

HB 3317 - S COMM AMD
By Committee on Judiciary

ADOPTED 03/07/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 46.61.502 and 1998 c 213 s 3 are each amended to read
4 as follows:

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

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

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

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

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

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

29 (4) Analyses of blood or breath samples obtained more than two
30 hours after the alleged driving may be used as evidence that within two

1 hours of the alleged driving, a person had an alcohol concentration of
2 0.08 or more in violation of subsection (1)(a) of this section, and in
3 any case in which the analysis shows an alcohol concentration above
4 0.00 may be used as evidence that a person was under the influence of
5 or affected by intoxicating liquor or any drug in violation of
6 subsection (1)(b) or (c) of this section.

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

9 (6) It is a class C felony punishable under chapter 9.94A RCW, or
10 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has
11 four or more prior offenses within seven years as defined in RCW
12 46.61.5055; or (b) the person has ever previously been convicted of
13 vehicular homicide while under the influence of intoxicating liquor or
14 any drug, RCW 46.61.520(1)(a), or vehicular assault while under the
15 influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b).

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

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

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

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

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

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

36 (3) It is an affirmative defense to a violation of subsection
37 (1)(a) of this section which the defendant must prove by a

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

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

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

20 (6) It is a class C felony punishable under chapter 9.94A RCW, or
21 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has
22 four or more prior offenses within seven years as defined in RCW
23 46.61.5055; or (b) the person has ever previously been convicted of
24 vehicular homicide while under the influence of intoxicating liquor or
25 any drug, RCW 46.61.520(1)(a), or vehicular assault while under the
26 influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b).

27 **Sec. 3.** RCW 46.61.5055 and 2004 c 95 s 13 are each amended to read
28 as follows:

29 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
30 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
31 and who has no prior offense within seven years shall be punished as
32 follows:

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

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

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

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

26 (i) By imprisonment for not less than two days nor more than one
27 year. Two consecutive days of the imprisonment may not be suspended or
28 deferred unless the court finds that the imposition of this mandatory
29 minimum sentence would impose a substantial risk to the offender's
30 physical or mental well-being. Whenever the mandatory minimum sentence
31 is suspended or deferred, the court shall state in writing the reason
32 for granting the suspension or deferral and the facts upon which the
33 suspension or deferral is based. In lieu of the mandatory minimum term
34 of imprisonment required under this subsection (1)(b)(i), the court may
35 order not less than thirty days of electronic home monitoring. The
36 offender shall pay the cost of electronic home monitoring. The county
37 or municipality in which the penalty is being imposed shall determine
38 the cost. The court may also require the offender's electronic home

1 monitoring device to include an alcohol detection breathalyzer, and the
2 court may restrict the amount of alcohol the offender may consume
3 during the time the offender is on electronic home monitoring; and

4 (ii) By a fine of not less than five hundred dollars nor more than
5 five thousand dollars. Five hundred dollars of the fine may not be
6 suspended or deferred unless the court finds the offender to be
7 indigent.

8 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
9 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
10 and who has one prior offense within seven years shall be punished as
11 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 thirty days nor more than one
17 year and sixty days of electronic home monitoring. The offender shall
18 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. Thirty days of
24 imprisonment and sixty 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 five hundred dollars nor more than
32 five thousand dollars. Five hundred dollars of the fine may not be
33 suspended or deferred unless the court finds the offender to be
34 indigent; or

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

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

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

20 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
21 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
22 and who has two or (~~more~~) three prior offenses within seven years
23 shall be punished as follows:

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

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

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

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

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

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

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

34 (4) A person who is convicted of a violation of RCW 46.61.502 or
35 46.61.504 and who has four or more prior offenses within seven years,
36 or who has ever previously been convicted of a violation of RCW
37 46.61.520 committed while under the influence of intoxicating liquor or

1 any drug or RCW 46.61.522 committed while under the influence of
2 intoxicating liquor or any drug, shall be punished in accordance with
3 chapter 9.94A RCW.

4 (5) If a person who is convicted of a violation of RCW 46.61.502 or
5 46.61.504 committed the offense while a passenger under the age of
6 sixteen was in the vehicle, the court shall:

7 (a) In any case in which the installation and use of an interlock
8 or other device is not mandatory under RCW 46.20.720 or other law,
9 order the use of such a device for not less than sixty days following
10 the restoration of the person's license, permit, or nonresident driving
11 privileges; and

12 (b) In any case in which the installation and use of such a device
13 is otherwise mandatory, order the use of such a device for an
14 additional sixty days.

15 ~~((+5))~~ (6) In exercising its discretion in setting penalties
16 within the limits allowed by this section, the court shall particularly
17 consider the following:

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

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

22 ~~((+6))~~ (7) An offender punishable under this section is subject to
23 the alcohol assessment and treatment provisions of RCW 46.61.5056.

24 ~~((+7))~~ (8) The license, permit, or nonresident privilege of a
25 person convicted of driving or being in physical control of a motor
26 vehicle while under the influence of intoxicating liquor or drugs must:

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

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

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

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

37 (b) If the person's alcohol concentration was at least 0.15:

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

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

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

7 (c) If by reason of the person's refusal to take a test offered
8 under RCW 46.20.308, there is no test result indicating the person's
9 alcohol concentration:

10 (i) Where there have been no prior offenses within seven years, be
11 revoked or denied by the department for two years;

12 (ii) Where there has been one prior offense within seven years, be
13 revoked or denied by the department for three years; or

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

16 The department shall grant credit on a day-for-day basis for any
17 portion of a suspension, revocation, or denial already served under
18 this subsection for a suspension, revocation, or denial imposed under
19 RCW 46.20.3101 arising out of the same incident.

20 For purposes of this subsection (~~((7))~~) (8), the department shall
21 refer to the driver's record maintained under RCW 46.52.120 when
22 determining the existence of prior offenses.

23 (~~((8))~~) (9) After expiration of any period of suspension,
24 revocation, or denial of the offender's license, permit, or privilege
25 to drive required by this section, the department shall place the
26 offender's driving privilege in probationary status pursuant to RCW
27 46.20.355.

28 (~~((9))~~) (10)(a) In addition to any nonsuspendable and nondeferrable
29 jail sentence required by this section, whenever the court imposes less
30 than one year in jail, the court shall also suspend but shall not defer
31 a period of confinement for a period not exceeding five years. The
32 court shall impose conditions of probation that include: (i) Not
33 driving a motor vehicle within this state without a valid license to
34 drive and proof of financial responsibility for the future; (ii) not
35 driving a motor vehicle within this state while having an alcohol
36 concentration of 0.08 or more within two hours after driving; and (iii)
37 not refusing to submit to a test of his or her breath or blood to
38 determine alcohol concentration upon request of a law enforcement

1 officer who has reasonable grounds to believe the person was driving or
2 was in actual physical control of a motor vehicle within this state
3 while under the influence of intoxicating liquor. The court may impose
4 conditions of probation that include nonrepetition, installation of an
5 ignition interlock device on the probationer's motor vehicle, alcohol
6 or drug treatment, supervised probation, or other conditions that may
7 be appropriate. The sentence may be imposed in whole or in part upon
8 violation of a condition of probation during the suspension period.

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

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

23 ~~((+10))~~ (11) A court may waive the electronic home monitoring
24 requirements of this chapter when:

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

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

28 (c) The court determines that there is reason to believe that the
29 offender would violate the conditions of the electronic home monitoring
30 penalty.

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

37 Whenever the combination of jail time and electronic home
38 monitoring or alternative sentence would exceed three hundred sixty-

1 five days, the offender shall serve the jail portion of the sentence
2 first, and the electronic home monitoring or alternative portion of the
3 sentence shall be reduced so that the combination does not exceed three
4 hundred sixty-five days.

5 ~~((11))~~ (12) An offender serving a sentence under this section,
6 whether or not a mandatory minimum term has expired, may be granted an
7 extraordinary medical placement by the jail administrator subject to
8 the standards and limitations set forth in RCW 9.94A.728(4).

9 ~~((12))~~ (13) For purposes of this section and RCW 46.61.502 and
10 46.61.504:

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

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

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

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

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

20 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
21 9A.36.050 or an equivalent local ordinance, if the conviction is the
22 result of a charge that was originally filed as a violation of RCW
23 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
24 46.61.520 or 46.61.522;

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

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

31 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
32 prosecution for a violation of RCW 46.61.5249, or an equivalent local
33 ordinance, if the charge under which the deferred prosecution was
34 granted was originally filed as a violation of RCW 46.61.502 or
35 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
36 46.61.522; and

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

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.94A RCW
2 to read as follows:

3 (1) When sentencing an offender convicted of a violation of RCW
4 46.61.502(6) or 46.61.504(6), the court, in addition to imposing the
5 provisions of this chapter, shall order the offender to undergo alcohol
6 or chemical dependency treatment services during incarceration. The
7 offender shall be liable for the cost of treatment unless the court
8 finds the offender indigent and no third-party insurance coverage is
9 available.

10 (2) The provisions under RCW 46.61.5055 (8) and (9) regarding the
11 suspension, revocation, or denial of the offender's license, permit, or
12 nonresident privilege to drive shall apply to an offender convicted of
13 a violation of RCW 46.61.502(6) or 46.61.504(6).

14 (3) The provisions under RCW 46.20.720 and 46.61.5055(5) regarding
15 ignition interlock devices shall apply to an offender convicted of a
16 violation of RCW 46.61.502(6) or 46.61.504(6).

17 **Sec. 5.** RCW 9.94A.030 and 2005 c 436 s 1 are each amended to read
18 as follows:

19 Unless the context clearly requires otherwise, the definitions in
20 this section apply throughout this chapter.

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

23 (2) "Collect," or any derivative thereof, "collect and remit," or
24 "collect and deliver," when used with reference to the department,
25 means that the department, either directly or through a collection
26 agreement authorized by RCW 9.94A.760, is responsible for monitoring
27 and enforcing the offender's sentence with regard to the legal
28 financial obligation, receiving payment thereof from the offender, and,
29 consistent with current law, delivering daily the entire payment to the
30 superior court clerk without depositing it in a departmental account.

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

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

36 (5) "Community custody" means that portion of an offender's
37 sentence of confinement in lieu of earned release time or imposed

1 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
2 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
3 community subject to controls placed on the offender's movement and
4 activities by the department. For offenders placed on community
5 custody for crimes committed on or after July 1, 2000, the department
6 shall assess the offender's risk of reoffense and may establish and
7 modify conditions of community custody, in addition to those imposed by
8 the court, based upon the risk to community safety.

9 (6) "Community custody range" means the minimum and maximum period
10 of community custody included as part of a sentence under RCW
11 9.94A.715, as established by the commission or the legislature under
12 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

13 (7) "Community placement" means that period during which the
14 offender is subject to the conditions of community custody and/or
15 postrelease supervision, which begins either upon completion of the
16 term of confinement (postrelease supervision) or at such time as the
17 offender is transferred to community custody in lieu of earned release.
18 Community placement may consist of entirely community custody, entirely
19 postrelease supervision, or a combination of the two.

20 (8) "Community protection zone" means the area within eight hundred
21 eighty feet of the facilities and grounds of a public or private
22 school.

23 (9) "Community restitution" means compulsory service, without
24 compensation, performed for the benefit of the community by the
25 offender.

26 (10) "Community supervision" means a period of time during which a
27 convicted offender is subject to crime-related prohibitions and other
28 sentence conditions imposed by a court pursuant to this chapter or RCW
29 16.52.200(6) or 46.61.524. Where the court finds that any offender has
30 a chemical dependency that has contributed to his or her offense, the
31 conditions of supervision may, subject to available resources, include
32 treatment. For purposes of the interstate compact for out-of-state
33 supervision of parolees and probationers, RCW 9.95.270, community
34 supervision is the functional equivalent of probation and should be
35 considered the same as probation by other states.

36 (11) "Confinement" means total or partial confinement.

37 (12) "Conviction" means an adjudication of guilt pursuant to Titles

1 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
2 acceptance of a plea of guilty.

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

10 (14) "Criminal history" means the list of a defendant's prior
11 convictions and juvenile adjudications, whether in this state, in
12 federal court, or elsewhere.

13 (a) The history shall include, where known, for each conviction (i)
14 whether the defendant has been placed on probation and the length and
15 terms thereof; and (ii) whether the defendant has been incarcerated and
16 the length of incarceration.

17 (b) A conviction may be removed from a defendant's criminal history
18 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
19 a similar out-of-state statute, or if the conviction has been vacated
20 pursuant to a governor's pardon.

21 (c) The determination of a defendant's criminal history is distinct
22 from the determination of an offender score. A prior conviction that
23 was not included in an offender score calculated pursuant to a former
24 version of the sentencing reform act remains part of the defendant's
25 criminal history.

26 (15) "Day fine" means a fine imposed by the sentencing court that
27 equals the difference between the offender's net daily income and the
28 reasonable obligations that the offender has for the support of the
29 offender and any dependents.

30 (16) "Day reporting" means a program of enhanced supervision
31 designed to monitor the offender's daily activities and compliance with
32 sentence conditions, and in which the offender is required to report
33 daily to a specific location designated by the department or the
34 sentencing court.

35 (17) "Department" means the department of corrections.

36 (18) "Determinate sentence" means a sentence that states with
37 exactitude the number of actual years, months, or days of total
38 confinement, of partial confinement, of community supervision, the

1 number of actual hours or days of community restitution work, or
2 dollars or terms of a legal financial obligation. The fact that an
3 offender through earned release can reduce the actual period of
4 confinement shall not affect the classification of the sentence as a
5 determinate sentence.

6 (19) "Disposable earnings" means that part of the earnings of an
7 offender remaining after the deduction from those earnings of any
8 amount required by law to be withheld. For the purposes of this
9 definition, "earnings" means compensation paid or payable for personal
10 services, whether denominated as wages, salary, commission, bonuses, or
11 otherwise, and, notwithstanding any other provision of law making the
12 payments exempt from garnishment, attachment, or other process to
13 satisfy a court-ordered legal financial obligation, specifically
14 includes periodic payments pursuant to pension or retirement programs,
15 or insurance policies of any type, but does not include payments made
16 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
17 or Title 74 RCW.

18 (20) "Drug offender sentencing alternative" is a sentencing option
19 available to persons convicted of a felony offense other than a violent
20 offense or a sex offense and who are eligible for the option under RCW
21 9.94A.660.

22 (21) "Drug offense" means:

23 (a) Any felony violation of chapter 69.50 RCW except possession of
24 a controlled substance (RCW 69.50.4013) or forged prescription for a
25 controlled substance (RCW 69.50.403);

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

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

32 (22) "Earned release" means earned release from confinement as
33 provided in RCW 9.94A.728.

34 (23) "Escape" means:

35 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
36 first degree (RCW 9A.76.110), escape in the second degree (RCW
37 9A.76.120), willful failure to return from furlough (RCW 72.66.060),

1 willful failure to return from work release (RCW 72.65.070), or willful
2 failure to be available for supervision by the department while in
3 community custody (RCW 72.09.310); or

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

7 (24) "Felony traffic offense" means:

8 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
9 46.61.522), eluding a police officer (RCW 46.61.024), ~~((e))~~ felony
10 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while
11 under the influence of intoxicating liquor or any drug (RCW
12 46.61.502(6)), or felony physical control of a vehicle while under the
13 influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

17 (25) "Fine" means a specific sum of money ordered by the sentencing
18 court to be paid by the offender to the court over a specific period of
19 time.

20 (26) "First-time offender" means any person who has no prior
21 convictions for a felony and is eligible for the first-time offender
22 waiver under RCW 9.94A.650.

23 (27) "Home detention" means a program of partial confinement
24 available to offenders wherein the offender is confined in a private
25 residence subject to electronic surveillance.

26 (28) "Legal financial obligation" means a sum of money that is
27 ordered by a superior court of the state of Washington for legal
28 financial obligations which may include restitution to the victim,
29 statutorily imposed crime victims' compensation fees as assessed
30 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
31 court-appointed attorneys' fees, and costs of defense, fines, and any
32 other financial obligation that is assessed to the offender as a result
33 of a felony conviction. Upon conviction for vehicular assault while
34 under the influence of intoxicating liquor or any drug, RCW
35 46.61.522(1)(b), or vehicular homicide while under the influence of
36 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
37 obligations may also include payment to a public agency of the expense

1 of an emergency response to the incident resulting in the conviction,
2 subject to RCW 38.52.430.

3 (29) "Most serious offense" means any of the following felonies or
4 a felony attempt to commit any of the following felonies:

5 (a) Any felony defined under any law as a class A felony or
6 criminal solicitation of or criminal conspiracy to commit a class A
7 felony;

8 (b) Assault in the second degree;

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

10 (d) Child molestation in the second degree;

11 (e) Controlled substance homicide;

12 (f) Extortion in the first degree;

13 (g) Incest when committed against a child under age fourteen;

14 (h) Indecent liberties;

15 (i) Kidnapping in the second degree;

16 (j) Leading organized crime;

17 (k) Manslaughter in the first degree;

18 (l) Manslaughter in the second degree;

19 (m) Promoting prostitution in the first degree;

20 (n) Rape in the third degree;

21 (o) Robbery in the second degree;

22 (p) Sexual exploitation;

23 (q) Vehicular assault, when caused by the operation or driving of
24 a vehicle by a person while under the influence of intoxicating liquor
25 or any drug or by the operation or driving of a vehicle in a reckless
26 manner;

27 (r) Vehicular homicide, when proximately caused by the driving of
28 any vehicle by any person while under the influence of intoxicating
29 liquor or any drug as defined by RCW 46.61.502, or by the operation of
30 any vehicle in a reckless manner;

31 (s) Any other class B felony offense with a finding of sexual
32 motivation;

33 (t) Any other felony with a deadly weapon verdict under RCW
34 9.94A.602;

35 (u) Any felony offense in effect at any time prior to December 2,
36 1993, that is comparable to a most serious offense under this
37 subsection, or any federal or out-of-state conviction for an offense

1 that under the laws of this state would be a felony classified as a
2 most serious offense under this subsection;

3 (v)(i) A prior conviction for indecent liberties under RCW
4 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
5 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
6 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
7 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

8 (ii) A prior conviction for indecent liberties under RCW
9 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
10 if: (A) The crime was committed against a child under the age of
11 fourteen; or (B) the relationship between the victim and perpetrator is
12 included in the definition of indecent liberties under RCW
13 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
14 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
15 through July 27, 1997.

16 (30) "Nonviolent offense" means an offense which is not a violent
17 offense.

18 (31) "Offender" means a person who has committed a felony
19 established by state law and is eighteen years of age or older or is
20 less than eighteen years of age but whose case is under superior court
21 jurisdiction under RCW 13.04.030 or has been transferred by the
22 appropriate juvenile court to a criminal court pursuant to RCW
23 13.40.110. Throughout this chapter, the terms "offender" and
24 "defendant" are used interchangeably.

25 (32) "Partial confinement" means confinement for no more than one
26 year in a facility or institution operated or utilized under contract
27 by the state or any other unit of government, or, if home detention or
28 work crew has been ordered by the court, in an approved residence, for
29 a substantial portion of each day with the balance of the day spent in
30 the community. Partial confinement includes work release, home
31 detention, work crew, and a combination of work crew and home
32 detention.

33 (33) "Persistent offender" is an offender who:

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

36 (ii) Has, before the commission of the offense under (a) of this
37 subsection, been convicted as an offender on at least two separate
38 occasions, whether in this state or elsewhere, of felonies that under

1 the laws of this state would be considered most serious offenses and
2 would be included in the offender score under RCW 9.94A.525; provided
3 that of the two or more previous convictions, at least one conviction
4 must have occurred before the commission of any of the other most
5 serious offenses for which the offender was previously convicted; or

6 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
7 of a child in the first degree, child molestation in the first degree,
8 rape in the second degree, rape of a child in the second degree, or
9 indecent liberties by forcible compulsion; (B) any of the following
10 offenses with a finding of sexual motivation: Murder in the first
11 degree, murder in the second degree, homicide by abuse, kidnapping in
12 the first degree, kidnapping in the second degree, assault in the first
13 degree, assault in the second degree, assault of a child in the first
14 degree, or burglary in the first degree; or (C) an attempt to commit
15 any crime listed in this subsection (33)(b)(i); and

16 (ii) Has, before the commission of the offense under (b)(i) of this
17 subsection, been convicted as an offender on at least one occasion,
18 whether in this state or elsewhere, of an offense listed in (b)(i) of
19 this subsection or any federal or out-of-state offense or offense under
20 prior Washington law that is comparable to the offenses listed in
21 (b)(i) of this subsection. A conviction for rape of a child in the
22 first degree constitutes a conviction under (b)(i) of this subsection
23 only when the offender was sixteen years of age or older when the
24 offender committed the offense. A conviction for rape of a child in
25 the second degree constitutes a conviction under (b)(i) of this
26 subsection only when the offender was eighteen years of age or older
27 when the offender committed the offense.

28 (34) "Postrelease supervision" is that portion of an offender's
29 community placement that is not community custody.

30 (35) "Private school" means a school regulated under chapter
31 28A.195 or 28A.205 RCW.

32 (36) "Public school" has the same meaning as in RCW 28A.150.010.

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

37 (38) "Risk assessment" means the application of an objective
38 instrument supported by research and adopted by the department for the

1 purpose of assessing an offender's risk of reoffense, taking into
2 consideration the nature of the harm done by the offender, place and
3 circumstances of the offender related to risk, the offender's
4 relationship to any victim, and any information provided to the
5 department by victims. The results of a risk assessment shall not be
6 based on unconfirmed or unconfirmable allegations.

7 (39) "Serious traffic offense" means:

8 (a) Nonfelony driving while under the influence of intoxicating
9 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
10 while under the influence of intoxicating liquor or any drug (RCW
11 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
12 attended vehicle (RCW 46.52.020(5)); or

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

16 (40) "Serious violent offense" is a subcategory of violent offense
17 and means:

18 (a)(i) Murder in the first degree;

19 (ii) Homicide by abuse;

20 (iii) Murder in the second degree;

21 (iv) Manslaughter in the first degree;

22 (v) Assault in the first degree;

23 (vi) Kidnapping in the first degree;

24 (vii) Rape in the first degree;

25 (viii) Assault of a child in the first degree; or

26 (ix) An attempt, criminal solicitation, or criminal conspiracy to
27 commit one of these felonies; or

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

31 (41) "Sex offense" means:

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

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

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

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

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 sex
3 offense in (a) of this subsection;

4 (c) A felony with a finding of sexual motivation under RCW
5 9.94A.835 or 13.40.135; or

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

9 (42) "Sexual motivation" means that one of the purposes for which
10 the defendant committed the crime was for the purpose of his or her
11 sexual gratification.

12 (43) "Standard sentence range" means the sentencing court's
13 discretionary range in imposing a nonappealable sentence.

14 (44) "Statutory maximum sentence" means the maximum length of time
15 for which an offender may be confined as punishment for a crime as
16 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
17 crime, or other statute defining the maximum penalty for a crime.

18 (45) "Total confinement" means confinement inside the physical
19 boundaries of a facility or institution operated or utilized under
20 contract by the state or any other unit of government for twenty-four
21 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

22 (46) "Transition training" means written and verbal instructions
23 and assistance provided by the department to the offender during the
24 two weeks prior to the offender's successful completion of the work
25 ethic camp program. The transition training shall include instructions
26 in the offender's requirements and obligations during the offender's
27 period of community custody.

28 (47) "Victim" means any person who has sustained emotional,
29 psychological, physical, or financial injury to person or property as
30 a direct result of the crime charged.

31 (48) "Violent offense" means:

32 (a) Any of the following felonies:

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

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

37 (iii) Manslaughter in the first degree;

38 (iv) Manslaughter in the second degree;

1 (v) Indecent liberties if committed by forcible compulsion;
2 (vi) Kidnapping in the second degree;
3 (vii) Arson in the second degree;
4 (viii) Assault in the second degree;
5 (ix) Assault of a child in the second degree;
6 (x) Extortion in the first degree;
7 (xi) Robbery in the second degree;
8 (xii) Drive-by shooting;
9 (xiii) Vehicular assault, when caused by the operation or driving
10 of a vehicle by a person while under the influence of intoxicating
11 liquor or any drug or by the operation or driving of a vehicle in a
12 reckless manner; and

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

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

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

23 (49) "Work crew" means a program of partial confinement consisting
24 of civic improvement tasks for the benefit of the community that
25 complies with RCW 9.94A.725.

26 (50) "Work ethic camp" means an alternative incarceration program
27 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
28 the cost of corrections by requiring offenders to complete a
29 comprehensive array of real-world job and vocational experiences,
30 character-building work ethics training, life management skills
31 development, substance abuse rehabilitation, counseling, literacy
32 training, and basic adult education.

33 (51) "Work release" means a program of partial confinement
34 available to offenders who are employed or engaged as a student in a
35 regular course of study at school.

36 **Sec. 6.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
37 as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

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

5 (2) "Collect," or any derivative thereof, "collect and remit," or
6 "collect and deliver," when used with reference to the department,
7 means that the department, either directly or through a collection
8 agreement authorized by RCW 9.94A.760, is responsible for monitoring
9 and enforcing the offender's sentence with regard to the legal
10 financial obligation, receiving payment thereof from the offender, and,
11 consistent with current law, delivering daily the entire payment to the
12 superior court clerk without depositing it in a departmental account.

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

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

18 (5) "Community custody" means that portion of an offender's
19 sentence of confinement in lieu of earned release time or imposed
20 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
21 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
22 community subject to controls placed on the offender's movement and
23 activities by the department. For offenders placed on community
24 custody for crimes committed on or after July 1, 2000, the department
25 shall assess the offender's risk of reoffense and may establish and
26 modify conditions of community custody, in addition to those imposed by
27 the court, based upon the risk to community safety.

28 (6) "Community custody range" means the minimum and maximum period
29 of community custody included as part of a sentence under RCW
30 9.94A.715, as established by the commission or the legislature under
31 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

32 (7) "Community placement" means that period during which the
33 offender is subject to the conditions of community custody and/or
34 postrelease supervision, which begins either upon completion of the
35 term of confinement (postrelease supervision) or at such time as the
36 offender is transferred to community custody in lieu of earned release.
37 Community placement may consist of entirely community custody, entirely
38 postrelease supervision, or a combination of the two.

1 (8) "Community restitution" means compulsory service, without
2 compensation, performed for the benefit of the community by the
3 offender.

4 (9) "Community supervision" means a period of time during which a
5 convicted offender is subject to crime-related prohibitions and other
6 sentence conditions imposed by a court pursuant to this chapter or RCW
7 16.52.200(6) or 46.61.524. Where the court finds that any offender has
8 a chemical dependency that has contributed to his or her offense, the
9 conditions of supervision may, subject to available resources, include
10 treatment. For purposes of the interstate compact for out-of-state
11 supervision of parolees and probationers, RCW 9.95.270, community
12 supervision is the functional equivalent of probation and should be
13 considered the same as probation by other states.

14 (10) "Confinement" means total or partial confinement.

15 (11) "Conviction" means an adjudication of guilt pursuant to Titles
16 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
17 acceptance of a plea of guilty.

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

25 (13) "Criminal history" means the list of a defendant's prior
26 convictions and juvenile adjudications, whether in this state, in
27 federal court, or elsewhere.

28 (a) The history shall include, where known, for each conviction (i)
29 whether the defendant has been placed on probation and the length and
30 terms thereof; and (ii) whether the defendant has been incarcerated and
31 the length of incarceration.

32 (b) A conviction may be removed from a defendant's criminal history
33 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
34 a similar out-of-state statute, or if the conviction has been vacated
35 pursuant to a governor's pardon.

36 (c) The determination of a defendant's criminal history is distinct
37 from the determination of an offender score. A prior conviction that

1 was not included in an offender score calculated pursuant to a former
2 version of the sentencing reform act remains part of the defendant's
3 criminal history.

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

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

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

14 (17) "Determinate sentence" means a sentence that states with
15 exactitude the number of actual years, months, or days of total
16 confinement, of partial confinement, of community supervision, the
17 number of actual hours or days of community restitution work, or
18 dollars or terms of a legal financial obligation. The fact that an
19 offender through earned release can reduce the actual period of
20 confinement shall not affect the classification of the sentence as a
21 determinate sentence.

22 (18) "Disposable earnings" means that part of the earnings of an
23 offender remaining after the deduction from those earnings of any
24 amount required by law to be withheld. For the purposes of this
25 definition, "earnings" means compensation paid or payable for personal
26 services, whether denominated as wages, salary, commission, bonuses, or
27 otherwise, and, notwithstanding any other provision of law making the
28 payments exempt from garnishment, attachment, or other process to
29 satisfy a court-ordered legal financial obligation, specifically
30 includes periodic payments pursuant to pension or retirement programs,
31 or insurance policies of any type, but does not include payments made
32 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
33 or Title 74 RCW.

34 (19) "Drug offender sentencing alternative" is a sentencing option
35 available to persons convicted of a felony offense other than a violent
36 offense or a sex offense and who are eligible for the option under RCW
37 9.94A.660.

38 (20) "Drug offense" means:

1 (a) Any felony violation of chapter 69.50 RCW except possession of
2 a controlled substance (RCW 69.50.4013) or forged prescription for a
3 controlled substance (RCW 69.50.403);

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

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

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

12 (22) "Escape" means:

13 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
14 first degree (RCW 9A.76.110), escape in the second degree (RCW
15 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
16 willful failure to return from work release (RCW 72.65.070), or willful
17 failure to be available for supervision by the department while in
18 community custody (RCW 72.09.310); or

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

22 (23) "Felony traffic offense" means:

23 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
24 46.61.522), eluding a police officer (RCW 46.61.024), ~~((e))~~ felony
25 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while
26 under the influence of intoxicating liquor or any drug (RCW
27 46.61.502(6)), or felony physical control of a vehicle while under the
28 influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

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

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

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

20 (a) Any felony defined under any law as a class A felony or
21 criminal solicitation of or criminal conspiracy to commit a class A
22 felony;

23 (b) Assault in the second degree;

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

25 (d) Child molestation in the second degree;

26 (e) Controlled substance homicide;

27 (f) Extortion in the first degree;

28 (g) Incest when committed against a child under age fourteen;

29 (h) Indecent liberties;

30 (i) Kidnapping in the second degree;

31 (j) Leading organized crime;

32 (k) Manslaughter in the first degree;

33 (l) Manslaughter in the second degree;

34 (m) Promoting prostitution in the first degree;

35 (n) Rape in the third degree;

36 (o) Robbery in the second degree;

37 (p) Sexual exploitation;

1 (q) Vehicular assault, when caused by the operation or driving of
2 a vehicle by a person while under the influence of intoxicating liquor
3 or any drug or by the operation or driving of a vehicle in a reckless
4 manner;

5 (r) Vehicular homicide, when proximately caused by the driving of
6 any vehicle by any person while under the influence of intoxicating
7 liquor or any drug as defined by RCW 46.61.502, or by the operation of
8 any vehicle in a reckless manner;

9 (s) Any other class B felony offense with a finding of sexual
10 motivation;

11 (t) Any other felony with a deadly weapon verdict under RCW
12 9.94A.602;

13 (u) Any felony offense in effect at any time prior to December 2,
14 1993, that is comparable to a most serious offense under this
15 subsection, or any federal or out-of-state conviction for an offense
16 that under the laws of this state would be a felony classified as a
17 most serious offense under this subsection;

18 (v)(i) A prior conviction for indecent liberties under RCW
19 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
20 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
21 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
22 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

23 (ii) A prior conviction for indecent liberties under RCW
24 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
25 if: (A) The crime was committed against a child under the age of
26 fourteen; or (B) the relationship between the victim and perpetrator is
27 included in the definition of indecent liberties under RCW
28 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
29 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
30 through July 27, 1997.

31 (29) "Nonviolent offense" means an offense which is not a violent
32 offense.

33 (30) "Offender" means a person who has committed a felony
34 established by state law and is eighteen years of age or older or is
35 less than eighteen years of age but whose case is under superior court
36 jurisdiction under RCW 13.04.030 or has been transferred by the
37 appropriate juvenile court to a criminal court pursuant to RCW

1 13.40.110. Throughout this chapter, the terms "offender" and
2 "defendant" are used interchangeably.

3 (31) "Partial confinement" means confinement for no more than one
4 year in a facility or institution operated or utilized under contract
5 by the state or any other unit of government, or, if home detention or
6 work crew has been ordered by the court, in an approved residence, for
7 a substantial portion of each day with the balance of the day spent in
8 the community. Partial confinement includes work release, home
9 detention, work crew, and a combination of work crew and home
10 detention.

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

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

14 (ii) Has, before the commission of the offense under (a) of this
15 subsection, been convicted as an offender on at least two separate
16 occasions, whether in this state or elsewhere, of felonies that under
17 the laws of this state would be considered most serious offenses and
18 would be included in the offender score under RCW 9.94A.525; provided
19 that of the two or more previous convictions, at least one conviction
20 must have occurred before the commission of any of the other most
21 serious offenses for which the offender was previously convicted; or

22 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
23 of a child in the first degree, child molestation in the first degree,
24 rape in the second degree, rape of a child in the second degree, or
25 indecent liberties by forcible compulsion; (B) any of the following
26 offenses with a finding of sexual motivation: Murder in the first
27 degree, murder in the second degree, homicide by abuse, kidnapping in
28 the first degree, kidnapping in the second degree, assault in the first
29 degree, assault in the second degree, assault of a child in the first
30 degree, or burglary in the first degree; or (C) an attempt to commit
31 any crime listed in this subsection (32)(b)(i); and

32 (ii) Has, before the commission of the offense under (b)(i) of this
33 subsection, been convicted as an offender on at least one occasion,
34 whether in this state or elsewhere, of an offense listed in (b)(i) of
35 this subsection or any federal or out-of-state offense or offense under
36 prior Washington law that is comparable to the offenses listed in
37 (b)(i) of this subsection. A conviction for rape of a child in the
38 first degree constitutes a conviction under (b)(i) of this subsection

1 only when the offender was sixteen years of age or older when the
2 offender committed the offense. A conviction for rape of a child in
3 the second degree constitutes a conviction under (b)(i) of this
4 subsection only when the offender was eighteen years of age or older
5 when the offender committed the offense.

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

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

12 (35) "Risk assessment" means the application of an objective
13 instrument supported by research and adopted by the department for the
14 purpose of assessing an offender's risk of reoffense, taking into
15 consideration the nature of the harm done by the offender, place and
16 circumstances of the offender related to risk, the offender's
17 relationship to any victim, and any information provided to the
18 department by victims. The results of a risk assessment shall not be
19 based on unconfirmed or unconfirmable allegations.

20 (36) "Serious traffic offense" means:

21 (a) Nonfelony driving while under the influence of intoxicating
22 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
23 while under the influence of intoxicating liquor or any drug (RCW
24 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
25 attended vehicle (RCW 46.52.020(5)); or

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

29 (37) "Serious violent offense" is a subcategory of violent offense
30 and means:

- 31 (a)(i) Murder in the first degree;
32 (ii) Homicide by abuse;
33 (iii) Murder in the second degree;
34 (iv) Manslaughter in the first degree;
35 (v) Assault in the first degree;
36 (vi) Kidnapping in the first degree;
37 (vii) Rape in the first degree;
38 (viii) Assault of a child in the first degree; or

1 (ix) An attempt, criminal solicitation, or criminal conspiracy to
2 commit one of these felonies; or

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

6 (38) "Sex offense" means:

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

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

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

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

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

17 (c) A felony with a finding of sexual motivation under RCW
18 9.94A.835 or 13.40.135; or

19 (d) Any federal or out-of-state conviction for an offense that
20 under the laws of this state would be a felony classified as a sex
21 offense under (a) of this subsection.

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

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

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

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

35 (43) "Transition training" means written and verbal instructions
36 and assistance provided by the department to the offender during the
37 two weeks prior to the offender's successful completion of the work

1 ethic camp program. The transition training shall include instructions
2 in the offender's requirements and obligations during the offender's
3 period of community custody.

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

7 (45) "Violent offense" means:

8 (a) Any of the following felonies:

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

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

13 (iii) Manslaughter in the first degree;

14 (iv) Manslaughter in the second degree;

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

16 (vi) Kidnapping in the second degree;

17 (vii) Arson in the second degree;

18 (viii) Assault in the second degree;

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

20 (x) Extortion in the first degree;

21 (xi) Robbery in the second degree;

22 (xii) Drive-by shooting;

23 (xiii) Vehicular assault, when caused by the operation or driving
24 of a vehicle by a person while under the influence of intoxicating
25 liquor or any drug or by the operation or driving of a vehicle in a
26 reckless manner; and

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

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

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

37 (46) "Work crew" means a program of partial confinement consisting

1 of civic improvement tasks for the benefit of the community that
2 complies with RCW 9.94A.725.

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

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

13 **Sec. 7.** RCW 9.94A.505 and 2002 c 290 s 17, 2002 c 289 s 6, and
14 2002 c 175 s 6 are each reenacted and amended to read as follows:

15 (1) When a person is convicted of a felony, the court shall impose
16 punishment as provided in this chapter.

17 (2)(a) The court shall impose a sentence as provided in the
18 following sections and as applicable in the case:

19 (i) Unless another term of confinement applies, the court shall
20 impose a sentence within the standard sentence range established in RCW
21 9.94A.510 or 9.94A.517;

22 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

23 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

24 (iv) RCW 9.94A.545, relating to community custody for offenders
25 whose term of confinement is one year or less;

26 (v) RCW 9.94A.570, relating to persistent offenders;

27 (vi) RCW 9.94A.540, relating to mandatory minimum terms;

28 (vii) RCW 9.94A.650, relating to the first-time offender waiver;

29 (viii) RCW 9.94A.660, relating to the drug offender sentencing
30 alternative;

31 (ix) RCW 9.94A.670, relating to the special sex offender sentencing
32 alternative;

33 (x) RCW 9.94A.712, relating to certain sex offenses;

34 (xi) RCW 9.94A.535, relating to exceptional sentences;

35 (xii) RCW 9.94A.589, relating to consecutive and concurrent
36 sentences;

1 (xiii) Section 4 of this act, relating to felony driving while
2 under the influence of intoxicating liquor or any drug and felony
3 physical control of a vehicle while under the influence of intoxicating
4 liquor or any drug.

5 (b) If a standard sentence range has not been established for the
6 offender's crime, the court shall impose a determinate sentence which
7 may include not more than one year of confinement; community
8 restitution work; until July 1, 2000, a term of community supervision
9 not to exceed one year and on and after July 1, 2000, a term of
10 community custody not to exceed one year, subject to conditions and
11 sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other
12 legal financial obligations. The court may impose a sentence which
13 provides more than one year of confinement if the court finds reasons
14 justifying an exceptional sentence as provided in RCW 9.94A.535.

15 (3) If the court imposes a sentence requiring confinement of thirty
16 days or less, the court may, in its discretion, specify that the
17 sentence be served on consecutive or intermittent days. A sentence
18 requiring more than thirty days of confinement shall be served on
19 consecutive days. Local jail administrators may schedule court-ordered
20 intermittent sentences as space permits.

21 (4) If a sentence imposed includes payment of a legal financial
22 obligation, it shall be imposed as provided in RCW 9.94A.750,
23 9.94A.753, 9.94A.760, and 43.43.7541.

24 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
25 court may not impose a sentence providing for a term of confinement or
26 community supervision, community placement, or community custody which
27 exceeds the statutory maximum for the crime as provided in chapter
28 9A.20 RCW.

29 (6) The sentencing court shall give the offender credit for all
30 confinement time served before the sentencing if that confinement was
31 solely in regard to the offense for which the offender is being
32 sentenced.

33 (7) The court shall order restitution as provided in RCW 9.94A.750
34 and 9.94A.753.

35 (8) As a part of any sentence, the court may impose and enforce
36 crime-related prohibitions and affirmative conditions as provided in
37 this chapter.

1 (9) The court may order an offender whose sentence includes
2 community placement or community supervision to undergo a mental status
3 evaluation and to participate in available outpatient mental health
4 treatment, if the court finds that reasonable grounds exist to believe
5 that the offender is a mentally ill person as defined in RCW 71.24.025,
6 and that this condition is likely to have influenced the offense. An
7 order requiring mental status evaluation or treatment must be based on
8 a presentence report and, if applicable, mental status evaluations that
9 have been filed with the court to determine the offender's competency
10 or eligibility for a defense of insanity. The court may order
11 additional evaluations at a later date if deemed appropriate.

12 (10) In any sentence of partial confinement, the court may require
13 the offender to serve the partial confinement in work release, in a
14 program of home detention, on work crew, or in a combined program of
15 work crew and home detention.

16 (11) In sentencing an offender convicted of a crime of domestic
17 violence, as defined in RCW 10.99.020, if the offender has a minor
18 child, or if the victim of the offense for which the offender was
19 convicted has a minor child, the court may, as part of any term of
20 community supervision, community placement, or community custody, order
21 the offender to participate in a domestic violence perpetrator program
22 approved under RCW 26.50.150.

23 **Sec. 8.** RCW 9.94A.525 and 2002 c 290 s 3 and 2002 c 107 s 3 are
24 each reenacted and amended to read as follows:

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

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

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

34 (2)(a) Class A and sex prior felony convictions shall always be
35 included in the offender score.

36 (b) Class B prior felony convictions other than sex offenses shall
37 not be included in the offender score, if 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 had spent ten consecutive years in the community
4 without committing any crime that subsequently results in a conviction.

5 (c) Except as provided in (e) of this subsection, class C prior
6 felony convictions other than sex offenses shall not be included in the
7 offender score if, since the last date of release from confinement
8 (including full-time residential treatment) pursuant to a felony
9 conviction, if any, or entry of judgment and sentence, the offender had
10 spent five consecutive years in the community without committing any
11 crime that subsequently results in a conviction.

12 (d) Except as provided in (e) of this subsection, serious traffic
13 convictions shall not be included in the offender score if, since the
14 last date of release from confinement (including full-time residential
15 treatment) pursuant to a felony conviction, if any, or entry of
16 judgment and sentence, the offender spent five years in the community
17 without committing any crime that subsequently results in a conviction.

18 (e) If the present conviction is felony driving while under the
19 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
20 felony physical control of a vehicle while under the influence of
21 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions
22 of felony driving while under the influence of intoxicating liquor or
23 any drug, felony physical control of a vehicle while under the
24 influence of intoxicating liquor or any drug, and serious traffic
25 offenses shall be included in the offender score if: (i) The prior
26 convictions were committed within five years since the last date of
27 release from confinement (including full-time residential treatment) or
28 entry of judgment and sentence; or (ii) the prior convictions would be
29 considered "prior offenses within seven years" as defined in RCW
30 46.61.5055.

31 (f) This subsection applies to both adult and juvenile prior
32 convictions.

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

1 usually considered subject to exclusive federal jurisdiction, the
2 offense shall be scored as a class C felony equivalent if it was a
3 felony under the relevant federal statute.

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

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

10 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
11 encompass the same criminal conduct, shall be counted as one offense,
12 the offense that yields the highest offender score. The current
13 sentencing court shall determine with respect to other prior adult
14 offenses for which sentences were served concurrently or prior juvenile
15 offenses for which sentences were served consecutively, whether those
16 offenses shall be counted as one offense or as separate offenses using
17 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
18 if the court finds that they shall be counted as one offense, then the
19 offense that yields the highest offender score shall be used. The
20 current sentencing court may presume that such other prior offenses
21 were not the same criminal conduct from sentences imposed on separate
22 dates, or in separate counties or jurisdictions, or in separate
23 complaints, indictments, or informations;

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

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

36 (6) If the present conviction is one of the anticipatory offenses
37 of criminal attempt, solicitation, or conspiracy, count each prior

1 conviction as if the present conviction were for a completed offense.
2 When these convictions are used as criminal history, score them the
3 same as a completed crime.

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

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

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

20 (10) If the present conviction is for Burglary 1, count prior
21 convictions as in subsection (8) of this section; however count two
22 points for each prior adult Burglary 2 or residential burglary
23 conviction, and one point for each prior juvenile Burglary 2 or
24 residential burglary conviction.

25 (11) If the present conviction is for a felony traffic offense
26 count two points for each adult or juvenile prior conviction for
27 Vehicular Homicide or Vehicular Assault; for each felony offense count
28 one point for each adult and 1/2 point for each juvenile prior
29 conviction; for each serious traffic offense, other than those used for
30 an enhancement pursuant to RCW 46.61.520(2), count one point for each
31 adult and 1/2 point for each juvenile prior conviction.

32 (12) If the present conviction is for manufacture of
33 methamphetamine count three points for each adult prior manufacture of
34 methamphetamine conviction and two points for each juvenile manufacture
35 of methamphetamine offense. If the present conviction is for a drug
36 offense and the offender has a criminal history that includes a sex
37 offense or serious violent offense, count three points for each adult
38 prior felony drug offense conviction and two points for each juvenile

1 drug offense. All other adult and juvenile felonies are scored as in
2 subsection (8) of this section if the current drug offense is violent,
3 or as in subsection (7) of this section if the current drug offense is
4 nonviolent.

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

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

12 (15) If the present conviction is for Burglary 2 or residential
13 burglary, count priors as in subsection (7) of this section; however,
14 count two points for each adult and juvenile prior Burglary 1
15 conviction, two points for each adult prior Burglary 2 or residential
16 burglary conviction, and one point for each juvenile prior Burglary 2
17 or residential burglary conviction.

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

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

23 (18) The fact that a prior conviction was not included in an
24 offender's offender score or criminal history at a previous sentencing
25 shall have no bearing on whether it is included in the criminal history
26 or offender score for the current offense. Accordingly, prior
27 convictions that were not counted in the offender score or included in
28 criminal history under repealed or previous versions of the sentencing
29 reform act shall be included in criminal history and shall count in the
30 offender score if the current version of the sentencing reform act
31 requires including or counting those convictions.

32 **Sec. 9.** RCW 9.94A.640 and 1987 c 486 s 7 are each amended to read
33 as follows:

34 (1) Every offender who has been discharged under RCW 9.94A.637 may
35 apply to the sentencing court for a vacation of the offender's record
36 of conviction. If the court finds the offender meets the tests
37 prescribed in subsection (2) of this section, the court may clear the

1 record of conviction by: (a) Permitting the offender to withdraw the
2 offender's plea of guilty and to enter a plea of not guilty; or (b) if
3 the offender has been convicted after a plea of not guilty, by the
4 court setting aside the verdict of guilty; and (c) by the court
5 dismissing the information or indictment against the offender.

6 (2) An offender may not have the record of conviction cleared if:
7 (a) There are any criminal charges against the offender pending in any
8 court of this state or another state, or in any federal court; (b) the
9 offense was a violent offense as defined in RCW 9.94A.030; (c) the
10 offense was a crime against persons as defined in RCW 43.43.830; (d)
11 the offender has been convicted of a new crime in this state, another
12 state, or federal court since the date of the offender's discharge
13 under RCW 9.94A.637; (e) the offense is a class B felony and less than
14 ten years have passed since the date the applicant was discharged under
15 RCW 9.94A.637; ~~((and))~~ (f) the offense was a class C felony, other than
16 a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and
17 less than five years have passed since the date the applicant was
18 discharged under RCW 9.94A.637; or (g) the offense was a class C felony
19 described in RCW 46.61.502(6) or 46.61.504(6) and less than seven years
20 have passed since the applicant was discharged under RCW 9.94A.637.

21 (3) Once the court vacates a record of conviction under subsection
22 (1) of this section, the fact that the offender has been convicted of
23 the offense shall not be included in the offender's criminal history
24 for purposes of determining a sentence in any subsequent conviction,
25 and the offender shall be released from all penalties and disabilities
26 resulting from the offense. For all purposes, including responding to
27 questions on employment applications, an offender whose conviction has
28 been vacated may state that the offender has never been convicted of
29 that crime. Nothing in this section affects or prevents the use of an
30 offender's prior conviction in a later criminal prosecution.

31 **Sec. 10.** RCW 9.94A.650 and 2002 c 175 s 9 are each amended to read
32 as follows:

33 (1) This section applies to offenders who have never been
34 previously convicted of a felony in this state, federal court, or
35 another state, and who have never participated in a program of deferred
36 prosecution for a felony, and who are convicted of a felony that is
37 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 marihuana; or

12 (e) Felony driving while under the influence of intoxicating liquor
13 or any drug or felony physical control of a vehicle while under the
14 influence of 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 restitution 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. 11.** RCW 9.94A.660 and 2005 c 460 s 1 are each amended to read
17 as follows:

18 (1) An offender is eligible for the special drug offender
19 sentencing alternative if:

20 (a) The offender is convicted of a felony that is not a violent
21 offense or sex offense and the violation does not involve a sentence
22 enhancement under RCW 9.94A.533 (3) or (4);

23 (b) The offender is convicted of a felony that is not a felony
24 driving while under the influence of intoxicating liquor or any drug
25 under RCW 46.61.502(6) or felony physical control of a vehicle while
26 under the influence of intoxicating liquor or any drug under RCW
27 46.61.504(6);

28 (c) The offender has no current or prior convictions for a sex
29 offense at any time or violent offense within ten years before
30 conviction of the current offense, in this state, another state, or the
31 United States;

32 ((+e)) (d) For a violation of the Uniform Controlled Substances
33 Act under chapter 69.50 RCW or a criminal solicitation to commit such
34 a violation under chapter 9A.28 RCW, the offense involved only a small
35 quantity of the particular controlled substance as determined by the
36 judge upon consideration of such factors as the weight, purity,
37 packaging, sale price, and street value of the controlled substance;

1 (~~(d)~~) (e) The offender has not been found by the United States
2 attorney general to be subject to a deportation detainer or order and
3 does not become subject to a deportation order during the period of the
4 sentence;

5 (~~(e)~~) (f) The standard sentence range for the current offense is
6 greater than one year; and

7 (~~(f)~~) (g) The offender has not received a drug offender
8 sentencing alternative more than once in the prior ten years before the
9 current offense.

10 (2) A motion for a sentence under this section may be made by the
11 court, the offender, or the state. If the sentencing court determines
12 that the offender is eligible for this alternative, the court may order
13 an examination of the offender. The examination shall, at a minimum,
14 address the following issues:

15 (a) Whether the offender suffers from drug addiction;

16 (b) Whether the addiction is such that there is a probability that
17 criminal behavior will occur in the future;

18 (c) Whether effective treatment for the offender's addiction is
19 available from a provider that has been licensed or certified by the
20 division of alcohol and substance abuse of the department of social and
21 health services; and

22 (d) Whether the offender and the community will benefit from the
23 use of the alternative.

24 (3) The examination report must contain:

25 (a) Information on the issues required to be addressed in
26 subsection (2) of this section; and

27 (b) A proposed treatment plan that must, at a minimum, contain:

28 (i) A proposed treatment provider that has been licensed or
29 certified by the division of alcohol and substance abuse of the
30 department of social and health services;

31 (ii) The recommended frequency and length of treatment, including
32 both residential chemical dependency treatment and treatment in the
33 community;

34 (iii) A proposed monitoring plan, including any requirements
35 regarding living conditions, lifestyle requirements, and monitoring by
36 family members and others; and

37 (iv) Recommended crime-related prohibitions and affirmative
38 conditions.

1 (4) After receipt of the examination report, if the court
2 determines that a sentence under this section is appropriate, the court
3 shall waive imposition of a sentence within the standard sentence range
4 and impose a sentence consisting of either a prison-based alternative
5 under subsection (5) of this section or a residential chemical
6 dependency treatment-based alternative under subsection (6) of this
7 section. The residential chemical dependency treatment-based
8 alternative is only available if the midpoint of the standard range is
9 twenty-four months or less.

10 (5) The prison-based alternative shall include:

11 (a) A period of total confinement in a state facility for one-half
12 of the midpoint of the standard sentence range. During incarceration
13 in the state facility, offenders sentenced under this subsection shall
14 undergo a comprehensive substance abuse assessment and receive, within
15 available resources, treatment services appropriate for the offender.
16 The treatment services shall be designed by the division of alcohol and
17 substance abuse of the department of social and health services, in
18 cooperation with the department of corrections;

19 (b) The remainder of the midpoint of the standard range as a term
20 of community custody which must include appropriate substance abuse
21 treatment in a program that has been approved by the division of
22 alcohol and substance abuse of the department of social and health
23 services. If the department finds that conditions have been willfully
24 violated, the offender may be reclassified to serve the remaining
25 balance of the original sentence. An offender who fails to complete
26 the program or who is administratively terminated from the program
27 shall be reclassified to serve the unexpired term of his or her
28 sentence as ordered by the sentencing court;

29 (c) Crime-related prohibitions including a condition not to use
30 illegal controlled substances;

31 (d) A requirement to submit to urinalysis or other testing to
32 monitor that status; and

33 (e) A term of community custody pursuant to RCW 9.94A.715 to be
34 imposed upon failure to complete or administrative termination from the
35 special drug offender sentencing alternative program.

36 (6) The residential chemical dependency treatment-based alternative
37 shall include:

1 (a) A term of community custody equal to one-half of the midpoint
2 of the standard sentence range or two years, whichever is greater,
3 conditioned on the offender entering and remaining in residential
4 chemical dependency treatment certified under chapter 70.96A RCW for a
5 period set by the court between three and six months. If the court
6 imposes a term of community custody, the department shall, within
7 available resources, make chemical dependency assessment and treatment
8 services available to the offender during the term of community
9 custody. The court shall impose, as conditions of community custody,
10 treatment and other conditions as proposed in the plan under subsection
11 (3)(b) of this section. The department may impose conditions and
12 sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7),
13 9.94A.737, and 9.94A.740. The court shall schedule a progress hearing
14 during the period of residential chemical dependency treatment, and
15 schedule a treatment termination hearing for three months before the
16 expiration of the term of community custody;

17 (b) Before the progress hearing and treatment termination hearing,
18 the treatment provider and the department shall submit written reports
19 to the court and parties regarding the offender's compliance with
20 treatment and monitoring requirements, and recommendations regarding
21 termination from treatment. At the hearing, the court may:

22 (i) Authorize the department to terminate the offender's community
23 custody status on the expiration date determined under (a) of this
24 subsection; or

25 (ii) Continue the hearing to a date before the expiration date of
26 community custody, with or without modifying the conditions of
27 community custody; or

28 (iii) Impose a term of total confinement equal to one-half the
29 midpoint of the standard sentence range, followed by a term of
30 community custody under RCW 9.94A.715;

31 (c) If the court imposes a term of total confinement under (b)(iii)
32 of this subsection, the department shall, within available resources,
33 make chemical dependency assessment and treatment services available to
34 the offender during the terms of total confinement and community
35 custody.

36 (7) If the court imposes a sentence under this section, the court
37 may prohibit the offender from using alcohol or controlled substances
38 and may require that the monitoring for controlled substances be

1 conducted by the department or by a treatment alternatives to street
2 crime program or a comparable court or agency-referred program. The
3 offender may be required to pay thirty dollars per month while on
4 community custody to offset the cost of monitoring. In addition, the
5 court may impose any of the following conditions:

6 (a) Devote time to a specific employment or training;

7 (b) Remain within prescribed geographical boundaries and notify the
8 court or the community corrections officer before any change in the
9 offender's address or employment;

10 (c) Report as directed to a community corrections officer;

11 (d) Pay all court-ordered legal financial obligations;

12 (e) Perform community restitution work;

13 (f) Stay out of areas designated by the sentencing court;

14 (g) Such other conditions as the court may require such as
15 affirmative conditions.

16 (8)(a) The court may bring any offender sentenced under this
17 section back into court at any time on its own initiative to evaluate
18 the offender's progress in treatment or to determine if any violations
19 of the conditions of the sentence have occurred.

20 (b) If the offender is brought back to court, the court may modify
21 the terms of the community custody or impose sanctions under (c) of
22 this subsection.

23 (c) The court may order the offender to serve a term of total
24 confinement within the standard range of the offender's current offense
25 at any time during the period of community custody if the offender
26 violates the conditions of the sentence or if the offender is failing
27 to make satisfactory progress in treatment.

28 (d) An offender ordered to serve a term of total confinement under
29 (c) of this subsection shall receive credit for any time previously
30 served under this section.

31 (9) If an offender sentenced to the prison-based alternative under
32 subsection (5) of this section is found by the United States attorney
33 general to be subject to a deportation order, a hearing shall be held
34 by the department unless waived by the offender, and, if the department
35 finds that the offender is subject to a valid deportation order, the
36 department may administratively terminate the offender from the program
37 and reclassify the offender to serve the remaining balance of the
38 original sentence.

1 (10) An offender sentenced under this section shall be subject to
2 all rules relating to earned release time with respect to any period
3 served in total confinement.

4 (11) Costs of examinations and preparing treatment plans under
5 subsections (2) and (3) of this section may be paid, at the option of
6 the county, from funds provided to the county from the criminal justice
7 treatment account under RCW 70.96A.350.

8 **Sec. 12.** RCW 9.94A.690 and 2000 c 28 s 21 are each amended to read
9 as follows:

10 (1)(a) An offender is eligible to be sentenced to a work ethic camp
11 if the offender:

12 (i) Is sentenced to a term of total confinement of not less than
13 twelve months and one day or more than thirty-six months;

14 (ii) Has no current or prior convictions for any sex offenses or
15 for violent offenses; and

16 (iii) Is not currently subject to a sentence for, or being
17 prosecuted for, a violation of felony driving while under the influence
18 of intoxicating liquor or any drug (RCW 46.61.502(6)), a violation of
19 physical control of a vehicle while under the influence of intoxicating
20 liquor or any drug (RCW 46.61.504(6)), a violation of the uniform
21 controlled substances act, or a criminal solicitation to commit such a
22 violation under chapter 9A.28 or 69.50 RCW.

23 (b) The length of the work ethic camp shall be at least one hundred
24 twenty days and not more than one hundred eighty days.

25 (2) If the sentencing court determines that the offender is
26 eligible for the work ethic camp and is likely to qualify under
27 subsection (3) of this section, the judge shall impose a sentence
28 within the standard sentence range and may recommend that the offender
29 serve the sentence at a work ethic camp. In sentencing an offender to
30 the work ethic camp, the court shall specify: (a) That upon completion
31 of the work ethic camp the offender shall be released on community
32 custody for any remaining time of total confinement; (b) the applicable
33 conditions of supervision on community custody status as required by
34 RCW 9.94A.700(4) and authorized by RCW 9.94A.700(5); and (c) that
35 violation of the conditions may result in a return to total confinement
36 for the balance of the offender's remaining time of confinement.

1 (3) The department shall place the offender in the work ethic camp
2 program, subject to capacity, unless: (a) The department determines
3 that the offender has physical or mental impairments that would prevent
4 participation and completion of the program; (b) the department
5 determines that the offender's custody level prevents placement in the
6 program; (c) the offender refuses to agree to the terms and conditions
7 of the program; (d) the offender has been found by the United States
8 attorney general to be subject to a deportation detainer or order; or
9 (e) the offender has participated in the work ethic camp program in the
10 past.

11 (4) An offender who fails to complete the work ethic camp program,
12 who is administratively terminated from the program, or who otherwise
13 violates any conditions of supervision, as defined by the department,
14 shall be reclassified to serve the unexpired term of his or her
15 sentence as ordered by the sentencing court and shall be subject to all
16 rules relating to earned release time.

17 (5) During the last two weeks prior to release from the work ethic
18 camp program the department shall provide the offender with
19 comprehensive transition training.

20 **Sec. 13.** RCW 9.94A.515 and 2005 c 458 s 2 and 2005 c 183 s 9 are
21 each reenacted and amended to read as follows:

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TABLE 2	
CRIMES INCLUDED WITHIN	
EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050) Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))

1 Malicious placement of an explosive 1
2 (RCW 70.74.270(1))
3 XII Assault 1 (RCW 9A.36.011)
4 Assault of a Child 1 (RCW 9A.36.120)
5 Malicious placement of an imitation
6 device 1 (RCW 70.74.272(1)(a))
7 Rape 1 (RCW 9A.44.040)
8 Rape of a Child 1 (RCW 9A.44.073)
9 Trafficking 2 (RCW 9A.40.100(2))
10 XI Manslaughter 1 (RCW 9A.32.060)
11 Rape 2 (RCW 9A.44.050)
12 Rape of a Child 2 (RCW 9A.44.076)
13 X Child Molestation 1 (RCW 9A.44.083)
14 Indecent Liberties (with forcible
15 compulsion) (RCW
16 9A.44.100(1)(a))
17 Kidnapping 1 (RCW 9A.40.020)
18 Leading Organized Crime (RCW
19 9A.82.060(1)(a))
20 Malicious explosion 3 (RCW
21 70.74.280(3))
22 Sexually Violent Predator Escape
23 (RCW 9A.76.115)
24 IX Assault of a Child 2 (RCW 9A.36.130)
25 Explosive devices prohibited (RCW
26 70.74.180)
27 Hit and Run--Death (RCW
28 46.52.020(4)(a))
29 Homicide by Watercraft, by being
30 under the influence of intoxicating
31 liquor or any drug (RCW
32 79A.60.050)
33 Inciting Criminal Profiteering (RCW
34 9A.82.060(1)(b))
35 Malicious placement of an explosive 2
36 (RCW 70.74.270(2))
37 Robbery 1 (RCW 9A.56.200)

1 Sexual Exploitation (RCW 9.68A.040)
2 Vehicular Homicide, by being under
3 the influence of intoxicating liquor
4 or any drug (RCW 46.61.520)
5 VIII Arson 1 (RCW 9A.48.020)
6 Homicide by Watercraft, by the
7 operation of any vessel in a
8 reckless manner (RCW
9 79A.60.050)
10 Manslaughter 2 (RCW 9A.32.070)
11 Promoting Prostitution 1 (RCW
12 9A.88.070)
13 Theft of Ammonia (RCW 69.55.010)
14 Vehicular Homicide, by the operation
15 of any vehicle in a reckless
16 manner (RCW 46.61.520)
17 VII Burglary 1 (RCW 9A.52.020)
18 Child Molestation 2 (RCW 9A.44.086)
19 Civil Disorder Training (RCW
20 9A.48.120)
21 Dealing in depictions of minor
22 engaged in sexually explicit
23 conduct (RCW 9.68A.050)
24 Drive-by Shooting (RCW 9A.36.045)
25 Homicide by Watercraft, by disregard
26 for the safety of others (RCW
27 79A.60.050)
28 Indecent Liberties (without forcible
29 compulsion) (RCW 9A.44.100(1)
30 (b) and (c))
31 Introducing Contraband 1 (RCW
32 9A.76.140)
33 Malicious placement of an explosive 3
34 (RCW 70.74.270(3))
35 Negligently Causing Death By Use of
36 a Signal Preemption Device
37 (RCW 46.37.675)

1 Sending, bringing into state depictions
2 of minor engaged in sexually
3 explicit conduct (RCW
4 9.68A.060)
5 Unlawful Possession of a Firearm in
6 the first degree (RCW
7 9.41.040(1))
8 Use of a Machine Gun in Commission
9 of a Felony (RCW 9.41.225)
10 Vehicular Homicide, by disregard for
11 the safety of others (RCW
12 46.61.520)
13 VI Bail Jumping with Murder 1 (RCW
14 9A.76.170(3)(a))
15 Bribery (RCW 9A.68.010)
16 Incest 1 (RCW 9A.64.020(1))
17 Intimidating a Judge (RCW
18 9A.72.160)
19 Intimidating a Juror/Witness (RCW
20 9A.72.110, 9A.72.130)
21 Malicious placement of an imitation
22 device 2 (RCW 70.74.272(1)(b))
23 Rape of a Child 3 (RCW 9A.44.079)
24 Theft of a Firearm (RCW 9A.56.300)
25 Unlawful Storage of Ammonia (RCW
26 69.55.020)
27 V Abandonment of dependent person 1
28 (RCW 9A.42.060)
29 Advancing money or property for
30 extortionate extension of credit
31 (RCW 9A.82.030)
32 Bail Jumping with class A Felony
33 (RCW 9A.76.170(3)(b))
34 Child Molestation 3 (RCW 9A.44.089)
35 Criminal Mistreatment 1 (RCW
36 9A.42.020)

1 Custodial Sexual Misconduct 1 (RCW
2 9A.44.160)
3 Domestic Violence Court Order
4 Violation (RCW 10.99.040,
5 10.99.050, 26.09.300, 26.10.220,
6 26.26.138, 26.50.110, 26.52.070,
7 or 74.34.145)
8 Driving While Under the Influence
9 (RCW 46.61.502(6))
10 Extortion 1 (RCW 9A.56.120)
11 Extortionate Extension of Credit
12 (RCW 9A.82.020)
13 Extortionate Means to Collect
14 Extensions of Credit (RCW
15 9A.82.040)
16 Incest 2 (RCW 9A.64.020(2))
17 Kidnapping 2 (RCW 9A.40.030)
18 Perjury 1 (RCW 9A.72.020)
19 Persistent prison misbehavior (RCW
20 9.94.070)
21 Physical Control of a Vehicle While
22 Under the Influence (RCW
23 46.61.504(6))
24 Possession of a Stolen Firearm (RCW
25 9A.56.310)
26 Rape 3 (RCW 9A.44.060)
27 Rendering Criminal Assistance 1
28 (RCW 9A.76.070)
29 Sexual Misconduct with a Minor 1
30 (RCW 9A.44.093)
31 Sexually Violating Human Remains
32 (RCW 9A.44.105)
33 Stalking (RCW 9A.46.110)
34 Taking Motor Vehicle Without
35 Permission 1 (RCW 9A.56.070)
36 IV Arson 2 (RCW 9A.48.030)
37 Assault 2 (RCW 9A.36.021)

1 Assault 3 (of a Peace Officer with a
2 Projectile Stun Gun) (RCW
3 9A.36.031(1)(h))
4 Assault by Watercraft (RCW
5 79A.60.060)
6 Bribing a Witness/Bribe Received by
7 Witness (RCW 9A.72.090,
8 9A.72.100)
9 Cheating 1 (RCW 9.46.1961)
10 Commercial Bribery (RCW
11 9A.68.060)
12 Counterfeiting (RCW 9.16.035(4))
13 Endangerment with a Controlled
14 Substance (RCW 9A.42.100)
15 Escape 1 (RCW 9A.76.110)
16 Hit and Run--Injury (RCW
17 46.52.020(4)(b))
18 Hit and Run with Vessel--Injury
19 Accident (RCW 79A.60.200(3))
20 Identity Theft 1 (RCW 9.35.020(2))
21 Indecent Exposure to Person Under
22 Age Fourteen (subsequent sex
23 offense) (RCW 9A.88.010)
24 Influencing Outcome of Sporting
25 Event (RCW 9A.82.070)
26 Malicious Harassment (RCW
27 9A.36.080)
28 Residential Burglary (RCW
29 9A.52.025)
30 Robbery 2 (RCW 9A.56.210)
31 Theft of Livestock 1 (RCW 9A.56.080)
32 Threats to Bomb (RCW 9.61.160)
33 Trafficking in Stolen Property 1 (RCW
34 9A.82.050)
35 Unlawful factoring of a credit card or
36 payment card transaction (RCW
37 9A.56.290(4)(b))

1 Unlawful transaction of health
2 coverage as a health care service
3 contractor (RCW 48.44.016(3))
4 Unlawful transaction of health
5 coverage as a health maintenance
6 organization (RCW 48.46.033(3))
7 Unlawful transaction of insurance
8 business (RCW 48.15.023(3))
9 Unlicensed practice as an insurance
10 professional (RCW 48.17.063(3))
11 Use of Proceeds of Criminal
12 Profiteering (RCW 9A.82.080 (1)
13 and (2))
14 Vehicular Assault, by being under the
15 influence of intoxicating liquor or
16 any drug, or by the operation or
17 driving of a vehicle in a reckless
18 manner (RCW 46.61.522)
19 Willful Failure to Return from
20 Furlough (RCW 72.66.060)
21 III Abandonment of dependent person 2
22 (RCW 9A.42.070)
23 Assault 3 (Except Assault 3 of a Peace
24 Officer With a Projectile Stun
25 Gun) (RCW 9A.36.031 except
26 subsection (1)(h))
27 Assault of a Child 3 (RCW 9A.36.140)
28 Bail Jumping with class B or C Felony
29 (RCW 9A.76.170(3)(c))
30 Burglary 2 (RCW 9A.52.030)
31 Communication with a Minor for
32 Immoral Purposes (RCW
33 9.68A.090)
34 Criminal Gang Intimidation (RCW
35 9A.46.120)
36 Criminal Mistreatment 2 (RCW
37 9A.42.030)

1 Custodial Assault (RCW 9A.36.100)
2 Cyberstalking (subsequent conviction
3 or threat of death) (RCW
4 9.61.260(3))
5 Escape 2 (RCW 9A.76.120)
6 Extortion 2 (RCW 9A.56.130)
7 Harassment (RCW 9A.46.020)
8 Intimidating a Public Servant (RCW
9 9A.76.180)
10 Introducing Contraband 2 (RCW
11 9A.76.150)
12 Malicious Injury to Railroad Property
13 (RCW 81.60.070)
14 Negligently Causing Substantial Bodily
15 Harm By Use of a Signal
16 Preemption Device (RCW
17 46.37.674)
18 Patronizing a Juvenile Prostitute
19 (RCW 9.68A.100)
20 Perjury 2 (RCW 9A.72.030)
21 Possession of Incendiary Device (RCW
22 9.40.120)
23 Possession of Machine Gun or Short-
24 Barreled Shotgun or Rifle (RCW
25 9.41.190)
26 Promoting Prostitution 2 (RCW
27 9A.88.080)
28 Securities Act violation (RCW
29 21.20.400)
30 Tampering with a Witness (RCW
31 9A.72.120)
32 Telephone Harassment (subsequent
33 conviction or threat of death)
34 (RCW 9.61.230(2))
35 Theft of Livestock 2 (RCW 9A.56.083)
36 Trafficking in Stolen Property 2 (RCW
37 9A.82.055)

1 Unlawful Imprisonment (RCW
2 9A.40.040)
3 Unlawful possession of firearm in the
4 second degree (RCW 9.41.040(2))
5 Vehicular Assault, by the operation or
6 driving of a vehicle with disregard
7 for the safety of others (RCW
8 46.61.522)
9 Willful Failure to Return from Work
10 Release (RCW 72.65.070)
11 II Computer Trespass 1 (RCW
12 9A.52.110)
13 Counterfeiting (RCW 9.16.035(3))
14 Escape from Community Custody
15 (RCW 72.09.310)
16 Health Care False Claims (RCW
17 48.80.030)
18 Identity Theft 2 (RCW 9.35.020(3))
19 Improperly Obtaining Financial
20 Information (RCW 9.35.010)
21 Malicious Mischief 1 (RCW
22 9A.48.070)
23 Possession of Stolen Property 1 (RCW
24 9A.56.150)
25 Theft 1 (RCW 9A.56.030)
26 Theft of Rental, Leased, or Lease-
27 purchased Property (valued at one
28 thousand five hundred dollars or
29 more) (RCW 9A.56.096(5)(a))
30 Trafficking in Insurance Claims (RCW
31 48.30A.015)
32 Unlawful factoring of a credit card or
33 payment card transaction (RCW
34 9A.56.290(4)(a))
35 Unlawful Practice of Law (RCW
36 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 Forgery (RCW 9A.60.020)
8 Fraudulent Creation or Revocation of a
9 Mental Health Advance Directive
10 (RCW 9A.60.060)
11 Malicious Mischief 2 (RCW
12 9A.48.080)
13 Mineral Trespass (RCW 78.44.330)
14 Possession of Stolen Property 2 (RCW
15 9A.56.160)
16 Reckless Burning 1 (RCW 9A.48.040)
17 Taking Motor Vehicle Without
18 Permission 2 (RCW 9A.56.075)
19 Theft 2 (RCW 9A.56.040)
20 Theft of Rental, Leased, or Lease-
21 purchased Property (valued at two
22 hundred fifty dollars or more but
23 less than one thousand five
24 hundred dollars) (RCW
25 9A.56.096(5)(b))
26 Transaction of insurance business
27 beyond the scope of licensure
28 (RCW 48.17.063(4))
29 Unlawful Issuance of Checks or Drafts
30 (RCW 9A.56.060)
31 Unlawful Possession of Fictitious
32 Identification (RCW 9A.56.320)
33 Unlawful Possession of Instruments of
34 Financial Fraud (RCW
35 9A.56.320)
36 Unlawful Possession of Payment
37 Instruments (RCW 9A.56.320)

1 Unlawful Possession of a Personal
2 Identification Device (RCW
3 9A.56.320)
4 Unlawful Production of Payment
5 Instruments (RCW 9A.56.320)
6 Unlawful Trafficking in Food Stamps
7 (RCW 9.91.142)
8 Unlawful Use of Food Stamps (RCW
9 9.91.144)
10 Vehicle Prowl 1 (RCW 9A.52.095)

11 **Sec. 14.** RCW 9.94A.411 and 2000 c 119 s 28 and 2000 c 28 s 17 are
12 each reenacted and amended to read as follows:

13 (1) Decision not to prosecute.

14 STANDARD: A prosecuting attorney may decline to prosecute, even
15 though technically sufficient evidence to prosecute exists, in
16 situations where prosecution would serve no public purpose, would
17 defeat the underlying purpose of the law in question or would result in
18 decreased respect for the law.

19 GUIDELINE/COMMENTARY:

20 Examples

21 The following are examples of reasons not to prosecute which could
22 satisfy the standard.

23 (a) Contrary to Legislative Intent - It may be proper to decline to
24 charge where the application of criminal sanctions would be clearly
25 contrary to the intent of the legislature in enacting the particular
26 statute.

27 (b) Antiquated Statute - It may be proper to decline to charge
28 where the statute in question is antiquated in that:

29 (i) It has not been enforced for many years; and

30 (ii) Most members of society act as if it were no longer in
31 existence; and

32 (iii) It serves no deterrent or protective purpose in today's
33 society; and

34 (iv) The statute has not been recently reconsidered by the
35 legislature.

36 This reason is not to be construed as the basis for declining cases

1 because the law in question is unpopular or because it is difficult to
2 enforce.

3 (c) De Minimis Violation - It may be proper to decline to charge
4 where the violation of law is only technical or insubstantial and where
5 no public interest or deterrent purpose would be served by prosecution.

6 (d) Confinement on Other Charges - It may be proper to decline to
7 charge because the accused has been sentenced on another charge to a
8 lengthy period of confinement; and

9 (i) Conviction of the new offense would not merit any additional
10 direct or collateral punishment;

11 (ii) The new offense is either a misdemeanor or a felony which is
12 not particularly aggravated; and

13 (iii) Conviction of the new offense would not serve any significant
14 deterrent purpose.

15 (e) Pending Conviction on Another Charge - It may be proper to
16 decline to charge because the accused is facing a pending prosecution
17 in the same or another county; and

18 (i) Conviction of the new offense would not merit any additional
19 direct or collateral punishment;

20 (ii) Conviction in the pending prosecution is imminent;

21 (iii) The new offense is either a misdemeanor or a felony which is
22 not particularly aggravated; and

23 (iv) Conviction of the new offense would not serve any significant
24 deterrent purpose.

25 (f) High Disproportionate Cost of Prosecution - It may be proper to
26 decline to charge where the cost of locating or transporting, or the
27 burden on, prosecution witnesses is highly disproportionate to the
28 importance of prosecuting the offense in question. This reason should
29 be limited to minor cases and should not be relied upon in serious
30 cases.

31 (g) Improper Motives of Complainant - It may be proper to decline
32 charges because the motives of the complainant are improper and
33 prosecution would serve no public purpose, would defeat the underlying
34 purpose of the law in question or would result in decreased respect for
35 the law.

36 (h) Immunity - It may be proper to decline to charge where immunity
37 is to be given to an accused in order to prosecute another where the

1 accused's information or testimony will reasonably lead to the
2 conviction of others who are responsible for more serious criminal
3 conduct or who represent a greater danger to the public interest.

4 (i) Victim Request - It may be proper to decline to charge because
5 the victim requests that no criminal charges be filed and the case
6 involves the following crimes or situations:

7 (i) Assault cases where the victim has suffered little or no
8 injury;

9 (ii) Crimes against property, not involving violence, where no
10 major loss was suffered;

11 (iii) Where doing so would not jeopardize the safety of society.

12 Care should be taken to insure that the victim's request is freely
13 made and is not the product of threats or pressure by the accused.

14 The presence of these factors may also justify the decision to
15 dismiss a prosecution which has been commenced.

16 Notification

17 The prosecutor is encouraged to notify the victim, when practical,
18 and the law enforcement personnel, of the decision not to prosecute.

19 (2) Decision to prosecute.

20 (a) STANDARD:

21 Crimes against persons will be filed if sufficient admissible
22 evidence exists, which, when considered with the most plausible,
23 reasonably foreseeable defense that could be raised under the evidence,
24 would justify conviction by a reasonable and objective fact-finder.
25 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
26 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
27 9A.64.020 the prosecutor should avoid pre-filing agreements or
28 diversions intended to place the accused in a program of treatment or
29 counseling, so that treatment, if determined to be beneficial, can be
30 provided pursuant to RCW 9.94A.670.

31 Crimes against property/other crimes will be filed if the
32 admissible evidence is of such convincing force as to make it probable
33 that a reasonable and objective fact-finder would convict after hearing
34 all the admissible evidence and the most plausible defense that could
35 be raised.

36 See table below for the crimes within these categories.

37 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

38 CRIMES AGAINST PERSONS

1 Aggravated Murder
2 1st Degree Murder
3 2nd Degree Murder
4 1st Degree Manslaughter
5 2nd Degree Manslaughter
6 1st Degree Kidnapping
7 2nd Degree Kidnapping
8 1st Degree Assault
9 2nd Degree Assault
10 3rd Degree Assault
11 1st Degree Assault of a Child
12 2nd Degree Assault of a Child
13 3rd Degree Assault of a Child
14 1st Degree Rape
15 2nd Degree Rape
16 3rd Degree Rape
17 1st Degree Rape of a Child
18 2nd Degree Rape of a Child
19 3rd Degree Rape of a Child
20 1st Degree Robbery
21 2nd Degree Robbery
22 1st Degree Arson
23 1st Degree Burglary
24 1st Degree Extortion
25 2nd Degree Extortion
26 Indecent Liberties
27 Incest
28 Vehicular Homicide
29 Vehicular Assault
30 1st Degree Child Molestation
31 2nd Degree Child Molestation
32 3rd Degree Child Molestation
33 1st Degree Promoting Prostitution
34 Intimidating a Juror
35 Communication with a Minor
36 Intimidating a Witness
37 Intimidating a Public Servant
38 Bomb Threat (if against person)

1 Unlawful Imprisonment
2 Promoting a Suicide Attempt
3 Riot (if against person)
4 Stalking
5 Custodial Assault
6 Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050,
7 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
8 Counterfeiting (if a violation of RCW 9.16.035(4))
9 Felony Driving a Motor Vehicle While Under the Influence of
10 Intoxicating Liquor or Any Drug (RCW 46.61.502(6))
11 Felony Physical Control of a Motor Vehicle While Under the
12 Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))
13 CRIMES AGAINST PROPERTY/OTHER CRIMES
14 2nd Degree Arson
15 1st Degree Escape
16 2nd Degree Escape
17 2nd Degree Burglary
18 1st Degree Theft
19 2nd Degree Theft
20 1st Degree Perjury
21 2nd Degree Perjury
22 1st Degree Introducing Contraband
23 2nd Degree Introducing Contraband
24 1st Degree Possession of Stolen Property
25 2nd Degree Possession of Stolen Property
26 Bribery
27 Bribing a Witness
28 Bribe received by a Witness
29 Bomb Threat (if against property)
30 1st Degree Malicious Mischief
31 2nd Degree Malicious Mischief
32 1st Degree Reckless Burning
33 Taking a Motor Vehicle without Authorization
34 Forgery
35 2nd Degree Promoting Prostitution
36 Tampering with a Witness
37 Trading in Public Office
38 Trading in Special Influence

1 Receiving/Granting Unlawful Compensation
2 Bigamy
3 Eluding a Pursuing Police Vehicle
4 Willful Failure to Return from Furlough
5 Escape from Community Custody
6 Riot (if against property)
7 1st Degree Theft of Livestock
8 2nd Degree Theft of Livestock

9 ALL OTHER UNCLASSIFIED FELONIES
10 Selection of Charges/Degree of Charge

11 (i) The prosecutor should file charges which adequately describe
12 the nature of defendant's conduct. Other offenses may be charged only
13 if they are necessary to ensure that the charges:

14 (A) Will significantly enhance the strength of the state's case at
15 trial; or

16 (B) Will result in restitution to all victims.

17 (ii) The prosecutor should not overcharge to obtain a guilty plea.
18 Overcharging includes:

19 (A) Charging a higher degree;

20 (B) Charging additional counts.

21 This standard is intended to direct prosecutors to charge those
22 crimes which demonstrate the nature and seriousness of a defendant's
23 criminal conduct, but to decline to charge crimes which are not
24 necessary to such an indication. Crimes which do not merge as a matter
25 of law, but which arise from the same course of conduct, do not all
26 have to be charged.

27 (b) GUIDELINES/COMMENTARY:

28 (i) Police Investigation

29 A prosecuting attorney is dependent upon law enforcement agencies
30 to conduct the necessary factual investigation which must precede the
31 decision to prosecute. The prosecuting attorney shall ensure that a
32 thorough factual investigation has been conducted before a decision to
33 prosecute is made. In ordinary circumstances the investigation should
34 include the following:

35 (A) The interviewing of all material witnesses, together with the
36 obtaining of written statements whenever possible;

37 (B) The completion of necessary laboratory tests; and

1 (C) The obtaining, in accordance with constitutional requirements,
2 of the suspect's version of the events.

3 If the initial investigation is incomplete, a prosecuting attorney
4 should insist upon further investigation before a decision to prosecute
5 is made, and specify what the investigation needs to include.

6 (ii) Exceptions

7 In certain situations, a prosecuting attorney may authorize filing
8 of a criminal complaint before the investigation is complete if:

9 (A) Probable cause exists to believe the suspect is guilty; and

10 (B) The suspect presents a danger to the community or is likely to
11 flee if not apprehended; or

12 (C) The arrest of the suspect is necessary to complete the
13 investigation of the crime.

14 In the event that the exception to the standard is applied, the
15 prosecuting attorney shall obtain a commitment from the law enforcement
16 agency involved to complete the investigation in a timely manner. If
17 the subsequent investigation does not produce sufficient evidence to
18 meet the normal charging standard, the complaint should be dismissed.

19 (iii) Investigation Techniques

20 The prosecutor should be fully advised of the investigatory
21 techniques that were used in the case investigation including:

22 (A) Polygraph testing;

23 (B) Hypnosis;

24 (C) Electronic surveillance;

25 (D) Use of informants.

26 (iv) Pre-Filing Discussions with Defendant

27 Discussions with the defendant or his/her representative regarding
28 the selection or disposition of charges may occur prior to the filing
29 of charges, and potential agreements can be reached.

30 (v) Pre-Filing Discussions with Victim(s)

31 Discussions with the victim(s) or victims' representatives
32 regarding the selection or disposition of charges may occur before the
33 filing of charges. The discussions may be considered by the prosecutor
34 in charging and disposition decisions, and should be considered before
35 reaching any agreement with the defendant regarding these decisions.

36 **Sec. 15.** RCW 13.40.0357 and 2004 c 117 s 1 are each amended to
37 read as follows:

DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION

JUVENILE CATEGORY FOR
DISPOSITION ATTEMPT, BAILJUMP,
OFFENSE CONSPIRACY, OR
CATEGORY DESCRIPTION (RCW CITATION) SOLICITATION

.....

Arson and Malicious Mischief

A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D
D	Malicious Mischief 3 (9A.48.090(2) (a) and	
	(c))	E
E	Malicious Mischief 3 (9A.48.090(2)(b))	E
E	Tampering with Fire Alarm Apparatus	
	(9.40.100)	E
E	Tampering with Fire Alarm Apparatus with	
	Intent to Commit Arson (9.40.105)	E
A	Possession of Incendiary Device (9.40.120)	B+

Assault and Other Crimes Involving

Physical Harm

A	Assault 1 (9A.36.011)	B+
B+	Assault 2 (9A.36.021)	C+
C+	Assault 3 (9A.36.031)	D+
D+	Assault 4 (9A.36.041)	E
B+	Drive-By Shooting (9A.36.045)	C+
D+	Reckless Endangerment (9A.36.050)	E
C+	Promoting Suicide Attempt (9A.36.060)	D+
D+	Coercion (9A.36.070)	E
C+	Custodial Assault (9A.36.100)	D+

Burglary and Trespass

B+	Burglary 1 (9A.52.020)	C+
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1	B	Residential Burglary (9A.52.025)	C
2	B	Burglary 2 (9A.52.030)	C
3	D	Burglary Tools (Possession of) (9A.52.060)	E
4	D	Criminal Trespass 1 (9A.52.070)	E
5	E	Criminal Trespass 2 (9A.52.080)	E
6	C	Mineral Trespass (78.44.330)	C
7	C	Vehicle Prowling 1 (9A.52.095)	D
8	D	Vehicle Prowling 2 (9A.52.100)	E
9		Drugs	
10	E	Possession/Consumption of Alcohol	
11		(66.44.270)	E
12	C	Illegally Obtaining Legend Drug	
13		(69.41.020)	D
14	C+	Sale, Delivery, Possession of Legend Drug	
15		with Intent to Sell (69.41.030(2)(a))	D+
16	E	Possession of Legend Drug	
17		(69.41.030(2)(b))	E
18	B+	Violation of Uniform Controlled Substances	
19		Act - Narcotic, Methamphetamine, or	
20		Flunitrazepam Sale (69.50.401(2) (a) or	
21		(b))	B+
22	C	Violation of Uniform Controlled Substances	
23		Act - Nonnarcotic Sale (69.50.401(2)(c))	C
24	E	Possession of Marihuana <40 grams	
25		(69.50.4014)	E
26	C	Fraudulently Obtaining Controlled	
27		Substance (69.50.403)	C
28	C+	Sale of Controlled Substance for Profit	
29		(69.50.410)	C+
30	E	Unlawful Inhalation (9.47A.020)	E
31	B	Violation of Uniform Controlled Substances	
32		Act - Narcotic, Methamphetamine, or	
33		Flunitrazepam Counterfeit Substances	
34		(69.50.4011(2) (a) or (b))	B
35	C	Violation of Uniform Controlled Substances	
36		Act - Nonnarcotic Counterfeit Substances	
37		(69.50.4011(2) (c), (d), or (e))	C

1	C	Violation of Uniform Controlled Substances	
2		Act - Possession of a Controlled Substance	
3		(69.50.4013)	C
4	C	Violation of Uniform Controlled Substances	
5		Act - Possession of a Controlled Substance	
6		(69.50.4012)	C
7		Firearms and Weapons	
8	B	Theft of Firearm (9A.56.300)	C
9	B	Possession of Stolen Firearm (9A.56.310)	C
10	E	Carrying Loaded Pistol Without Permit	
11		(9.41.050)	E
12	C	Possession of Firearms by Minor (<18)	
13		(9.41.040(2)(a)(iii))	C
14	D+	Possession of Dangerous Weapon	
15		(9.41.250)	E
16	D	Intimidating Another Person by use of	
17		Weapon (9.41.270)	E
18		Homicide	
19	A+	Murder 1 (9A.32.030)	A
20	A+	Murder 2 (9A.32.050)	B+
21	B+	Manslaughter 1 (9A.32.060)	C+
22	C+	Manslaughter 2 (9A.32.070)	D+
23	B+	Vehicle Homicide (46.61.520)	C+
24		Kidnapping	
25	A	Kidnap 1 (9A.40.020)	B+
26	B+	Kidnap 2 (9A.40.030)	C+
27	C+	Unlawful Imprisonment (9A.40.040)	D+
28		Obstructing Governmental Operation	
29	D	Obstructing a Law Enforcement Officer	
30		(9A.76.020)	E
31	E	Resisting Arrest (9A.76.040)	E
32	B	Introducing Contraband 1 (9A.76.140)	C
33	C	Introducing Contraband 2 (9A.76.150)	D
34	E	Introducing Contraband 3 (9A.76.160)	E
35	B+	Intimidating a Public Servant (9A.76.180)	C+
36	B+	Intimidating a Witness (9A.72.110)	C+

1		Public Disturbance	
2	C+	Riot with Weapon (9A.84.010(2)(b))	D+
3	D+	Riot Without Weapon (9A.84.010(2)(a))	E
4	E	Failure to Disperse (9A.84.020)	E
5	E	Disorderly Conduct (9A.84.030)	E
6		Sex Crimes	
7	A	Rape 1 (9A.44.040)	B+
8	A-	Rape 2 (9A.44.050)	B+
9	C+	Rape 3 (9A.44.060)	D+
10	A-	Rape of a Child 1 (9A.44.073)	B+
11	B+	Rape of a Child 2 (9A.44.076)	C+
12	B	Incest 1 (9A.64.020(1))	C
13	C	Incest 2 (9A.64.020(2))	D
14	D+	Indecent Exposure (Victim <14)	
15		(9A.88.010)	E
16	E	Indecent Exposure (Victim 14 or over)	
17		(9A.88.010)	E
18	B+	Promoting Prostitution 1 (9A.88.070)	C+
19	C+	Promoting Prostitution 2 (9A.88.080)	D+
20	E	O & A (Prostitution) (9A.88.030)	E
21	B+	Indecent Liberties (9A.44.100)	C+
22	A-	Child Molestation 1 (9A.44.083)	B+
23	B	Child Molestation 2 (9A.44.086)	C+
24		Theft, Robbery, Extortion, and Forgery	
25	B	Theft 1 (9A.56.030)	C
26	C	Theft 2 (9A.56.040)	D
27	D	Theft 3 (9A.56.050)	E
28	B	Theft of Livestock 1 and 2 (9A.56.080 and	
29		9A.56.083)	C
30	C	Forgery (9A.60.020)	D
31	A	Robbery 1 (9A.56.200)	B+
32	B+	Robbery 2 (9A.56.210)	C+
33	B+	Extortion 1 (9A.56.120)	C+
34	C+	Extortion 2 (9A.56.130)	D+
35	C	Identity Theft 1 (9.35.020(2))	D
36	D	Identity Theft 2 (9.35.020(3))	E

1	D	Improperly Obtaining Financial Information	
2		(9.35.010)	E
3	B	Possession of Stolen Property 1	
4		(9A.56.150)	C
5	C	Possession of Stolen Property 2	
6		(9A.56.160)	D
7	D	Possession of Stolen Property 3	
8		(9A.56.170)	E
9	C	Taking Motor Vehicle Without Permission	
10		1 and 2 (9A.56.070 and 9A.56.075)	D
11		Motor Vehicle Related Crimes	
12	E	Driving Without a License (46.20.005)	E
13	B+	Hit and Run - Death (46.52.020(4)(a))	C+
14	C	Hit and Run - Injury (46.52.020(4)(b))	D
15	D	Hit and Run-Attended (46.52.020(5))	E
16	E	Hit and Run-Unattended (46.52.010)	E
17	C	Vehicular Assault (46.61.522)	D
18	C	Attempting to Elude Pursuing Police	
19		Vehicle (46.61.024)	D
20	E	Reckless Driving (46.61.500)	E
21	D	Driving While Under the Influence	
22		(46.61.502 and 46.61.504)	E
23	<u>B+</u>	<u>Felony Driving While Under the Influence</u>	
24		<u>(46.61.502(6))</u>	<u>B</u>
25	<u>B+</u>	<u>Felony Physical Control of a Vehicle While</u>	
26		<u>Under the Influence (46.61.504(6))</u>	<u>B</u>
27		Other	
28	B	Animal Cruelty 1 (16.52.205)	C
29	B	Bomb Threat (9.61.160)	C
30	C	Escape 1 ¹ (9A.76.110)	C
31	C	Escape 2 ¹ (9A.76.120)	C
32	D	Escape 3 (9A.76.130)	E
33	E	Obscene, Harassing, Etc., Phone Calls	
34		(9.61.230)	E
35	A	Other Offense Equivalent to an Adult Class	
36		A Felony	B+

1	B	Other Offense Equivalent to an Adult Class	
2		B Felony	C
3	C	Other Offense Equivalent to an Adult Class	
4		C Felony	D
5	D	Other Offense Equivalent to an Adult Gross	
6		Misdemeanor	E
7	E	Other Offense Equivalent to an Adult	
8		Misdemeanor	E
9	V	Violation of Order of Restitution,	
10		Community Supervision, or Confinement	
11		(13.40.200) ²	V

12 ¹Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses
13 and the standard range is established as follows:

14 1st escape or attempted escape during 12-month period - 4 weeks
15 confinement

16 2nd escape or attempted escape during 12-month period - 8 weeks
17 confinement

18 3rd and subsequent escape or attempted escape during 12-month
19 period - 12 weeks confinement

20 ²If the court finds that a respondent has violated terms of an order,
21 it may impose a penalty of up to 30 days of confinement.

22 **JUVENILE SENTENCING STANDARDS**

23 This schedule must be used for juvenile offenders. The court may
24 select sentencing option A, B, C, D, or RCW 13.40.167.

25	OPTION A			
26	JUVENILE OFFENDER SENTENCING GRID			
27	STANDARD RANGE			
28	<hr/>			
	A+	180 WEEKS TO AGE 21 YEARS		
29	<hr/>			
30	A	103 WEEKS TO 129 WEEKS		
31	<hr/>			
32	A-	15-36	52-65	80-100
33		WEEKS	WEEKS	WEEKS
34		EXCEPT		
35		30-40		

		WEEKS FOR 15-17 YEAR OLDS				
Current Offense Category	B+	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS	
B	LOCAL SANCTIONS (LS)		15-36 WEEKS		52-65 WEEKS	
C+	LS			15-36 WEEKS		
C	LS				15-36 WEEKS	
		Local Sanctions:				
		0 to 30 Days				
D+	LS	0 to 12 Months Community Supervision				
		0 to 150 Hours Community Restitution				
D	LS	\$0 to \$500 Fine				
E	LS					
		0	1	2	3	4 or more
		PRIOR ADJUDICATIONS				

NOTE: References in the grid to days or weeks mean periods of confinement.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an

1 offense category of E. However, a disposition for a violation shall
2 not include confinement.

3 OR

4 **OPTION B**

5 **SUSPENDED DISPOSITION ALTERNATIVE**

6 (1) If the offender is subject to a standard range disposition
7 involving confinement by the department, the court may impose the
8 standard range and suspend the disposition on condition that the
9 offender comply with one or more local sanctions and any educational or
10 treatment requirement. The treatment programs provided to the offender
11 must be research-based best practice programs as identified by the
12 Washington state institute for public policy or the joint legislative
13 audit and review committee.

14 (2) If the offender fails to comply with the suspended disposition,
15 the court may impose sanctions pursuant to RCW 13.40.200 or may revoke
16 the suspended disposition and order the disposition's execution.

17 (3) An offender is ineligible for the suspended disposition option
18 under this section if the offender is:

19 (a) Adjudicated of an A+ offense;

20 (b) Fourteen years of age or older and is adjudicated of one or
21 more of the following offenses:

22 (i) A class A offense, or an attempt, conspiracy, or solicitation
23 to commit a class A offense;

24 (ii) Manslaughter in the first degree (RCW 9A.32.060); or

25 (iii) Assault in the second degree (RCW 9A.36.021), extortion in
26 the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW
27 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential
28 burglary (RCW 9A.52.025), burglary in the second degree (RCW
29 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW
30 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a
31 witness (RCW 9A.72.110), violation of the uniform controlled substances
32 act (RCW 69.50.401 (2)(a) and (b)), or manslaughter 2 (RCW 9A.32.070),
33 when the offense includes infliction of bodily harm upon another or
34 when during the commission or immediate withdrawal from the offense the
35 respondent was armed with a deadly weapon;

36 (c) Ordered to serve a disposition for a firearm violation under
37 RCW 13.40.193; or

1 (d) Adjudicated of a sex offense as defined in RCW 9.94A.030.

2 OR

3 OPTION C

4 CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE

5 If the juvenile offender is subject to a standard range disposition
6 of local sanctions or 15 to 36 weeks of confinement and has not
7 committed an A- or B+ offense, the court may impose a disposition under
8 RCW 13.40.160(4) and 13.40.165.

9 OR

10 OPTION D

11 MANIFEST INJUSTICE

12 If the court determines that a disposition under option A, B, or C
13 would effectuate a manifest injustice, the court shall impose a
14 disposition outside the standard range under RCW 13.40.160(2).

15 **Sec. 16.** RCW 46.20.311 and 2005 c 314 s 308 are each amended to
16 read as follows:

17 (1)(a) The department shall not suspend a driver's license or
18 privilege to drive a motor vehicle on the public highways for a fixed
19 period of more than one year, except as specifically permitted under
20 RCW 46.20.267, 46.20.342, or other provision of law.

21 (b) Except for a suspension under RCW 46.20.267, 46.20.289,
22 46.20.291(5), 46.61.740, or 74.20A.320, whenever the license or driving
23 privilege of any person is suspended by reason of a conviction, a
24 finding that a traffic infraction has been committed, pursuant to
25 chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the
26 suspension shall remain in effect until the person gives and thereafter
27 maintains proof of financial responsibility for the future as provided
28 in chapter 46.29 RCW.

29 (c) If the suspension is the result of a nonfelony violation of RCW
30 46.61.502 or 46.61.504, the department shall determine the person's
31 eligibility for licensing based upon the reports provided by the
32 alcoholism agency or probation department designated under RCW
33 46.61.5056 and shall deny reinstatement until enrollment and
34 participation in an approved program has been established and the
35 person is otherwise qualified. If the suspension is the result of a

1 violation of RCW 46.61.502(6) or 46.61.504(6), the department shall
2 determine the person's eligibility for licensing based upon the reports
3 provided by the alcohol or drug dependency agency required under RCW
4 46.61.524 and shall deny reinstatement until satisfactory progress in
5 an approved program has been established and the person is otherwise
6 qualified. If the suspension is the result of a violation of RCW
7 46.61.502 or 46.61.504, and the person is required pursuant to RCW
8 46.20.720 to drive only a motor vehicle equipped with a functioning
9 ignition interlock, the department shall determine the person's
10 eligibility for licensing based upon written verification by a company
11 doing business in the state that it has installed the required device
12 on a vehicle owned or operated by the person seeking reinstatement.
13 If, based upon notification from the interlock provider or otherwise,
14 the department determines that an interlock required under RCW
15 46.20.720 is no longer installed or functioning as required, the
16 department shall suspend the person's license or privilege to drive.
17 Whenever the license or driving privilege of any person is suspended or
18 revoked as a result of noncompliance with an ignition interlock
19 requirement, the suspension shall remain in effect until the person
20 provides notice issued by a company doing business in the state that a
21 vehicle owned or operated by the person is equipped with a functioning
22 ignition interlock device.

23 (d) Whenever the license or driving privilege of any person is
24 suspended as a result of certification of noncompliance with a child
25 support order under chapter 74.20A RCW or a residential or visitation
26 order, the suspension shall remain in effect until the person provides
27 a release issued by the department of social and health services
28 stating that the person is in compliance with the order.

29 (e)(i) The department shall not issue to the person a new,
30 duplicate, or renewal license until the person pays a reissue fee of
31 seventy-five dollars.

32 (ii) If the suspension is the result of a violation of RCW
33 46.61.502 or 46.61.504, or is the result of administrative action under
34 RCW 46.20.308, the reissue fee shall be one hundred fifty dollars.

35 (2)(a) Any person whose license or privilege to drive a motor
36 vehicle on the public highways has been revoked, unless the revocation
37 was for a cause which has been removed, is not entitled to have the
38 license or privilege renewed or restored until: (i) After the

1 expiration of one year from the date the license or privilege to drive
2 was revoked; (ii) after the expiration of the applicable revocation
3 period provided by RCW 46.20.3101 or 46.61.5055; (iii) after the
4 expiration of two years for persons convicted of vehicular homicide; or
5 (iv) after the expiration of the applicable revocation period provided
6 by RCW 46.20.265.

7 (b)(i) After the expiration of the appropriate period, the person
8 may make application for a new license as provided by law together with
9 a reissue fee in the amount of seventy-five dollars.

10 (ii) If the revocation is the result of a violation of RCW
11 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one
12 hundred fifty dollars. If the revocation is the result of a nonfelony
13 violation of RCW 46.61.502 or 46.61.504, the department shall determine
14 the person's eligibility for licensing based upon the reports provided
15 by the alcoholism agency or probation department designated under RCW
16 46.61.5056 and shall deny reissuance of a license, permit, or privilege
17 to drive until enrollment and participation in an approved program has
18 been established and the person is otherwise qualified. If the
19 suspension is the result of a violation of RCW 46.61.502(6) or
20 46.61.504(6), the department shall determine the person's eligibility
21 for licensing based upon the reports provided by the alcohol or drug
22 dependency agency required under RCW 46.61.524 and shall deny
23 reinstatement until satisfactory progress in an approved program has
24 been established and the person is otherwise qualified. If the
25 revocation is the result of a violation of RCW 46.61.502 or 46.61.504,
26 and the person is required pursuant to RCW 46.20.720 to drive only a
27 motor vehicle equipped with a functioning ignition interlock or other
28 biological or technical device, the department shall determine the
29 person's eligibility for licensing based upon written verification by
30 a company doing business in the state that it has installed the
31 required device on a vehicle owned or operated by the person applying
32 for a new license. If, following issuance of a new license, the
33 department determines, based upon notification from the interlock
34 provider or otherwise, that an interlock required under RCW 46.20.720
35 is no longer functioning, the department shall suspend the person's
36 license or privilege to drive until the department has received written
37 verification from an interlock provider that a functioning interlock is
38 installed.

1 (c) Except for a revocation under RCW 46.20.265, the department
2 shall not then issue a new license unless it is satisfied after
3 investigation of the driving ability of the person that it will be safe
4 to grant the privilege of driving a motor vehicle on the public
5 highways, and until the person gives and thereafter maintains proof of
6 financial responsibility for the future as provided in chapter 46.29
7 RCW. For a revocation under RCW 46.20.265, the department shall not
8 issue a new license unless it is satisfied after investigation of the
9 driving ability of the person that it will be safe to grant that person
10 the privilege of driving a motor vehicle on the public highways.

11 (3)(a) Whenever the driver's license of any person is suspended
12 pursuant to Article IV of the nonresident violators compact or RCW
13 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue
14 to the person any new or renewal license until the person pays a
15 reissue fee of seventy-five dollars.

16 (b) If the suspension is the result of a violation of the laws of
17 this or any other state, province, or other jurisdiction involving (i)
18 the operation or physical control of a motor vehicle upon the public
19 highways while under the influence of intoxicating liquor or drugs, or
20 (ii) the refusal to submit to a chemical test of the driver's blood
21 alcohol content, the reissue fee shall be one hundred fifty dollars.

22 **Sec. 17.** RCW 46.61.524 and 2001 c 64 s 7 are each amended to read
23 as follows:

24 (1) A person convicted under RCW 46.61.502(6), 46.61.504(6),
25 46.61.520(1)(a), or 46.61.522(1)(b) shall, as a condition of community
26 custody imposed under RCW 9.94A.545 or community placement imposed
27 under RCW 9.94A.660, complete a diagnostic evaluation by an alcohol or
28 drug dependency agency approved by the department of social and health
29 services or a qualified probation department, as defined under RCW
30 46.61.516 that has been approved by the department of social and health
31 services. This report shall be forwarded to the department of
32 licensing. If the person is found to have an alcohol or drug problem
33 that requires treatment, the person shall complete treatment in a
34 program approved by the department of social and health services under
35 chapter 70.96A RCW. If the person is found not to have an alcohol or
36 drug problem that requires treatment, he or she shall complete a course
37 in an information school approved by the department of social and

1 health services under chapter 70.96A RCW. The convicted person shall
2 pay all costs for any evaluation, education, or treatment required by
3 this section, unless the person is eligible for an existing program
4 offered or approved by the department of social and health services.
5 Nothing in chapter 348, Laws of 1991 requires the addition of new
6 treatment or assessment facilities nor affects the department of social
7 and health services use of existing programs and facilities authorized
8 by law.

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

19 **Sec. 18.** RCW 46.61.5152 and 1998 c 41 s 9 are each amended to read
20 as follows:

21 In addition to penalties that may be imposed under RCW 46.61.5055,
22 the court may require a person who is convicted of a nonfelony
23 violation of RCW 46.61.502 or 46.61.504 or who enters a deferred
24 prosecution program under RCW 10.05.020 based on a nonfelony violation
25 of RCW 46.61.502 or 46.61.504, to attend an educational program
26 focusing on the emotional, physical, and financial suffering of victims
27 who were injured by persons convicted of driving while under the
28 influence of intoxicants.

29 **Sec. 19.** RCW 46.61.5151 and 1995 c 332 s 15 are each amended to
30 read as follows:

31 A sentencing court may allow (~~persons~~) a person convicted of
32 (~~violating~~) a nonfelony violation of RCW 46.61.502 or 46.61.504 to
33 fulfill the terms of the sentence provided in RCW 46.61.5055 in
34 nonconsecutive or intermittent time periods. However, any mandatory
35 minimum sentence under RCW 46.61.5055 shall be served consecutively
36 unless suspended or deferred as otherwise provided by law.

1 NEW SECTION. **Sec. 20.** Section 5 of this act expires July 1, 2006.

2 NEW SECTION. **Sec. 21.** Section 6 of this act takes effect July 1,
3 2006."

HB 3317 - S COMM AMD
By Committee on Judiciary

ADOPTED 03/07/2006

4 On page 1, line 3 of the title, after "drug;" strike the remainder
5 of the title and insert "amending RCW 46.61.502, 46.61.504, 46.61.5055,
6 9.94A.030, 9.94A.030, 9.94A.640, 9.94A.650, 9.94A.660, 9.94A.690,
7 13.40.0357, 46.20.311, 46.61.524, 46.61.5152, and 46.61.5151;
8 reenacting and amending RCW 9.94A.505, 9.94A.525, 9.94A.515, and
9 9.94A.411; adding a new section to chapter 9.94A RCW; prescribing
10 penalties; providing an effective date; and providing an expiration
11 date."

--- END ---