.50.402(a)(6))
23 Malicious Injury to Railroad Property (RCW
24 81.60.070)
25 Manufacture, deliver, or possess with
26 intent to deliver marijuana (RCW
27 69.50.401(a)(1)(iii))
28 Manufacture, distribute, or possess with
29 intent to distribute an imitation
30 controlled substance (RCW
31 69.52.030(1))
32 Patronizing a Juvenile Prostitute (RCW
33 9.68A.100)
34 Perjury 2 (RCW 9A.72.030)
35 Possession of Incendiary Device (RCW
36 9.40.120)
37 Possession of Machine Gun or Short-Barreled
38 Shotgun or Rifle (RCW 9.41.190)
39 Promoting Prostitution 2 (RCW 9A.88.080)

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

15 II Computer Trespass 1 (RCW 9A.52.110)
16 Counterfeiting (RCW 9.16.035(3))
17 Create, deliver, or possess a counterfeit
18 controlled substance (RCW
19 69.50.401(b))
20 Escape from Community Custody (RCW
21 72.09.310)
22 Health Care False Claims (RCW 48.80.030)
23 Malicious Mischief 1 (RCW 9A.48.070)
24 Possession of controlled substance that is
25 either heroin or narcotics from
26 Schedule I or II or flunitrazepam from
27 Schedule IV (RCW 69.50.401(d))
28 Possession of phencyclidine (PCP) (RCW
29 69.50.401(d))
30 Possession of Stolen Property 1 (RCW
31 9A.56.150)
32 Theft 1 (RCW 9A.56.030)
33 Theft of Rental, Leased, or Lease-purchased
34 Property (valued at one thousand five
35 hundred dollars or more) (RCW
36 9A.56.096(4))
37 Trafficking in Insurance Claims (RCW
38 48.30A.015)
39 Unlawful Practice of Law (RCW 2.48.180)

1 Unlicensed Practice of a Profession or
2 Business (RCW 18.130.190(7))

3 I Attempting to Elude a Pursuing Police
4 Vehicle (RCW 46.61.024)

5 False Verification for Welfare (RCW
6 74.08.055)

7 Forged Prescription (RCW 69.41.020)

8 Forged Prescription for a Controlled
9 Substance (RCW 69.50.403)

10 Forgery (RCW 9A.60.020)

11 Malicious Mischief 2 (RCW 9A.48.080)

12 Possess Controlled Substance that is a
13 Narcotic from Schedule III, IV, or V
14 or Non-narcotic from Schedule I-V
15 (except phencyclidine or
16 flunitrazepam) (RCW 69.50.401(d))

17 Possession of Stolen Property 2 (RCW
18 9A.56.160)

19 Reckless Burning 1 (RCW 9A.48.040)

20 Taking Motor Vehicle Without Permission
21 (RCW 9A.56.070)

22 Theft 2 (RCW 9A.56.040)

23 Theft of Rental, Leased, or Lease-purchased
24 Property (valued at two hundred fifty
25 dollars or more but less than one
26 thousand five hundred dollars) (RCW
27 9A.56.096(4))

28 Unlawful Issuance of Checks or Drafts (RCW
29 9A.56.060)

30 Unlawful Use of Food Stamps (RCW 9.91.140
31 (2) and (3))

32 Vehicle Prowl 1 (RCW 9A.52.095)

33 **Sec. 6.** RCW 9.94A.360 and 2000 c 28 s 15 are each amended to read
34 as follows:

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

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

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

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

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

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

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

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

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

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

30 (6) If the present conviction is one of the anticipatory offenses
31 of criminal attempt, solicitation, or conspiracy, count each prior
32 conviction as if the present conviction were for a completed offense.
33 When these convictions are used as criminal history, score them the
34 same as a completed crime.

35 (7) If the present conviction is for a nonviolent offense and not
36 covered by subsection (11) or (12) of this section, count one point for
37 each adult prior felony conviction and one point for each juvenile
38 prior violent felony conviction and 1/2 point for each juvenile prior
39 nonviolent felony conviction.

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

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

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

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

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

32 (13) If the present conviction is for Willful Failure to Return
33 from Furlough, RCW 72.66.060, Willful Failure to Return from Work
34 Release, RCW 72.65.070, or Escape from Community Custody, RCW
35 72.09.310, count only prior escape convictions in the offender score.
36 Count adult prior escape convictions as one point and juvenile prior
37 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 9.94A.650 and 2000 c 28 s 18 are each amended to read
16 as follows:

17 (1) This section applies to offenders who have never been
18 previously convicted of a felony in this state, federal court, or
19 another state, and who have never participated in a program of deferred
20 prosecution for a felony, and who are convicted of a felony that is
21 not:

22 (a) Classified as a violent offense or a sex offense under this
23 chapter;

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

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

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

33 (e) Felony driving under the influence contrary to RCW 46.61.502 or
34 felony being in actual physical control of a motor vehicle while under
35 the influence contrary to RCW 46.61.504.

36 (2) In sentencing a first-time offender the court may waive the
37 imposition of a sentence within the standard sentence range and impose
38 a sentence which may include up to ninety days of confinement in a

1 facility operated or utilized under contract by the county and a
2 requirement that the offender refrain from committing new offenses.
3 The sentence may also include a term of community supervision or
4 community custody as specified in subsection (3) of this section,
5 which, in addition to crime-related prohibitions, may include
6 requirements that the offender perform any one or more of the
7 following:

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

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

12 (c) Pursue a prescribed, secular course of study or vocational
13 training;

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

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

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

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

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

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

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

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