
SUBSTITUTE HOUSE BILL 3076

State of Washington 59th Legislature 2006 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Ahern, Lantz, McCoy, Nixon, Simpson, Woods, Serben, Springer, Conway, Kessler, Green and Morrell)

READ FIRST TIME 01/31/06.

1 AN ACT Relating to making it a felony to drive or be in physical
2 control of a vehicle while under the influence of intoxicating liquor
3 or any drug when the person has three prior offenses within seven years
4 or has a prior conviction for vehicular homicide or vehicular assault;
5 amending RCW 46.61.502, 46.61.504, 46.61.5055, 9.94A.030, 9.94A.030,
6 9.94A.640, 9.94A.650, 9.94A.660, 9.94A.690, 13.40.0357, 46.20.311,
7 46.61.524, 46.61.5152, and 46.61.5151; reenacting and amending RCW
8 9.94A.505, 9.94A.525, 9.94A.515, and 9.94A.411; adding a new section to
9 chapter 9.94A RCW; prescribing penalties; providing an effective date;
10 and providing an expiration date.

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

12 **Sec. 1.** RCW 46.61.502 and 1998 c 213 s 3 are each amended to read
13 as follows:

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

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

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

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

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

9 (3) It is an affirmative defense to a violation of subsection
10 (1)(a) of this section which the defendant must prove by a
11 preponderance of the evidence that the defendant consumed a sufficient
12 quantity of alcohol after the time of driving and before the
13 administration of an analysis of the person's breath or blood to cause
14 the defendant's alcohol concentration to be 0.08 or more within two
15 hours after driving. The court shall not admit evidence of this
16 defense unless the defendant notifies the prosecution prior to the
17 omnibus or pretrial hearing in the case of the defendant's intent to
18 assert the affirmative defense.

19 (4) Analyses of blood or breath samples obtained more than two
20 hours after the alleged driving may be used as evidence that within two
21 hours of the alleged driving, a person had an alcohol concentration of
22 0.08 or more in violation of subsection (1)(a) of this section, and in
23 any case in which the analysis shows an alcohol concentration above
24 0.00 may be used as evidence that a person was under the influence of
25 or affected by intoxicating liquor or any drug in violation of
26 subsection (1)(b) or (c) of this section.

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

29 (6) It is a class C felony punishable under chapter 9.94A RCW if:
30 (a) The person has three or more prior offenses within seven years as
31 defined in RCW 46.61.5055; or (b) the person has ever previously been
32 convicted of vehicular homicide while under the influence of
33 intoxicating liquor or any drug, RCW 46.61.520(1)(a), or vehicular
34 assault while under the influence of intoxicating liquor or any drug,
35 RCW 46.61.522(1)(b).

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

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

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

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

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

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

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 being in actual physical control
23 of the vehicle and before the administration of an analysis of the
24 person's breath or blood to cause the defendant's alcohol concentration
25 to be 0.08 or more within two hours after being in such control. The
26 court shall not admit evidence of this defense unless the defendant
27 notifies the prosecution prior to the omnibus or pretrial hearing in
28 the case of the defendant's intent to assert the affirmative defense.

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

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

3 (6) It is a class C felony punishable under chapter 9.94A RCW if:
4 (a) The person has three or more prior offenses within seven years as
5 defined in RCW 46.61.5055; or (b) the person has ever previously been
6 convicted of vehicular homicide while under the influence of
7 intoxicating liquor or any drug, RCW 46.61.520(1)(a), or vehicular
8 assault while under the influence of intoxicating liquor or any drug,
9 RCW 46.61.522(1)(b).

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

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

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

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

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

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

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

25 (ii) By a fine of not less than five hundred dollars nor more than
26 five thousand dollars. Five hundred dollars of the fine may not be
27 suspended or deferred unless the court finds the offender to be
28 indigent.

29 (2) 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 one 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:

37 (i) By imprisonment for not less than thirty days nor more than one
38 year and sixty days of electronic home monitoring. The offender shall

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

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

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

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

37 (ii) By a fine of not less than seven hundred fifty dollars nor

1 more than five thousand dollars. Seven hundred fifty dollars of the
2 fine may not be suspended or deferred unless the court finds the
3 offender to be indigent.

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

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

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

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

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

36 (i) By imprisonment for not less than one hundred twenty days nor
37 more than one year and one hundred fifty days of electronic home
38 monitoring. The offender shall pay for the cost of the electronic

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

14 (ii) By a fine of not less than one thousand five hundred dollars
15 nor more than five thousand dollars. One thousand five hundred dollars
16 of the fine may not be suspended or deferred unless the court finds the
17 offender to be indigent.

18 (4) A person who is convicted of a violation of RCW 46.61.502 or
19 46.61.504 and who has three or more prior offenses within seven years,
20 or who has ever previously been convicted of a violation of RCW
21 46.61.520 committed while under the influence of intoxicating liquor or
22 any drug or RCW 46.61.522 committed while under the influence of
23 intoxicating liquor or any drug, shall be punished in accordance with
24 chapter 9.94A RCW.

25 (5) If a person who is convicted of a violation of RCW 46.61.502 or
26 46.61.504 committed the offense while a passenger under the age of
27 sixteen was in the vehicle, the court shall:

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

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

36 ~~((+5))~~ (6) In exercising its discretion in setting penalties
37 within the limits allowed by this section, the court shall particularly
38 consider the following:

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

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

5 ~~((6))~~ (7) An offender punishable under this section is subject to
6 the alcohol assessment and treatment provisions of RCW 46.61.5056.

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

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

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

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

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

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

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

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

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

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

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

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

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

36 The department shall grant credit on a day-for-day basis for any
37 portion of a suspension, revocation, or denial already served under

1 this subsection for a suspension, revocation, or denial imposed under
2 RCW 46.20.3101 arising out of the same incident.

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

6 (~~((8))~~) (9) After expiration of any period of suspension,
7 revocation, or denial of the offender's license, permit, or privilege
8 to drive required by this section, the department shall place the
9 offender's driving privilege in probationary status pursuant to RCW
10 46.20.355.

11 (~~((9))~~) (10)(a) In addition to any nonsuspendable and nondeferrable
12 jail sentence required by this section, whenever the court imposes less
13 than one year in jail, the court shall also suspend but shall not defer
14 a period of confinement for a period not exceeding five years. The
15 court shall impose conditions of probation that include: (i) Not
16 driving a motor vehicle within this state without a valid license to
17 drive and proof of financial responsibility for the future; (ii) not
18 driving a motor vehicle within this state while having an alcohol
19 concentration of 0.08 or more within two hours after driving; and (iii)
20 not refusing to submit to a test of his or her breath or blood to
21 determine alcohol concentration upon request of a law enforcement
22 officer who has reasonable grounds to believe the person was driving or
23 was in actual physical control of a motor vehicle within this state
24 while under the influence of intoxicating liquor. The court may impose
25 conditions of probation that include nonrepetition, installation of an
26 ignition interlock device on the probationer's motor vehicle, alcohol
27 or drug treatment, supervised probation, or other conditions that may
28 be appropriate. The sentence may be imposed in whole or in part upon
29 violation of a condition of probation during the suspension period.

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

34 (c) For each incident involving a violation of a mandatory
35 condition of probation imposed under this subsection, the license,
36 permit, or privilege to drive of the person shall be suspended by the
37 court for thirty days or, if such license, permit, or privilege to
38 drive already is suspended, revoked, or denied at the time the finding

1 of probation violation is made, the suspension, revocation, or denial
2 then in effect shall be extended by thirty days. The court shall
3 notify the department of any suspension, revocation, or denial or any
4 extension of a suspension, revocation, or denial imposed under this
5 subsection.

6 ~~((+10))~~ (11) A court may waive the electronic home monitoring
7 requirements of this chapter when:

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

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

11 (c) The court determines that there is reason to believe that the
12 offender would violate the conditions of the electronic home monitoring
13 penalty.

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

20 Whenever the combination of jail time and electronic home
21 monitoring or alternative sentence would exceed three hundred sixty-
22 five days, the offender shall serve the jail portion of the sentence
23 first, and the electronic home monitoring or alternative portion of the
24 sentence shall be reduced so that the combination does not exceed three
25 hundred sixty-five days.

26 ~~((+11))~~ (12) An offender serving a sentence under this section,
27 whether or not a mandatory minimum term has expired, may be granted an
28 extraordinary medical placement by the jail administrator subject to
29 the standards and limitations set forth in RCW 9.94A.728(4).

30 ~~((+12))~~ (13) For purposes of this section and RCW 46.61.502 and
31 46.61.504:

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

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

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

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

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

3 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
4 9A.36.050 or an equivalent local ordinance, if the conviction is the
5 result of a charge that was originally filed as a violation of RCW
6 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
7 46.61.520 or 46.61.522;

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

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

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

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

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

24 (1) When sentencing an offender convicted of a violation of RCW
25 46.61.502(6) or 46.61.504(6), the court, in addition to imposing the
26 provisions of this chapter, shall order the offender to undergo alcohol
27 or chemical dependency treatment services during incarceration. The
28 offender shall be liable for the cost of treatment unless the court
29 finds the offender indigent and no third-party insurance coverage is
30 available.

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

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

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

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

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

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

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

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

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

30 (6) "Community custody range" means the minimum and maximum period
31 of community custody included as part of a sentence under RCW
32 9.94A.715, as established by the commission or the legislature under
33 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

34 (7) "Community placement" means that period during which the
35 offender is subject to the conditions of community custody and/or
36 postrelease supervision, which begins either upon completion of the
37 term of confinement (postrelease supervision) or at such time as the

1 offender is transferred to community custody in lieu of earned release.
2 Community placement may consist of entirely community custody, entirely
3 postrelease supervision, or a combination of the two.

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

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

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

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

21 (12) "Conviction" means an adjudication of guilt pursuant to Titles
22 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
23 acceptance of a plea of guilty.

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

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

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

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

5 (c) The determination of a defendant's criminal history is distinct
6 from the determination of an offender score. A prior conviction that
7 was not included in an offender score calculated pursuant to a former
8 version of the sentencing reform act remains part of the defendant's
9 criminal history.

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

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

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

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

28 (19) "Disposable earnings" means that part of the earnings of an
29 offender remaining after the deduction from those earnings of any
30 amount required by law to be withheld. For the purposes of this
31 definition, "earnings" means compensation paid or payable for personal
32 services, whether denominated as wages, salary, commission, bonuses, or
33 otherwise, and, notwithstanding any other provision of law making the
34 payments exempt from garnishment, attachment, or other process to
35 satisfy a court-ordered legal financial obligation, specifically
36 includes periodic payments pursuant to pension or retirement programs,
37 or insurance policies of any type, but does not include payments made

1 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
2 or Title 74 RCW.

3 (20) "Drug offender sentencing alternative" is a sentencing option
4 available to persons convicted of a felony offense other than a violent
5 offense or a sex offense and who are eligible for the option under RCW
6 9.94A.660.

7 (21) "Drug offense" means:

8 (a) Any felony violation of chapter 69.50 RCW except possession of
9 a controlled substance (RCW 69.50.4013) or forged prescription for a
10 controlled substance (RCW 69.50.403);

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

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

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

19 (23) "Escape" means:

20 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
21 first degree (RCW 9A.76.110), escape in the second degree (RCW
22 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
23 willful failure to return from work release (RCW 72.65.070), or willful
24 failure to be available for supervision by the department while in
25 community custody (RCW 72.09.310); or

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

29 (24) "Felony traffic offense" means:

30 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
31 46.61.522), eluding a police officer (RCW 46.61.024), ~~((e))~~ felony
32 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while
33 under the influence of intoxicating liquor or any drug (RCW
34 46.61.502(6)), or felony physical control of a vehicle while under the
35 influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

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

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

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

26 (a) Any felony defined under any law as a class A felony or
27 criminal solicitation of or criminal conspiracy to commit a class A
28 felony;

29 (b) Assault in the second degree;

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

31 (d) Child molestation in the second degree;

32 (e) Controlled substance homicide;

33 (f) Extortion in the first degree;

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

35 (h) Indecent liberties;

36 (i) Kidnapping in the second degree;

37 (j) Leading organized crime;

38 (k) Manslaughter in the first degree;

1 (l) Manslaughter in the second degree;
2 (m) Promoting prostitution in the first degree;
3 (n) Rape in the third degree;
4 (o) Robbery in the second degree;
5 (p) Sexual exploitation;
6 (q) Vehicular assault, when caused by the operation or driving of
7 a vehicle by a person while under the influence of intoxicating liquor
8 or any drug or by the operation or driving of a vehicle in a reckless
9 manner;
10 (r) Vehicular homicide, when proximately caused by the driving of
11 any vehicle by any person while under the influence of intoxicating
12 liquor or any drug as defined by RCW 46.61.502, or by the operation of
13 any vehicle in a reckless manner;
14 (s) Any other class B felony offense with a finding of sexual
15 motivation;
16 (t) Any other felony with a deadly weapon verdict under RCW
17 9.94A.602;
18 (u) Any felony offense in effect at any time prior to December 2,
19 1993, that is comparable to a most serious offense under this
20 subsection, or any federal or out-of-state conviction for an offense
21 that under the laws of this state would be a felony classified as a
22 most serious offense under this subsection;
23 (v)(i) A prior conviction for indecent liberties under RCW
24 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
25 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
26 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
27 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
28 (ii) A prior conviction for indecent liberties under RCW
29 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
30 if: (A) The crime was committed against a child under the age of
31 fourteen; or (B) the relationship between the victim and perpetrator is
32 included in the definition of indecent liberties under RCW
33 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
34 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
35 through July 27, 1997.
36 (30) "Nonviolent offense" means an offense which is not a violent
37 offense.

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

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

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

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

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

27 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
28 of a child in the first degree, child molestation in the first degree,
29 rape in the second degree, rape of a child in the second degree, or
30 indecent liberties by forcible compulsion; (B) any of the following
31 offenses with a finding of sexual motivation: Murder in the first
32 degree, murder in the second degree, homicide by abuse, kidnapping in
33 the first degree, kidnapping in the second degree, assault in the first
34 degree, assault in the second degree, assault of a child in the first
35 degree, or burglary in the first degree; or (C) an attempt to commit
36 any crime listed in this subsection (33)(b)(i); and

37 (ii) Has, before the commission of the offense under (b)(i) of this
38 subsection, been convicted as an offender on at least one occasion,

1 whether in this state or elsewhere, of an offense listed in (b)(i) of
2 this subsection or any federal or out-of-state offense or offense under
3 prior Washington law that is comparable to the offenses listed in
4 (b)(i) of this subsection. A conviction for rape of a child in the
5 first degree constitutes a conviction under (b)(i) of this subsection
6 only when the offender was sixteen years of age or older when the
7 offender committed the offense. A conviction for rape of a child in
8 the second degree constitutes a conviction under (b)(i) of this
9 subsection only when the offender was eighteen years of age or older
10 when the offender committed the offense.

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

13 (35) "Private school" means a school regulated under chapter
14 28A.195 or 28A.205 RCW.

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

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

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

28 (39) "Serious traffic offense" means:

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

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

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

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

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

14 (41) "Sex offense" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (48) "Violent offense" means:

15 (a) Any of the following felonies:

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

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

20 (iii) Manslaughter in the first degree;

21 (iv) Manslaughter in the second degree;

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

23 (vi) Kidnapping in the second degree;

24 (vii) Arson in the second degree;

25 (viii) Assault in the second degree;

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

27 (x) Extortion in the first degree;

28 (xi) Robbery in the second degree;

29 (xii) Drive-by shooting;

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

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

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

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

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

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

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

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

22 Unless the context clearly requires otherwise, the definitions in
23 this section apply throughout this chapter.

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

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

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

35 (4) "Community corrections officer" means an employee of the
36 department who is responsible for carrying out specific duties in

1 supervision of sentenced offenders and monitoring of sentence
2 conditions.

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

13 (6) "Community custody range" means the minimum and maximum period
14 of community custody included as part of a sentence under RCW
15 9.94A.715, as established by the commission or the legislature under
16 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

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

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

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

1 (11) "Conviction" means an adjudication of guilt pursuant to Titles
2 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
3 acceptance of a plea of guilty.

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

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

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

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

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

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

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

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

37 (17) "Determinate sentence" means a sentence that states with
38 exactitude the number of actual years, months, or days of total

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

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

19 (19) "Drug offender sentencing alternative" is a sentencing option
20 available to persons convicted of a felony offense other than a violent
21 offense or a sex offense and who are eligible for the option under RCW
22 9.94A.660.

23 (20) "Drug offense" means:

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

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

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

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

35 (22) "Escape" means:

36 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
37 first degree (RCW 9A.76.110), escape in the second degree (RCW
38 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 (23) "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 (24) "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 (25) "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 (26) "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 (27) "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 (28) "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 (29) "Nonviolent offense" means an offense which is not a violent
17 offense.

18 (30) "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 (31) "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 (32) "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 (32)(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 (33) "Postrelease supervision" is that portion of an offender's
29 community placement that is not community custody.

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

34 (35) "Risk assessment" means the application of an objective
35 instrument supported by research and adopted by the department for the
36 purpose of assessing an offender's risk of reoffense, taking into
37 consideration the nature of the harm done by the offender, place and
38 circumstances of the offender related to risk, the offender's

1 relationship to any victim, and any information provided to the
2 department by victims. The results of a risk assessment shall not be
3 based on unconfirmed or unconfirmable allegations.

4 (36) "Serious traffic offense" means:

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

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

13 (37) "Serious violent offense" is a subcategory of violent offense
14 and means:

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

16 (ii) Homicide by abuse;

17 (iii) Murder in the second degree;

18 (iv) Manslaughter in the first degree;

19 (v) Assault in the first degree;

20 (vi) Kidnapping in the first degree;

21 (vii) Rape in the first degree;

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

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

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

28 (38) "Sex offense" means:

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

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

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

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

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

1 (c) A felony with a finding of sexual motivation under RCW
2 9.94A.835 or 13.40.135; or

3 (d) 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 sex
5 offense under (a) of this subsection.

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

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

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

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

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

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

28 (45) "Violent offense" means:

29 (a) Any of the following felonies:

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

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

34 (iii) Manslaughter in the first degree;

35 (iv) Manslaughter in the second degree;

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

37 (vi) Kidnapping in the second degree;

38 (vii) Arson in the second degree;

1 (viii) Assault in the second degree;

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

3 (x) Extortion in the first degree;

4 (xi) Robbery in the second degree;

5 (xii) Drive-by shooting;

6 (xiii) Vehicular assault, when caused by the operation or driving
7 of a vehicle by a person while under the influence of intoxicating
8 liquor or any drug or by the operation or driving of a vehicle in a
9 reckless manner; and

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

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 violent
16 offense in (a) of this subsection; and

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

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

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

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

33 **Sec. 7.** RCW 9.94A.505 and 2002 c 290 s 17, 2002 c 289 s 6, and
34 2002 c 175 s 6 are each reenacted and amended to read as follows:

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

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

3 (i) Unless another term of confinement applies, the court shall
4 impose a sentence within the standard sentence range established in RCW
5 9.94A.510 or 9.94A.517;

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

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

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

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

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

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

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

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

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

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

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

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

25 (b) If a standard sentence range has not been established for the
26 offender's crime, the court shall impose a determinate sentence which
27 may include not more than one year of confinement; community
28 restitution work; until July 1, 2000, a term of community supervision
29 not to exceed one year and on and after July 1, 2000, a term of
30 community custody not to exceed one year, subject to conditions and
31 sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other
32 legal financial obligations. The court may impose a sentence which
33 provides more than one year of confinement if the court finds reasons
34 justifying an exceptional sentence as provided in RCW 9.94A.535.

35 (3) If the court imposes a sentence requiring confinement of thirty
36 days or less, the court may, in its discretion, specify that the
37 sentence be served on consecutive or intermittent days. A sentence

1 requiring more than thirty days of confinement shall be served on
2 consecutive days. Local jail administrators may schedule court-ordered
3 intermittent sentences as space permits.

4 (4) If a sentence imposed includes payment of a legal financial
5 obligation, it shall be imposed as provided in RCW 9.94A.750,
6 9.94A.753, 9.94A.760, and 43.43.7541.

7 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
8 court may not impose a sentence providing for a term of confinement or
9 community supervision, community placement, or community custody which
10 exceeds the statutory maximum for the crime as provided in chapter
11 9A.20 RCW.

12 (6) The sentencing court shall give the offender credit for all
13 confinement time served before the sentencing if that confinement was
14 solely in regard to the offense for which the offender is being
15 sentenced.

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

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

21 (9) The court may order an offender whose sentence includes
22 community placement or community supervision to undergo a mental status
23 evaluation and to participate in available outpatient mental health
24 treatment, if the court finds that reasonable grounds exist to believe
25 that the offender is a mentally ill person as defined in RCW 71.24.025,
26 and that this condition is likely to have influenced the offense. An
27 order requiring mental status evaluation or treatment must be based on
28 a presentence report and, if applicable, mental status evaluations that
29 have been filed with the court to determine the offender's competency
30 or eligibility for a defense of insanity. The court may order
31 additional evaluations at a later date if deemed appropriate.

32 (10) In any sentence of partial confinement, the court may require
33 the offender to serve the partial confinement in work release, in a
34 program of home detention, on work crew, or in a combined program of
35 work crew and home detention.

36 (11) In sentencing an offender convicted of a crime of domestic
37 violence, as defined in RCW 10.99.020, if the offender has a minor
38 child, or if the victim of the offense for which the offender was

1 convicted has a minor child, the court may, as part of any term of
2 community supervision, community placement, or community custody, order
3 the offender to participate in a domestic violence perpetrator program
4 approved under RCW 26.50.150.

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

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

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

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

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

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

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

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

1 (e) Prior convictions of felony driving while under the influence
2 of intoxicating liquor or any drug (RCW 46.61.502(6)), felony physical
3 control of a vehicle while under the influence of intoxicating liquor
4 or any drug (RCW 46.61.504(6)), and serious traffic convictions shall
5 not be included in the offender score if: (i) The present conviction
6 is felony driving while under the influence of intoxicating liquor or
7 any drug (RCW 46.61.502(6)) or felony physical control of a vehicle
8 while under the influence of intoxicating liquor or any drug (RCW
9 46.61.504(6)); and (ii) since the last date of release from confinement
10 (including full-time residential treatment) pursuant to a felony
11 conviction, if any, or entry of judgment and sentence, the prior
12 serious traffic conviction or prior conviction for violation of RCW
13 46.61.502(6) or 46.61.504(6) is a "prior offense within seven years" as
14 defined in RCW 46.61.5055.

15 (f) This subsection applies to both adult and juvenile prior
16 convictions.

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

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

29 (5)(a) In the case of multiple prior convictions, for the purpose
30 of computing the offender score, count all convictions separately,
31 except:

32 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
33 encompass the same criminal conduct, shall be counted as one offense,
34 the offense that yields the highest offender score. The current
35 sentencing court shall determine with respect to other prior adult
36 offenses for which sentences were served concurrently or prior juvenile
37 offenses for which sentences were served consecutively, whether those
38 offenses shall be counted as one offense or as separate offenses using

1 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
2 if the court finds that they shall be counted as one offense, then the
3 offense that yields the highest offender score shall be used. The
4 current sentencing court may presume that such other prior offenses
5 were not the same criminal conduct from sentences imposed on separate
6 dates, or in separate counties or jurisdictions, or in separate
7 complaints, indictments, or informations;

8 (ii) In the case of multiple prior convictions for offenses
9 committed before July 1, 1986, for the purpose of computing the
10 offender score, count all adult convictions served concurrently as one
11 offense, and count all juvenile convictions entered on the same date as
12 one offense. Use the conviction for the offense that yields the
13 highest offender score.

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

20 (6) If the present conviction is one of the anticipatory offenses
21 of criminal attempt, solicitation, or conspiracy, count each prior
22 conviction as if the present conviction were for a completed offense.
23 When these convictions are used as criminal history, score them the
24 same as a completed crime.

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

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

35 (9) If the present conviction is for a serious violent offense,
36 count three points for prior adult and juvenile convictions for crimes
37 in this category, two points for each prior adult and juvenile violent

1 conviction (not already counted), one point for each prior adult
2 nonviolent felony conviction, and 1/2 point for each prior juvenile
3 nonviolent felony conviction.

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

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

16 (12) If the present conviction is for manufacture of
17 methamphetamine count three points for each adult prior manufacture of
18 methamphetamine conviction and two points for each juvenile manufacture
19 of methamphetamine offense. If the present conviction is for a drug
20 offense and the offender has a criminal history that includes a sex
21 offense or serious violent offense, count three points for each adult
22 prior felony drug offense conviction and two points for each juvenile
23 drug offense. All other adult and juvenile felonies are scored as in
24 subsection (8) of this section if the current drug offense is violent,
25 or as in subsection (7) of this section if the current drug offense is
26 nonviolent.

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

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

34 (15) If the present conviction is for Burglary 2 or residential
35 burglary, count priors as in subsection (7) of this section; however,
36 count two points for each adult and juvenile prior Burglary 1
37 conviction, two points for each adult prior Burglary 2 or residential

1 burglary conviction, and one point for each juvenile prior Burglary 2
2 or residential burglary conviction.

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

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

8 (18) The fact that a prior conviction was not included in an
9 offender's offender score or criminal history at a previous sentencing
10 shall have no bearing on whether it is included in the criminal history
11 or offender score for the current offense. Accordingly, prior
12 convictions that were not counted in the offender score or included in
13 criminal history under repealed or previous versions of the sentencing
14 reform act shall be included in criminal history and shall count in the
15 offender score if the current version of the sentencing reform act
16 requires including or counting those convictions.

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

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

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

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

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

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

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

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

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

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

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

34 (e) Felony driving while under the influence of intoxicating liquor
35 or any drug or felony physical control of a vehicle while under the
36 influence of intoxicating liquor or any drug.

1 (2) In sentencing a first-time offender the court may waive the
2 imposition of a sentence within the standard sentence range and impose
3 a sentence which may include up to ninety days of confinement in a
4 facility operated or utilized under contract by the county and a
5 requirement that the offender refrain from committing new offenses.
6 The sentence may also include a term of community supervision or
7 community custody as specified in subsection (3) of this section,
8 which, in addition to crime-related prohibitions, may include
9 requirements that the offender perform any one or more of the
10 following:

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

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

15 (c) Pursue a prescribed, secular course of study or vocational
16 training;

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

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

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

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

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

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

36 (4) The department shall discharge from community supervision any
37 offender sentenced under this section before July 25, 1999, who has

1 served at least one year of community supervision and has completed any
2 treatment ordered by the court.

3 **Sec. 11.** RCW 9.94A.660 and 2005 c 460 s 1 are each amended to read
4 as follows:

5 (1) An offender is eligible for the special drug offender
6 sentencing alternative if:

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

10 (b) The offender is convicted of a felony that is not a felony
11 driving while under the influence of intoxicating liquor or any drug
12 under RCW 46.61.502(6) or felony physical control of a vehicle while
13 under the influence of intoxicating liquor or any drug under RCW
14 46.61.504(6);

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

19 ~~((e))~~ (d) For a violation of the Uniform Controlled Substances
20 Act under chapter 69.50 RCW or a criminal solicitation to commit such
21 a violation under chapter 9A.28 RCW, the offense involved only a small
22 quantity of the particular controlled substance as determined by the
23 judge upon consideration of such factors as the weight, purity,
24 packaging, sale price, and street value of the controlled substance;

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

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

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

34 (2) A motion for a sentence under this section may be made by the
35 court, the offender, or the state. If the sentencing court determines
36 that the offender is eligible for this alternative, the court may order

1 an examination of the offender. The examination shall, at a minimum,
2 address the following issues:

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

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

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

10 (d) Whether the offender and the community will benefit from the
11 use of the alternative.

12 (3) The examination report must contain:

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

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

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

19 (ii) The recommended frequency and length of treatment, including
20 both residential chemical dependency treatment and treatment in the
21 community;

22 (iii) A proposed monitoring plan, including any requirements
23 regarding living conditions, lifestyle requirements, and monitoring by
24 family members and others; and

25 (iv) Recommended crime-related prohibitions and affirmative
26 conditions.

27 (4) After receipt of the examination report, if the court
28 determines that a sentence under this section is appropriate, the court
29 shall waive imposition of a sentence within the standard sentence range
30 and impose a sentence consisting of either a prison-based alternative
31 under subsection (5) of this section or a residential chemical
32 dependency treatment-based alternative under subsection (6) of this
33 section. The residential chemical dependency treatment-based
34 alternative is only available if the midpoint of the standard range is
35 twenty-four months or less.

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

37 (a) A period of total confinement in a state facility for one-half
38 of the midpoint of the standard sentence range. During incarceration

1 in the state facility, offenders sentenced under this subsection shall
2 undergo a comprehensive substance abuse assessment and receive, within
3 available resources, treatment services appropriate for the offender.
4 The treatment services shall be designed by the division of alcohol and
5 substance abuse of the department of social and health services, in
6 cooperation with the department of corrections;

7 (b) The remainder of the midpoint of the standard range as a term
8 of community custody which must include appropriate substance abuse
9 treatment in a program that has been approved by the division of
10 alcohol and substance abuse of the department of social and health
11 services. If the department finds that conditions have been willfully
12 violated, the offender may be reclassified to serve the remaining
13 balance of the original sentence. An offender who fails to complete
14 the program or who is administratively terminated from the program
15 shall be reclassified to serve the unexpired term of his or her
16 sentence as ordered by the sentencing court;

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

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

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

24 (6) The residential chemical dependency treatment-based alternative
25 shall include:

26 (a) A term of community custody equal to one-half of the midpoint
27 of the standard sentence range or two years, whichever is greater,
28 conditioned on the offender entering and remaining in residential
29 chemical dependency treatment certified under chapter 70.96A RCW for a
30 period set by the court between three and six months. If the court
31 imposes a term of community custody, the department shall, within
32 available resources, make chemical dependency assessment and treatment
33 services available to the offender during the term of community
34 custody. The court shall impose, as conditions of community custody,
35 treatment and other conditions as proposed in the plan under subsection
36 (3)(b) of this section. The department may impose conditions and
37 sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7),
38 9.94A.737, and 9.94A.740. The court shall schedule a progress hearing

1 during the period of residential chemical dependency treatment, and
2 schedule a treatment termination hearing for three months before the
3 expiration of the term of community custody;

4 (b) Before the progress hearing and treatment termination hearing,
5 the treatment provider and the department shall submit written reports
6 to the court and parties regarding the offender's compliance with
7 treatment and monitoring requirements, and recommendations regarding
8 termination from treatment. At the hearing, the court may:

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

12 (ii) Continue the hearing to a date before the expiration date of
13 community custody, with or without modifying the conditions of
14 community custody; or

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

18 (c) If the court imposes a term of total confinement under (b)(iii)
19 of this subsection, the department shall, within available resources,
20 make chemical dependency assessment and treatment services available to
21 the offender during the terms of total confinement and community
22 custody.

23 (7) If the court imposes a sentence under this section, the court
24 may prohibit the offender from using alcohol or controlled substances
25 and may require that the monitoring for controlled substances be
26 conducted by the department or by a treatment alternatives to street
27 crime program or a comparable court or agency-referred program. The
28 offender may be required to pay thirty dollars per month while on
29 community custody to offset the cost of monitoring. In addition, the
30 court may impose any of the following conditions:

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

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

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

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

37 (e) Perform community restitution work;

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

1 (g) Such other conditions as the court may require such as
2 affirmative conditions.

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

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

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

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

18 (9) If an offender sentenced to the prison-based alternative under
19 subsection (5) of this section is found by the United States attorney
20 general to be subject to a deportation order, a hearing shall be held
21 by the department unless waived by the offender, and, if the department
22 finds that the offender is subject to a valid deportation order, the
23 department may administratively terminate the offender from the program
24 and reclassify the offender to serve the remaining balance of the
25 original sentence.

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

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

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

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

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

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

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

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

14 (2) If the sentencing court determines that the offender is
15 eligible for the work ethic camp and is likely to qualify under
16 subsection (3) of this section, the judge shall impose a sentence
17 within the standard sentence range and may recommend that the offender
18 serve the sentence at a work ethic camp. In sentencing an offender to
19 the work ethic camp, the court shall specify: (a) That upon completion
20 of the work ethic camp the offender shall be released on community
21 custody for any remaining time of total confinement; (b) the applicable
22 conditions of supervision on community custody status as required by
23 RCW 9.94A.700(4) and authorized by RCW 9.94A.700(5); and (c) that
24 violation of the conditions may result in a return to total confinement
25 for the balance of the offender's remaining time of confinement.

26 (3) The department shall place the offender in the work ethic camp
27 program, subject to capacity, unless: (a) The department determines
28 that the offender has physical or mental impairments that would prevent
29 participation and completion of the program; (b) the department
30 determines that the offender's custody level prevents placement in the
31 program; (c) the offender refuses to agree to the terms and conditions
32 of the program; (d) the offender has been found by the United States
33 attorney general to be subject to a deportation detainer or order; or
34 (e) the offender has participated in the work ethic camp program in the
35 past.

36 (4) An offender who fails to complete the work ethic camp program,
37 who is administratively terminated from the program, or who otherwise
38 violates any conditions of supervision, as defined by the department,

1 shall be reclassified to serve the unexpired term of his or her
2 sentence as ordered by the sentencing court and shall be subject to all
3 rules relating to earned release time.

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

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

9 TABLE 2

10 CRIMES INCLUDED WITHIN
11 EACH SERIOUSNESS LEVEL

12	XVI	Aggravated Murder 1 (RCW
13		10.95.020)
14	XV	Homicide by abuse (RCW 9A.32.055)
15		Malicious explosion 1 (RCW
16		70.74.280(1))
17		Murder 1 (RCW 9A.32.030)
18	XIV	Murder 2 (RCW 9A.32.050)
19		Trafficking 1 (RCW 9A.40.100(1))
20	XIII	Malicious explosion 2 (RCW
21		70.74.280(2))
22		Malicious placement of an explosive 1
23		(RCW 70.74.270(1))
24	XII	Assault 1 (RCW 9A.36.011)
25		Assault of a Child 1 (RCW 9A.36.120)
26		Malicious placement of an imitation
27		device 1 (RCW 70.74.272(1)(a))
28		Rape 1 (RCW 9A.44.040)
29		Rape of a Child 1 (RCW 9A.44.073)
30		Trafficking 2 (RCW 9A.40.100(2))
31	XI	Manslaughter 1 (RCW 9A.32.060)
32		Rape 2 (RCW 9A.44.050)
33		Rape of a Child 2 (RCW 9A.44.076)
34	X	Child Molestation 1 (RCW 9A.44.083)

1 Indecent Liberties (with forcible
2 compulsion) (RCW
3 9A.44.100(1)(a))
4 Kidnapping 1 (RCW 9A.40.020)
5 Leading Organized Crime (RCW
6 9A.82.060(1)(a))
7 Malicious explosion 3 (RCW
8 70.74.280(3))
9 Sexually Violent Predator Escape
10 (RCW 9A.76.115)
11 IX Assault of a Child 2 (RCW 9A.36.130)
12 Explosive devices prohibited (RCW
13 70.74.180)
14 Hit and Run--Death (RCW
15 46.52.020(4)(a))
16 Homicide by Watercraft, by being
17 under the influence of intoxicating
18 liquor or any drug (RCW
19 79A.60.050)
20 Inciting Criminal Profiteering (RCW
21 9A.82.060(1)(b))
22 Malicious placement of an explosive 2
23 (RCW 70.74.270(2))
24 Robbery 1 (RCW 9A.56.200)
25 Sexual Exploitation (RCW 9.68A.040)
26 Vehicular Homicide, by being under
27 the influence of intoxicating liquor
28 or any drug (RCW 46.61.520)
29 VIII Arson 1 (RCW 9A.48.020)
30 Homicide by Watercraft, by the
31 operation of any vessel in a
32 reckless manner (RCW
33 79A.60.050)
34 Manslaughter 2 (RCW 9A.32.070)
35 Promoting Prostitution 1 (RCW
36 9A.88.070)
37 Theft of Ammonia (RCW 69.55.010)

1 Vehicular Homicide, by the operation
2 of any vehicle in a reckless
3 manner (RCW 46.61.520)
4 VII Burglary 1 (RCW 9A.52.020)
5 Child Molestation 2 (RCW 9A.44.086)
6 Civil Disorder Training (RCW
7 9A.48.120)
8 Dealing in depictions of minor
9 engaged in sexually explicit
10 conduct (RCW 9.68A.050)
11 Drive-by Shooting (RCW 9A.36.045)
12 Homicide by Watercraft, by disregard
13 for the safety of others (RCW
14 79A.60.050)
15 Indecent Liberties (without forcible
16 compulsion) (RCW 9A.44.100(1)
17 (b) and (c))
18 Introducing Contraband 1 (RCW
19 9A.76.140)
20 Malicious placement of an explosive 3
21 (RCW 70.74.270(3))
22 Negligently Causing Death By Use of
23 a Signal Preemption Device
24 (RCW 46.37.675)
25 Sending, bringing into state depictions
26 of minor engaged in sexually
27 explicit conduct (RCW
28 9.68A.060)
29 Unlawful Possession of a Firearm in
30 the first degree (RCW
31 9.41.040(1))
32 Use of a Machine Gun in Commission
33 of a Felony (RCW 9.41.225)
34 Vehicular Homicide, by disregard for
35 the safety of others (RCW
36 46.61.520)

1 VI Bail Jumping with Murder 1 (RCW
2 9A.76.170(3)(a))
3 Bribery (RCW 9A.68.010)
4 Incest 1 (RCW 9A.64.020(1))
5 Intimidating a Judge (RCW
6 9A.72.160)
7 Intimidating a Juror/Witness (RCW
8 9A.72.110, 9A.72.130)
9 Malicious placement of an imitation
10 device 2 (RCW 70.74.272(1)(b))
11 Rape of a Child 3 (RCW 9A.44.079)
12 Theft of a Firearm (RCW 9A.56.300)
13 Unlawful Storage of Ammonia (RCW
14 69.55.020)

15 V Abandonment of dependent person 1
16 (RCW 9A.42.060)
17 Advancing money or property for
18 extortionate extension of credit
19 (RCW 9A.82.030)
20 Bail Jumping with class A Felony
21 (RCW 9A.76.170(3)(b))
22 Child Molestation 3 (RCW 9A.44.089)
23 Criminal Mistreatment 1 (RCW
24 9A.42.020)
25 Custodial Sexual Misconduct 1 (RCW
26 9A.44.160)
27 Domestic Violence Court Order
28 Violation (RCW 10.99.040,
29 10.99.050, 26.09.300, 26.10.220,
30 26.26.138, 26.50.110, 26.52.070,
31 or 74.34.145)
32 Driving While Under the Influence
33 (RCW 46.61.502(6))
34 Extortion 1 (RCW 9A.56.120)
35 Extortionate Extension of Credit
36 (RCW 9A.82.020)

1 Extortionate Means to Collect
2 Extensions of Credit (RCW
3 9A.82.040)
4 Incest 2 (RCW 9A.64.020(2))
5 Kidnapping 2 (RCW 9A.40.030)
6 Perjury 1 (RCW 9A.72.020)
7 Persistent prison misbehavior (RCW
8 9.94.070)
9 Physical Control of a Vehicle While
10 Under the Influence (RCW
11 46.61.504(6))
12 Possession of a Stolen Firearm (RCW
13 9A.56.310)
14 Rape 3 (RCW 9A.44.060)
15 Rendering Criminal Assistance 1
16 (RCW 9A.76.070)
17 Sexual Misconduct with a Minor 1
18 (RCW 9A.44.093)
19 Sexually Violating Human Remains
20 (RCW 9A.44.105)
21 Stalking (RCW 9A.46.110)
22 Taking Motor Vehicle Without
23 Permission 1 (RCW 9A.56.070)
24 IV Arson 2 (RCW 9A.48.030)
25 Assault 2 (RCW 9A.36.021)
26 Assault 3 (of a Peace Officer with a
27 Projectile Stun Gun) (RCW
28 9A.36.031(1)(h))
29 Assault by Watercraft (RCW
30 79A.60.060)
31 Bribing a Witness/Bribe Received by
32 Witness (RCW 9A.72.090,
33 9A.72.100)
34 Cheating 1 (RCW 9.46.1961)
35 Commercial Bribery (RCW
36 9A.68.060)
37 Counterfeiting (RCW 9.16.035(4))

1 Endangerment with a Controlled
2 Substance (RCW 9A.42.100)
3 Escape 1 (RCW 9A.76.110)
4 Hit and Run--Injury (RCW
5 46.52.020(4)(b))
6 Hit and Run with Vessel--Injury
7 Accident (RCW 79A.60.200(3))
8 Identity Theft 1 (RCW 9.35.020(2))
9 Indecent Exposure to Person Under
10 Age Fourteen (subsequent sex
11 offense) (RCW 9A.88.010)
12 Influencing Outcome of Sporting
13 Event (RCW 9A.82.070)
14 Malicious Harassment (RCW
15 9A.36.080)
16 Residential Burglary (RCW
17 9A.52.025)
18 Robbery 2 (RCW 9A.56.210)
19 Theft of Livestock 1 (RCW 9A.56.080)
20 Threats to Bomb (RCW 9.61.160)
21 Trafficking in Stolen Property 1 (RCW
22 9A.82.050)
23 Unlawful factoring of a credit card or
24 payment card transaction (RCW
25 9A.56.290(4)(b))
26 Unlawful transaction of health
27 coverage as a health care service
28 contractor (RCW 48.44.016(3))
29 Unlawful transaction of health
30 coverage as a health maintenance
31 organization (RCW 48.46.033(3))
32 Unlawful transaction of insurance
33 business (RCW 48.15.023(3))
34 Unlicensed practice as an insurance
35 professional (RCW 48.17.063(3))

1 Use of Proceeds of Criminal
2 Profiteering (RCW 9A.82.080 (1)
3 and (2))
4 Vehicular Assault, by being under the
5 influence of intoxicating liquor or
6 any drug, or by the operation or
7 driving of a vehicle in a reckless
8 manner (RCW 46.61.522)
9 Willful Failure to Return from
10 Furlough (RCW 72.66.060)
11 III Abandonment of dependent person 2
12 (RCW 9A.42.070)
13 Assault 3 (Except Assault 3 of a Peace
14 Officer With a Projectile Stun
15 Gun) (RCW 9A.36.031 except
16 subsection (1)(h))
17 Assault of a Child 3 (RCW 9A.36.140)
18 Bail Jumping with class B or C Felony
19 (RCW 9A.76.170(3)(c))
20 Burglary 2 (RCW 9A.52.030)
21 Communication with a Minor for
22 Immoral Purposes (RCW
23 9.68A.090)
24 Criminal Gang Intimidation (RCW
25 9A.46.120)
26 Criminal Mistreatment 2 (RCW
27 9A.42.030)
28 Custodial Assault (RCW 9A.36.100)
29 Cyberstalking (subsequent conviction
30 or threat of death) (RCW
31 9.61.260(3))
32 Escape 2 (RCW 9A.76.120)
33 Extortion 2 (RCW 9A.56.130)
34 Harassment (RCW 9A.46.020)
35 Intimidating a Public Servant (RCW
36 9A.76.180)

1 Introducing Contraband 2 (RCW
2 9A.76.150)
3 Malicious Injury to Railroad Property
4 (RCW 81.60.070)
5 Negligently Causing Substantial Bodily
6 Harm By Use of a Signal
7 Preemption Device (RCW
8 46.37.674)
9 Patronizing a Juvenile Prostitute
10 (RCW 9.68A.100)
11 Perjury 2 (RCW 9A.72.030)
12 Possession of Incendiary Device (RCW
13 9.40.120)
14 Possession of Machine Gun or Short-
15 Barreled Shotgun or Rifle (RCW
16 9.41.190)
17 Promoting Prostitution 2 (RCW
18 9A.88.080)
19 Securities Act violation (RCW
20 21.20.400)
21 Tampering with a Witness (RCW
22 9A.72.120)
23 Telephone Harassment (subsequent
24 conviction or threat of death)
25 (RCW 9.61.230(2))
26 Theft of Livestock 2 (RCW 9A.56.083)
27 Trafficking in Stolen Property 2 (RCW
28 9A.82.055)
29 Unlawful Imprisonment (RCW
30 9A.40.040)
31 Unlawful possession of firearm in the
32 second degree (RCW 9.41.040(2))
33 Vehicular Assault, by the operation or
34 driving of a vehicle with disregard
35 for the safety of others (RCW
36 46.61.522)

1 Willful Failure to Return from Work
2 Release (RCW 72.65.070)
3 II Computer Trespass 1 (RCW
4 9A.52.110)
5 Counterfeiting (RCW 9.16.035(3))
6 Escape from Community Custody
7 (RCW 72.09.310)
8 Health Care False Claims (RCW
9 48.80.030)
10 Identity Theft 2 (RCW 9.35.020(3))
11 Improperly Obtaining Financial
12 Information (RCW 9.35.010)
13 Malicious Mischief 1 (RCW
14 9A.48.070)
15 Possession of Stolen Property 1 (RCW
16 9A.56.150)
17 Theft 1 (RCW 9A.56.030)
18 Theft of Rental, Leased, or Lease-
19 purchased Property (valued at one
20 thousand five hundred dollars or
21 more) (RCW 9A.56.096(5)(a))
22 Trafficking in Insurance Claims (RCW
23 48.30A.015)
24 Unlawful factoring of a credit card or
25 payment card transaction (RCW
26 9A.56.290(4)(a))
27 Unlawful Practice of Law (RCW
28 2.48.180)
29 Unlicensed Practice of a Profession or
30 Business (RCW 18.130.190(7))
31 I Attempting to Elude a Pursuing Police
32 Vehicle (RCW 46.61.024)
33 False Verification for Welfare (RCW
34 74.08.055)
35 Forgery (RCW 9A.60.020)

1 Fraudulent Creation or Revocation of a
2 Mental Health Advance Directive
3 (RCW 9A.60.060)
4 Malicious Mischief 2 (RCW
5 9A.48.080)
6 Mineral Trespass (RCW 78.44.330)
7 Possession of Stolen Property 2 (RCW
8 9A.56.160)
9 Reckless Burning 1 (RCW 9A.48.040)
10 Taking Motor Vehicle Without
11 Permission 2 (RCW 9A.56.075)
12 Theft 2 (RCW 9A.56.040)
13 Theft of Rental, Leased, or Lease-
14 purchased Property (valued at two
15 hundred fifty dollars or more but
16 less than one thousand five
17 hundred dollars) (RCW
18 9A.56.096(5)(b))
19 Transaction of insurance business
20 beyond the scope of licensure
21 (RCW 48.17.063(4))
22 Unlawful Issuance of Checks or Drafts
23 (RCW 9A.56.060)
24 Unlawful Possession of Fictitious
25 Identification (RCW 9A.56.320)
26 Unlawful Possession of Instruments of
27 Financial Fraud (RCW
28 9A.56.320)
29 Unlawful Possession of Payment
30 Instruments (RCW 9A.56.320)
31 Unlawful Possession of a Personal
32 Identification Device (RCW
33 9A.56.320)
34 Unlawful Production of Payment
35 Instruments (RCW 9A.56.320)
36 Unlawful Trafficking in Food Stamps
37 (RCW 9.91.142)

1 Unlawful Use of Food Stamps (RCW
2 9.91.144)
3 Vehicle Prowl 1 (RCW 9A.52.095)

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

6 (1) Decision not to prosecute.

7 STANDARD: A prosecuting attorney may decline to prosecute, even
8 though technically sufficient evidence to prosecute exists, in
9 situations where prosecution would serve no public purpose, would
10 defeat the underlying purpose of the law in question or would result in
11 decreased respect for the law.

12 GUIDELINE/COMMENTARY:

13 Examples

14 The following are examples of reasons not to prosecute which could
15 satisfy the standard.

16 (a) Contrary to Legislative Intent - It may be proper to decline to
17 charge where the application of criminal sanctions would be clearly
18 contrary to the intent of the legislature in enacting the particular
19 statute.

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

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

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

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

27 (iv) The statute has not been recently reconsidered by the
28 legislature.

29 This reason is not to be construed as the basis for declining cases
30 because the law in question is unpopular or because it is difficult to
31 enforce.

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

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

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

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

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

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

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

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

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

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

17 (f) High Disproportionate Cost of Prosecution - It may be proper to
18 decline to charge where the cost of locating or transporting, or the
19 burden on, prosecution witnesses is highly disproportionate to the
20 importance of prosecuting the offense in question. This reason should
21 be limited to minor cases and should not be relied upon in serious
22 cases.

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

28 (h) Immunity - It may be proper to decline to charge where immunity
29 is to be given to an accused in order to prosecute another where the
30 accused's information or testimony will reasonably lead to the
31 conviction of others who are responsible for more serious criminal
32 conduct or who represent a greater danger to the public interest.

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

36 (i) Assault cases where the victim has suffered little or no
37 injury;

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

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

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

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

8 Notification

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

11 (2) Decision to prosecute.

12 (a) STANDARD:

13 Crimes against persons will be filed if sufficient admissible
14 evidence exists, which, when considered with the most plausible,
15 reasonably foreseeable defense that could be raised under the evidence,
16 would justify conviction by a reasonable and objective fact-finder.
17 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
18 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
19 9A.64.020 the prosecutor should avoid pre-filing agreements or
20 diversions intended to place the accused in a program of treatment or
21 counseling, so that treatment, if determined to be beneficial, can be
22 provided pursuant to RCW 9.94A.670.

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

28 See table below for the crimes within these categories.

29 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

30 CRIMES AGAINST PERSONS

31 Aggravated Murder

32 1st Degree Murder

33 2nd Degree Murder

34 1st Degree Manslaughter

35 2nd Degree Manslaughter

36 1st Degree Kidnapping

37 2nd Degree Kidnapping

38 1st Degree Assault

1 2nd Degree Assault
2 3rd Degree Assault
3 1st Degree Assault of a Child
4 2nd Degree Assault of a Child
5 3rd Degree Assault of a Child
6 1st Degree Rape
7 2nd Degree Rape
8 3rd Degree Rape
9 1st Degree Rape of a Child
10 2nd Degree Rape of a Child
11 3rd Degree Rape of a Child
12 1st Degree Robbery
13 2nd Degree Robbery
14 1st Degree Arson
15 1st Degree Burglary
16 1st Degree Extortion
17 2nd Degree Extortion
18 Indecent Liberties
19 Incest
20 Vehicular Homicide
21 Vehicular Assault
22 1st Degree Child Molestation
23 2nd Degree Child Molestation
24 3rd Degree Child Molestation
25 1st Degree Promoting Prostitution
26 Intimidating a Juror
27 Communication with a Minor
28 Intimidating a Witness
29 Intimidating a Public Servant
30 Bomb Threat (if against person)
31 Unlawful Imprisonment
32 Promoting a Suicide Attempt
33 Riot (if against person)
34 Stalking
35 Custodial Assault
36 Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050,
37 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
38 Counterfeiting (if a violation of RCW 9.16.035(4))

1 Felony Driving a Motor Vehicle While Under the Influence of
2 Intoxicating Liquor or Any Drug (RCW 46.61.502(6))

3 Felony Physical Control of a Motor Vehicle While Under the
4 Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))

5 CRIMES AGAINST PROPERTY/OTHER CRIMES

6 2nd Degree Arson

7 1st Degree Escape

8 2nd Degree Escape

9 2nd Degree Burglary

10 1st Degree Theft

11 2nd Degree Theft

12 1st Degree Perjury

13 2nd Degree Perjury

14 1st Degree Introducing Contraband

15 2nd Degree Introducing Contraband

16 1st Degree Possession of Stolen Property

17 2nd Degree Possession of Stolen Property

18 Bribery

19 Bribing a Witness

20 Bribe received by a Witness

21 Bomb Threat (if against property)

22 1st Degree Malicious Mischief

23 2nd Degree Malicious Mischief

24 1st Degree Reckless Burning

25 Taking a Motor Vehicle without Authorization

26 Forgery

27 2nd Degree Promoting Prostitution

28 Tampering with a Witness

29 Trading in Public Office

30 Trading in Special Influence

31 Receiving/Granting Unlawful Compensation

32 Bigamy

33 Eluding a Pursuing Police Vehicle

34 Willful Failure to Return from Furlough

35 Escape from Community Custody

36 Riot (if against property)

37 1st Degree Theft of Livestock

38 2nd Degree Theft of Livestock

1 ALL OTHER UNCLASSIFIED FELONIES

2 Selection of Charges/Degree of Charge

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

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

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

9 (ii) The prosecutor should not overcharge to obtain a guilty plea.

10 Overcharging includes:

11 (A) Charging a higher degree;

12 (B) Charging additional counts.

13 This standard is intended to direct prosecutors to charge those
14 crimes which demonstrate the nature and seriousness of a defendant's
15 criminal conduct, but to decline to charge crimes which are not
16 necessary to such an indication. Crimes which do not merge as a matter
17 of law, but which arise from the same course of conduct, do not all
18 have to be charged.

19 (b) GUIDELINES/COMMENTARY:

20 (i) Police Investigation

21 A prosecuting attorney is dependent upon law enforcement agencies
22 to conduct the necessary factual investigation which must precede the
23 decision to prosecute. The prosecuting attorney shall ensure that a
24 thorough factual investigation has been conducted before a decision to
25 prosecute is made. In ordinary circumstances the investigation should
26 include the following:

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

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

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

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

35 (ii) Exceptions

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

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

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

3 (C) The arrest of the suspect is necessary to complete the
4 investigation of the crime.

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

10 (iii) Investigation Techniques

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

13 (A) Polygraph testing;

14 (B) Hypnosis;

15 (C) Electronic surveillance;

16 (D) Use of informants.

17 (iv) Pre-Filing Discussions with Defendant

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

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

22 Discussions with the victim(s) or victims' representatives
23 regarding the selection or disposition of charges may occur before the
24 filing of charges. The discussions may be considered by the prosecutor
25 in charging and disposition decisions, and should be considered before
26 reaching any agreement with the defendant regarding these decisions.

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

29 **DESCRIPTION AND OFFENSE CATEGORY**

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

1		Arson and Malicious Mischief	
2	A	Arson 1 (9A.48.020)	B+
3	B	Arson 2 (9A.48.030)	C
4	C	Reckless Burning 1 (9A.48.040)	D
5	D	Reckless Burning 2 (9A.48.050)	E
6	B	Malicious Mischief 1 (9A.48.070)	C
7	C	Malicious Mischief 2 (9A.48.080)	D
8	D	Malicious Mischief 3 (9A.48.090(2) (a) and	
9		(c))	E
10	E	Malicious Mischief 3 (9A.48.090(2)(b))	E
11	E	Tampering with Fire Alarm Apparatus	
12		(9.40.100)	E
13	E	Tampering with Fire Alarm Apparatus with	
14		Intent to Commit Arson (9.40.105)	E
15	A	Possession of Incendiary Device (9.40.120)	B+
16		Assault and Other Crimes Involving	
17		Physical Harm	
18	A	Assault 1 (9A.36.011)	B+
19	B+	Assault 2 (9A.36.021)	C+
20	C+	Assault 3 (9A.36.031)	D+
21	D+	Assault 4 (9A.36.041)	E
22	B+	Drive-By Shooting (9A.36.045)	C+
23	D+	Reckless Endangerment (9A.36.050)	E
24	C+	Promoting Suicide Attempt (9A.36.060)	D+
25	D+	Coercion (9A.36.070)	E
26	C+	Custodial Assault (9A.36.100)	D+
27		Burglary and Trespass	
28	B+	Burglary 1 (9A.52.020)	C+
29	B	Residential Burglary (9A.52.025)	C
30	B	Burglary 2 (9A.52.030)	C
31	D	Burglary Tools (Possession of) (9A.52.060)	E
32	D	Criminal Trespass 1 (9A.52.070)	E
33	E	Criminal Trespass 2 (9A.52.080)	E
34	C	Mineral Trespass (78.44.330)	C
35	C	Vehicle Prowling 1 (9A.52.095)	D
36	D	Vehicle Prowling 2 (9A.52.100)	E

1		Drugs	
2	E	Possession/Consumption of Alcohol	
3		(66.44.270)	E
4	C	Illegally Obtaining Legend Drug	
5		(69.41.020)	D
6	C+	Sale, Delivery, Possession of Legend Drug	
7		with Intent to Sell (69.41.030(2)(a))	D+
8	E	Possession of Legend Drug	
9		(69.41.030(2)(b))	E
10	B+	Violation of Uniform Controlled Substances	
11		Act - Narcotic, Methamphetamine, or	
12		Flunitrazepam Sale (69.50.401(2) (a) or	
13		(b))	B+
14	C	Violation of Uniform Controlled Substances	
15		Act - Nonnarcotic Sale (69.50.401(2)(c))	C
16	E	Possession of Marihuana <40 grams	
17		(69.50.4014)	E
18	C	Fraudulently Obtaining Controlled	
19		Substance (69.50.403)	C
20	C+	Sale of Controlled Substance for Profit	
21		(69.50.410)	C+
22	E	Unlawful Inhalation (9.47A.020)	E
23	B	Violation of Uniform Controlled Substances	
24		Act - Narcotic, Methamphetamine, or	
25		Flunitrazepam Counterfeit Substances	
26		(69.50.4011(2) (a) or (b))	B
27	C	Violation of Uniform Controlled Substances	
28		Act - Nonnarcotic Counterfeit Substances	
29		(69.50.4011(2) (c), (d), or (e))	C
30	C	Violation of Uniform Controlled Substances	
31		Act - Possession of a Controlled Substance	
32		(69.50.4013)	C
33	C	Violation of Uniform Controlled Substances	
34		Act - Possession of a Controlled Substance	
35		(69.50.4012)	C
36		Firearms and Weapons	
37	B	Theft of Firearm (9A.56.300)	C

1	B	Possession of Stolen Firearm (9A.56.310)	C
2	E	Carrying Loaded Pistol Without Permit	
3		(9.41.050)	E
4	C	Possession of Firearms by Minor (<18)	
5		(9.41.040(2)(a)(iii))	C
6	D+	Possession of Dangerous Weapon	
7		(9.41.250)	E
8	D	Intimidating Another Person by use of	
9		Weapon (9.41.270)	E
10		Homicide	
11	A+	Murder 1 (9A.32.030)	A
12	A+	Murder 2 (9A.32.050)	B+
13	B+	Manslaughter 1 (9A.32.060)	C+
14	C+	Manslaughter 2 (9A.32.070)	D+
15	B+	Vehicular Homicide (46.61.520)	C+
16		Kidnapping	
17	A	Kidnap 1 (9A.40.020)	B+
18	B+	Kidnap 2 (9A.40.030)	C+
19	C+	Unlawful Imprisonment (9A.40.040)	D+
20		Obstructing Governmental Operation	
21	D	Obstructing a Law Enforcement Officer	
22		(9A.76.020)	E
23	E	Resisting Arrest (9A.76.040)	E
24	B	Introducing Contraband 1 (9A.76.140)	C
25	C	Introducing Contraband 2 (9A.76.150)	D
26	E	Introducing Contraband 3 (9A.76.160)	E
27	B+	Intimidating a Public Servant (9A.76.180)	C+
28	B+	Intimidating a Witness (9A.72.110)	C+
29		Public Disturbance	
30	C+	Riot with Weapon (9A.84.010(2)(b))	D+
31	D+	Riot Without Weapon (9A.84.010(2)(a))	E
32	E	Failure to Disperse (9A.84.020)	E
33	E	Disorderly Conduct (9A.84.030)	E
34		Sex Crimes	
35	A	Rape 1 (9A.44.040)	B+
36	A-	Rape 2 (9A.44.050)	B+

1	C+	Rape 3 (9A.44.060)	D+
2	A-	Rape of a Child 1 (9A.44.073)	B+
3	B+	Rape of a Child 2 (9A.44.076)	C+
4	B	Incest 1 (9A.64.020(1))	C
5	C	Incest 2 (9A.64.020(2))	D
6	D+	Indecent Exposure (Victim <14)	
7		(9A.88.010)	E
8	E	Indecent Exposure (Victim 14 or over)	
9		(9A.88.010)	E
10	B+	Promoting Prostitution 1 (9A.88.070)	C+
11	C+	Promoting Prostitution 2 (9A.88.080)	D+
12	E	O & A (Prostitution) (9A.88.030)	E
13	B+	Indecent Liberties (9A.44.100)	C+
14	A-	Child Molestation 1 (9A.44.083)	B+
15	B	Child Molestation 2 (9A.44.086)	C+
16		Theft, Robbery, Extortion, and Forgery	
17	B	Theft 1 (9A.56.030)	C
18	C	Theft 2 (9A.56.040)	D
19	D	Theft 3 (9A.56.050)	E
20	B	Theft of Livestock 1 and 2 (9A.56.080 and	
21		9A.56.083)	C
22	C	Forgery (9A.60.020)	D
23	A	Robbery 1 (9A.56.200)	B+
24	B+	Robbery 2 (9A.56.210)	C+
25	B+	Extortion 1 (9A.56.120)	C+
26	C+	Extortion 2 (9A.56.130)	D+
27	C	Identity Theft 1 (9.35.020(2))	D
28	D	Identity Theft 2 (9.35.020(3))	E
29	D	Improperly Obtaining Financial Information	
30		(9.35.010)	E
31	B	Possession of Stolen Property 1	
32		(9A.56.150)	C
33	C	Possession of Stolen Property 2	
34		(9A.56.160)	D
35	D	Possession of Stolen Property 3	
36		(9A.56.170)	E

1	C	Taking Motor Vehicle Without Permission	
2		1 and 2 (9A.56.070 and 9A.56.075)	D
3		Motor Vehicle Related Crimes	
4	E	Driving Without a License (46.20.005)	E
5	B+	Hit and Run - Death (46.52.020(4)(a))	C+
6	C	Hit and Run - Injury (46.52.020(4)(b))	D
7	D	Hit and Run-Attended (46.52.020(5))	E
8	E	Hit and Run-Unattended (46.52.010)	E
9	C	Vehicular Assault (46.61.522)	D
10	C	Attempting to Elude Pursuing Police	
11		Vehicle (46.61.024)	D
12	E	Reckless Driving (46.61.500)	E
13	D	Driving While Under the Influence	
14		(46.61.502 and 46.61.504)	E
15	<u>B+</u>	<u>Felony Driving While Under the Influence</u>	
16		<u>(46.61.502(6) and 46.61.504(6))</u>	<u>B</u>
17		Other	
18	B	Animal Cruelty 1 (16.52.205)	C
19	B	Bomb Threat (9.61.160)	C
20	C	Escape 1 ¹ (9A.76.110)	C
21	C	Escape 2 ¹ (9A.76.120)	C
22	D	Escape 3 (9A.76.130)	E
23	E	Obscene, Harassing, Etc., Phone Calls	
24		(9.61.230)	E
25	A	Other Offense Equivalent to an Adult Class	
26		A Felony	B+
27	B	Other Offense Equivalent to an Adult Class	
28		B Felony	C
29	C	Other Offense Equivalent to an Adult Class	
30		C Felony	D
31	D	Other Offense Equivalent to an Adult Gross	
32		Misdemeanor	E
33	E	Other Offense Equivalent to an Adult	
34		Misdemeanor	E
35	V	Violation of Order of Restitution,	
36		Community Supervision, or Confinement	
37		(13.40.200) ²	V

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

3 1st escape or attempted escape during 12-month period - 4 weeks
 4 confinement

5 2nd escape or attempted escape during 12-month period - 8 weeks
 6 confinement

7 3rd and subsequent escape or attempted escape during 12-month
 8 period - 12 weeks confinement

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

11 **JUVENILE SENTENCING STANDARDS**

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

14 **OPTION A**
 15 **JUVENILE OFFENDER SENTENCING GRID**
 16 **STANDARD RANGE**

17 A+ 180 WEEKS TO AGE 21 YEARS

18 A 103 WEEKS TO 129 WEEKS

21 A-	15-36	52-65	80-100	103-129
22	WEEKS	WEEKS	WEEKS	WEEKS
23	EXCEPT			
24	30-40			
25	WEEKS FOR			
26	15-17			
27	YEAR OLDS			

29 Current	B+	15-36	52-65	80-100	103-129
30 Offense		WEEKS	WEEKS	WEEKS	WEEKS

31 Category	B	LOCAL		52-65
32		SANCTIONS (LS)	15-36 WEEKS	WEEKS

35 C+	LS		15-36 WEEKS
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1	C	LS	15-36 WEEKS				
2			Local Sanctions:				
3			0 to 30 Days				
4	D+	LS	0 to 12 Months Community Supervision				
5			0 to 150 Hours Community Restitution				
6	D	LS	\$0 to \$500 Fine				
7							
8	E	LS					
9							
10			0	1	2	3	4
11							or more
12			PRIOR ADJUDICATIONS				

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

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

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

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

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

28 (5) A current offense that is a violation is equivalent to an
 29 offense category of E. However, a disposition for a violation shall
 30 not include confinement.

31 **OR**
 32 **OPTION B**
 33 **SUSPENDED DISPOSITION ALTERNATIVE**

34 (1) If the offender is subject to a standard range disposition
 35 involving confinement by the department, the court may impose the
 36 standard range and suspend the disposition on condition that the
 37 offender comply with one or more local sanctions and any educational or
 38 treatment requirement. The treatment programs provided to the offender

1 must be research-based best practice programs as identified by the
2 Washington state institute for public policy or the joint legislative
3 audit and review committee.

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

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

9 (a) Adjudicated of an A+ offense;

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

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

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

15 (iii) Assault in the second degree (RCW 9A.36.021), extortion in
16 the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW
17 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential
18 burglary (RCW 9A.52.025), burglary in the second degree (RCW
19 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW
20 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a
21 witness (RCW 9A.72.110), violation of the uniform controlled substances
22 act (RCW 69.50.401 (2)(a) and (b)), or manslaughter 2 (RCW 9A.32.070),
23 when the offense includes infliction of bodily harm upon another or
24 when during the commission or immediate withdrawal from the offense the
25 respondent was armed with a deadly weapon;

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

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

29 **OR**

30 **OPTION C**

31 **CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE**

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

36 **OR**

1 on a vehicle owned or operated by the person seeking reinstatement.
2 If, based upon notification from the interlock provider or otherwise,
3 the department determines that an interlock required under RCW
4 46.20.720 is no longer installed or functioning as required, the
5 department shall suspend the person's license or privilege to drive.
6 Whenever the license or driving privilege of any person is suspended or
7 revoked as a result of noncompliance with an ignition interlock
8 requirement, the suspension shall remain in effect until the person
9 provides notice issued by a company doing business in the state that a
10 vehicle owned or operated by the person is equipped with a functioning
11 ignition interlock device.

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

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

21 (ii) If the suspension is the result of a violation of RCW
22 46.61.502 or 46.61.504, or is the result of administrative action under
23 RCW 46.20.308, the reissue fee shall be one hundred fifty dollars.

24 (2)(a) Any person whose license or privilege to drive a motor
25 vehicle on the public highways has been revoked, unless the revocation
26 was for a cause which has been removed, is not entitled to have the
27 license or privilege renewed or restored until: (i) After the
28 expiration of one year from the date the license or privilege to drive
29 was revoked; (ii) after the expiration of the applicable revocation
30 period provided by RCW 46.20.3101 or 46.61.5055; (iii) after the
31 expiration of two years for persons convicted of vehicular homicide; or
32 (iv) after the expiration of the applicable revocation period provided
33 by RCW 46.20.265.

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

37 (ii) If the revocation is the result of a violation of RCW
38 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one

1 hundred fifty dollars. If the revocation is the result of a nonfelony
2 violation of RCW 46.61.502 or 46.61.504, the department shall determine
3 the person's eligibility for licensing based upon the reports provided
4 by the alcoholism agency or probation department designated under RCW
5 46.61.5056 and shall deny reissuance of a license, permit, or privilege
6 to drive until enrollment and participation in an approved program has
7 been established and the person is otherwise qualified. If the
8 suspension is the result of a violation of RCW 46.61.502(6) or
9 46.61.504(6), the department shall determine the person's eligibility
10 for licensing based upon the reports provided by the alcohol or drug
11 dependency agency required under RCW 46.61.524 and shall deny
12 reinstatement until satisfactory progress in an approved program has
13 been established and the person is otherwise qualified. If the
14 revocation is the result of a violation of RCW 46.61.502 or 46.61.504,
15 and the person is required pursuant to RCW 46.20.720 to drive only a
16 motor vehicle equipped with a functioning ignition interlock or other
17 biological or technical device, the department shall determine the
18 person's eligibility for licensing based upon written verification by
19 a company doing business in the state that it has installed the
20 required device on a vehicle owned or operated by the person applying
21 for a new license. If, following issuance of a new license, the
22 department determines, based upon notification from the interlock
23 provider or otherwise, that an interlock required under RCW 46.20.720
24 is no longer functioning, the department shall suspend the person's
25 license or privilege to drive until the department has received written
26 verification from an interlock provider that a functioning interlock is
27 installed.

28 (c) Except for a revocation under RCW 46.20.265, the department
29 shall not then issue a new license unless it is satisfied after
30 investigation of the driving ability of the person that it will be safe
31 to grant the privilege of driving a motor vehicle on the public
32 highways, and until the person gives and thereafter maintains proof of
33 financial responsibility for the future as provided in chapter 46.29
34 RCW. For a revocation under RCW 46.20.265, the department shall not
35 issue a new license unless it is satisfied after investigation of the
36 driving ability of the person that it will be safe to grant that person
37 the privilege of driving a motor vehicle on the public highways.

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

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

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

14 (1) A person convicted under RCW 46.61.502(6), 46.61.504(6),
15 46.61.520(1)(a), or 46.61.522(1)(b) shall, as a condition of community
16 custody imposed under RCW 9.94A.545 or community placement imposed
17 under RCW 9.94A.660, complete a diagnostic evaluation by an alcohol or
18 drug dependency agency approved by the department of social and health
19 services or a qualified probation department, as defined under RCW
20 46.61.516 that has been approved by the department of social and health
21 services. This report shall be forwarded to the department of
22 licensing. If the person is found to have an alcohol or drug problem
23 that requires treatment, the person shall complete treatment in a
24 program approved by the department of social and health services under
25 chapter 70.96A RCW. If the person is found not to have an alcohol or
26 drug problem that requires treatment, he or she shall complete a course
27 in an information school approved by the department of social and
28 health services under chapter 70.96A RCW. The convicted person shall
29 pay all costs for any evaluation, education, or treatment required by
30 this section, unless the person is eligible for an existing program
31 offered or approved by the department of social and health services.
32 Nothing in chapter 348, Laws of 1991 requires the addition of new
33 treatment or assessment facilities nor affects the department of social
34 and health services use of existing programs and facilities authorized
35 by law.

36 (2) As provided for under RCW 46.20.285, the department shall
37 revoke the license, permit to drive, or a nonresident privilege of a

1 person convicted of vehicular homicide under RCW 46.61.520 or vehicular
2 assault under RCW 46.61.522. The department shall determine the
3 eligibility of a person convicted of vehicular homicide under RCW
4 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to
5 receive a license based upon the report provided by the designated
6 alcoholism treatment facility or probation department, and shall deny
7 reinstatement until satisfactory progress in an approved program has
8 been established and the person is otherwise qualified.

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

11 In addition to penalties that may be imposed under RCW 46.61.5055,
12 the court may require a person who is convicted of a nonfelony
13 violation of RCW 46.61.502 or 46.61.504 or who enters a deferred
14 prosecution program under RCW 10.05.020 based on a nonfelony violation
15 of RCW 46.61.502 or 46.61.504, to attend an educational program
16 focusing on the emotional, physical, and financial suffering of victims
17 who were injured by persons convicted of driving while under the
18 influence of intoxicants.

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

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

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

28 NEW SECTION. **Sec. 21.** Section 6 of this act takes effect July 1,
29 2006.

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