
SENATE BILL 5904

State of Washington

65th Legislature

2017 Regular Session

By Senators Braun and Brown

Read first time 03/22/17. Referred to Committee on Law & Justice.

1 AN ACT Relating to convicted persons; amending RCW 9A.42.020,
2 9A.42.030, 9A.42.035, 9A.56.010, 9A.04.080, 9A.56.030, 9A.56.040,
3 74.34.020, 46.61.502, 46.61.504, 46.61.5054, 9.94A.589, 9.94B.050,
4 9.94A.501, 9.94A.702, 9.94A.533, 46.20.117, 46.20.117, 46.20.342,
5 46.63.020, 46.20.015, 9.94A.518, 9.94A.650, 9A.36.041. 9.94A.525,
6 43.43.754, and 43.43.830; reenacting and amending RCW 9.94A.411,
7 9.94A.515, 46.61.5055, 10.31.100, and 9.96.060; adding a new section
8 to chapter 9A.56 RCW; adding a new section to chapter 74.34 RCW;
9 adding a new section to chapter 9.94B RCW; adding new sections to
10 chapter 9.94A RCW; adding a new section to chapter 72.09 RCW; adding
11 a new section to chapter 7.36 RCW; creating new sections; repealing
12 RCW 69.50.4014; repealing 2015 c 291 ss 8 and 9 and 2013 2nd sp.s. c
13 14 s 1; repealing 2013 2nd sp.s. c 14 s 10 (uncodified); prescribing
14 penalties; providing an effective date; providing expiration dates;
15 and declaring an emergency.

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

PART I

CRIMES AGAINST VULNERABLE PERSONS

19 NEW SECTION. **Sec. 101.** The legislature finds that seniors and
20 people with disabilities face a growing threat of financial

1 exploitation and physical neglect. The legislature intends with this
2 act to hold accountable those perpetrators who commit theft and
3 physical neglect of seniors and people with disabilities by
4 increasing penalties, reducing barriers to prosecution, and expanding
5 the scope of protection for vulnerable persons.

6 **Sec. 102.** RCW 9A.42.020 and 2006 c 228 s 2 are each amended to
7 read as follows:

8 (1) A parent of a child, the person entrusted with the physical
9 custody of a child or dependent person, a person who has assumed the
10 responsibility to provide to a dependent person the basic necessities
11 of life, or a person employed to provide to the child or dependent
12 person the basic necessities of life is guilty of criminal
13 mistreatment in the first degree if he or she (~~recklessly~~) with
14 criminal negligence, as defined in RCW 9A.08.010, causes great bodily
15 harm to a child or dependent person by withholding any of the basic
16 necessities of life.

17 (2) Criminal mistreatment in the first degree is a class B
18 felony.

19 **Sec. 103.** RCW 9A.42.030 and 2006 c 228 s 3 are each amended to
20 read as follows:

21 (1) A parent of a child, the person entrusted with the physical
22 custody of a child or dependent person, a person who has assumed the
23 responsibility to provide to a dependent person the basic necessities
24 of life, or a person employed to provide to the child or dependent
25 person the basic necessities of life is guilty of criminal
26 mistreatment in the second degree if he or she (~~recklessly~~) with
27 criminal negligence, as defined in RCW 9A.08.010, either (a) creates
28 an imminent and substantial risk of death or great bodily harm by
29 withholding any of the basic necessities of life, or (b) causes
30 substantial bodily harm by withholding any of the basic necessities
31 of life.

32 (2) Criminal mistreatment in the second degree is a class C
33 felony.

34 **Sec. 104.** RCW 9A.42.035 and 2006 c 228 s 4 are each amended to
35 read as follows:

36 (1) A person is guilty of the crime of criminal mistreatment in
37 the third degree if the person is the parent of a child, is a person

1 entrusted with the physical custody of a child or other dependent
2 person, is a person who has assumed the responsibility to provide to
3 a dependent person the basic necessities of life, or is a person
4 employed to provide to the child or dependent person the basic
5 necessities of life((~~τ~~)) and ((~~either~~+

6 ~~(a))~~), with criminal negligence, creates an imminent and
7 substantial risk of substantial bodily harm to a child or dependent
8 person by withholding any of the basic necessities of life((~~τ~~)+~~or~~

9 ~~(b) With criminal negligence, causes substantial bodily harm to a~~
10 ~~child or dependent person by withholding any of the basic necessities~~
11 ~~of life)).~~

12 (2) For purposes of this section, "a person who has assumed the
13 responsibility to provide to a dependent person the basic necessities
14 of life" means a person other than: (a) A government agency that
15 regularly provides assistance or services to dependent persons,
16 including but not limited to the department of social and health
17 services; or (b) a good samaritan as defined in RCW 9A.42.010.

18 (3) Criminal mistreatment in the third degree is a gross
19 misdemeanor.

20 **Sec. 105.** RCW 9.94A.411 and 2006 c 271 s 1 and 2006 c 73 s 13
21 are each reenacted and amended to read as follows:

22 (1) Decision not to prosecute.

23 STANDARD: A prosecuting attorney may decline to prosecute, even
24 though technically sufficient evidence to prosecute exists, in
25 situations where prosecution would serve no public purpose, would
26 defeat the underlying purpose of the law in question or would result
27 in decreased respect for the law.

28 GUIDELINE/COMMENTARY:

29 Examples

30 The following are examples of reasons not to prosecute which
31 could satisfy the standard.

32 (a) Contrary to Legislative Intent - It may be proper to decline
33 to charge where the application of criminal sanctions would be
34 clearly contrary to the intent of the legislature in enacting the
35 particular statute.

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

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

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

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

5 (iv) The statute has not been recently reconsidered by the
6 legislature.

7 This reason is not to be construed as the basis for declining
8 cases because the law in question is unpopular or because it is
9 difficult to enforce.

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

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

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

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

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

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

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

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

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

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

33 (f) High Disproportionate Cost of Prosecution - It may be proper
34 to decline to charge where the cost of locating or transporting, or
35 the burden on, prosecution witnesses is highly disproportionate to
36 the importance of prosecuting the offense in question. This reason
37 should be limited to minor cases and should not be relied upon in
38 serious cases.

39 (g) Improper Motives of Complainant - It may be proper to decline
40 charges because the motives of the complainant are improper and

1 prosecution would serve no public purpose, would defeat the
2 underlying purpose of the law in question or would result in
3 decreased respect for the law.

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

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

13 (i) Assault cases where the victim has suffered little or no
14 injury;

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

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

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

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

23 Notification

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

27 (2) Decision to prosecute.

28 (a) STANDARD:

29 Crimes against persons will be filed if sufficient admissible
30 evidence exists, which, when considered with the most plausible,
31 reasonably foreseeable defense that could be raised under the
32 evidence, would justify conviction by a reasonable and objective fact
33 finder. With regard to offenses prohibited by RCW 9A.44.040,
34 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086,
35 9A.44.089, and 9A.64.020 the prosecutor should avoid prefilings
36 agreements or diversions intended to place the accused in a program
37 of treatment or counseling, so that treatment, if determined to be
38 beneficial, can be provided pursuant to RCW 9.94A.670.

39 Crimes against property/other crimes will be filed if the
40 admissible evidence is of such convincing force as to make it

1 probable that a reasonable and objective fact finder would convict
2 after hearing all the admissible evidence and the most plausible
3 defense that could be raised.

4 See table below for the crimes within these categories.

5 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

6 CRIMES AGAINST PERSONS

7 Aggravated Murder (RCW 10.95.020)

8 1st Degree Murder (RCW 9A.32.030)

9 2nd Degree Murder (RCW 9A.32.050)

10 1st Degree Manslaughter (RCW 9A.32.060)

11 2nd Degree Manslaughter (RCW 9A.32.070)

12 1st Degree Kidnapping (RCW 9A.40.020)

13 2nd Degree Kidnapping (RCW 9A.40.030)

14 1st Degree Assault (RCW 9A.36.011)

15 2nd Degree Assault (RCW 9A.36.021)

16 3rd Degree Assault (RCW 9A.36.031)

17 4th Degree Assault (RCW 9A.36.041(3))

18 1st Degree Assault of a Child (RCW 9A.36.120)

19 2nd Degree Assault of a Child (RCW 9A.36.130)

20 3rd Degree Assault of a Child (RCW 9A.36.140)

21 1st Degree Rape (RCW 9A.44.040)

22 2nd Degree Rape (RCW 9A.44.050)

23 3rd Degree Rape (RCW 9A.44.060)

24 1st Degree Rape of a Child (RCW 9A.44.073)

25 2nd Degree Rape of a Child (RCW 9A.44.076)

26 3rd Degree Rape of a Child (RCW 9A.44.079)

27 1st Degree Robbery (RCW 9A.56.200)

28 2nd Degree Robbery (RCW 9A.56.210)

29 1st Degree Arson (RCW 9A.48.020)

30 1st Degree Burglary (RCW 9A.52.020)

31 1st Degree Identity Theft (RCW 9.35.020(2))

32 2nd Degree Identity Theft (RCW 9.35.020(3))

33 1st Degree Extortion (RCW 9A.56.120)

34 2nd Degree Extortion (RCW 9A.56.130)

35 1st Degree Criminal Mistreatment (RCW 9A.42.020)

36 2nd Degree Criminal Mistreatment (RCW 9A.42.030)

37 1st Degree Theft from a Vulnerable Adult (section 106(1) of this
38 act)

1 2nd Degree Theft from a Vulnerable Adult (section 106(2) of this
2 act)
3 Indecent Liberties (RCW 9A.44.100)
4 Incest (RCW 9A.64.020)
5 Vehicular Homicide (RCW 46.61.520)
6 Vehicular Assault (RCW 46.61.522)
7 1st Degree Child Molestation (RCW 9A.44.083)
8 2nd Degree Child Molestation (RCW 9A.44.086)
9 3rd Degree Child Molestation (RCW 9A.44.089)
10 1st Degree Promoting Prostitution (RCW 9A.88.070)
11 Intimidating a Juror (RCW 9A.72.130)
12 Communication with a Minor (RCW 9.68A.090)
13 Intimidating a Witness (RCW 9A.72.110)
14 Intimidating a Public Servant (RCW 9A.76.180)
15 Bomb Threat (if against person) (RCW 9.61.160)
16 Unlawful Imprisonment (RCW 9A.40.040)
17 Promoting a Suicide Attempt (RCW 9A.36.060)
18 ~~((Riøt))~~ Criminal Mischief (if against person) (RCW 9A.84.010)
19 Stalking (RCW 9A.46.110)
20 Custodial Assault (RCW 9A.36.100)
21 Domestic Violence Court Order Violation (RCW 10.99.040,
22 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or
23 74.34.145)
24 Counterfeiting (if a violation of RCW 9.16.035(4))
25 Felony Driving a Motor Vehicle While Under the Influence of
26 Intoxicating Liquor or Any Drug (RCW 46.61.502(6))
27 Felony Physical Control of a Motor Vehicle While Under the
28 Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))
29 CRIMES AGAINST PROPERTY/OTHER CRIMES
30 2nd Degree Arson (RCW 9A.48.030)
31 1st Degree Escape (RCW 9A.76.110)
32 2nd Degree Escape (RCW 9A.76.120)
33 2nd Degree Burglary (RCW 9A.52.030)
34 1st Degree Theft (RCW 9A.56.030)
35 2nd Degree Theft (RCW 9A.56.040)
36 1st Degree Perjury (RCW 9A.72.020)
37 2nd Degree Perjury (RCW 9A.72.030)
38 1st Degree Introducing Contraband (RCW 9A.76.140)
39 2nd Degree Introducing Contraband (RCW 9A.76.150)

1 1st Degree Possession of Stolen Property (RCW 9A.56.150)
2 2nd Degree Possession of Stolen Property (RCW 9A.56.160)
3 Bribery (RCW 9A.68.010)
4 Bribing a Witness (RCW 9A.72.090)
5 Bribe received by a Witness (RCW 9A.72.100)
6 Bomb Threat (if against property) (RCW 9.61.160)
7 1st Degree Malicious Mischief (RCW 9A.48.070)
8 2nd Degree Malicious Mischief (RCW 9A.48.080)
9 1st Degree Reckless Burning (RCW 9A.48.040)
10 Taking a Motor Vehicle without Authorization (RCW 9A.56.070 and
11 9A.56.075)
12 Forgery (RCW 9A.60.020)
13 2nd Degree Promoting Prostitution (RCW 9A.88.080)
14 Tampering with a Witness (RCW 9A.72.120)
15 Trading in Public Office (RCW 9A.68.040)
16 Trading in Special Influence (RCW 9A.68.050)
17 Receiving/Granting Unlawful Compensation (RCW 9A.68.030)
18 Bigamy (RCW 9A.64.010)
19 Eluding a Pursuing Police Vehicle (RCW 46.61.024)
20 Willful Failure to Return from Furlough
21 Escape from Community Custody
22 ((Riet)) Criminal Mischief (if against property) (RCW 9A.84.010)
23 1st Degree Theft of Livestock (RCW 9A.56.080)
24 2nd Degree Theft of Livestock (RCW 9A.56.083)

25 ALL OTHER UNCLASSIFIED FELONIES

26 Selection of Charges/Degree of Charge

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

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

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

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

35 (A) Charging a higher degree;

36 (B) Charging additional counts.

37 This standard is intended to direct prosecutors to charge those
38 crimes which demonstrate the nature and seriousness of a defendant's
39 criminal conduct, but to decline to charge crimes which are not

1 necessary to such an indication. Crimes which do not merge as a
2 matter of law, but which arise from the same course of conduct, do
3 not all have to be charged.

4 (b) GUIDELINES/COMMENTARY:

5 (i) Police Investigation

6 A prosecuting attorney is dependent upon law enforcement agencies
7 to conduct the necessary factual investigation which must precede the
8 decision to prosecute. The prosecuting attorney shall ensure that a
9 thorough factual investigation has been conducted before a decision
10 to prosecute is made. In ordinary circumstances the investigation
11 should include the following:

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

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

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

17 If the initial investigation is incomplete, a prosecuting
18 attorney should insist upon further investigation before a decision
19 to prosecute is made, and specify what the investigation needs to
20 include.

21 (ii) Exceptions

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

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

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

28 (C) The arrest of the suspect is necessary to complete the
29 investigation of the crime.

30 In the event that the exception to the standard is applied, the
31 prosecuting attorney shall obtain a commitment from the law
32 enforcement agency involved to complete the investigation in a timely
33 manner. If the subsequent investigation does not produce sufficient
34 evidence to meet the normal charging standard, the complaint should
35 be dismissed.

36 (iii) Investigation Techniques

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

39 (A) Polygraph testing;

1 (B) Hypnosis;

2 (C) Electronic surveillance;

3 (D) Use of informants.

4 (iv) Prefiling Discussions with Defendant

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

8 (v) Prefiling Discussions with Victim(s)

9 Discussions with the victim(s) or victims' representatives
10 regarding the selection or disposition of charges may occur before
11 the filing of charges. The discussions may be considered by the
12 prosecutor in charging and disposition decisions, and should be
13 considered before reaching any agreement with the defendant regarding
14 these decisions.

15 NEW SECTION. **Sec. 106.** A new section is added to chapter 9A.56
16 RCW to read as follows:

17 (1)(a) A person is guilty of theft from a vulnerable adult in the
18 first degree if he or she commits theft of property or services that
19 exceed(s) five thousand dollars in value, other than a firearm as
20 defined in RCW 9.41.010, of a vulnerable adult. The defendant must
21 have known or should have known that the victim was a vulnerable
22 adult.

23 (b) Theft from a vulnerable adult in the first degree is a class
24 B felony.

25 (2)(a) A person is guilty of theft from a vulnerable adult in the
26 second degree if he or she commits theft of property or services that
27 exceed(s) seven hundred fifty dollars in value but does not exceed
28 five thousand dollars in value, other than a firearm as defined in
29 RCW 9.41.010 or a motor vehicle, of a vulnerable adult. The defendant
30 must have known or should have known that the victim was a vulnerable
31 adult.

32 (b) Theft from a vulnerable adult in the second degree is a class
33 C felony.

34 **Sec. 107.** RCW 9A.56.010 and 2011 c 164 s 2 are each amended to
35 read as follows:

36 The following definitions are applicable in this chapter unless
37 the context otherwise requires:

1 (1) "Access device" means any card, plate, code, account number,
2 or other means of account access that can be used alone or in
3 conjunction with another access device to obtain money, goods,
4 services, or anything else of value, or that can be used to initiate
5 a transfer of funds, other than a transfer originated solely by paper
6 instrument;

7 (2) "Appropriate lost or misdelivered property or services" means
8 obtaining or exerting control over the property or services of
9 another which the actor knows to have been lost or mislaid, or to
10 have been delivered under a mistake as to identity of the recipient
11 or as to the nature or amount of the property;

12 (3) "Beverage crate" means a plastic or metal box-like container
13 used by a manufacturer or distributor in the transportation or
14 distribution of individually packaged beverages to retail outlets,
15 and affixed with language stating "property of," "owned
16 by," or other markings or words identifying ownership;

17 (4) "By color or aid of deception" means that the deception
18 operated to bring about the obtaining of the property or services; it
19 is not necessary that deception be the sole means of obtaining the
20 property or services;

21 (5) "Deception" occurs when an actor knowingly:

22 (a) Creates or confirms another's false impression which the
23 actor knows to be false; or

24 (b) Fails to correct another's impression which the actor
25 previously has created or confirmed; or

26 (c) Prevents another from acquiring information material to the
27 disposition of the property involved; or

28 (d) Transfers or encumbers property without disclosing a lien,
29 adverse claim, or other legal impediment to the enjoyment of the
30 property, whether that impediment is or is not valid, or is or is not
31 a matter of official record; or

32 (e) Promises performance which the actor does not intend to
33 perform or knows will not be performed;

34 (6) "Deprive" in addition to its common meaning means to make
35 unauthorized use or an unauthorized copy of records, information,
36 data, trade secrets, or computer programs;

37 (7) "Mail," in addition to its common meaning, means any letter,
38 postal card, package, bag, or other item that is addressed to a
39 specific address for delivery by the United States postal service or

1 any commercial carrier performing the function of delivering similar
2 items to residences or businesses, provided the mail:

3 (a)(i) Is addressed with a specific person's name, family name,
4 or company, business, or corporation name on the outside of the item
5 of mail or on the contents inside; and

6 (ii) Is not addressed to a generic unnamed occupant or resident
7 of the address without an identifiable person, family, or company,
8 business, or corporation name on the outside of the item of mail or
9 on the contents inside; and

10 (b) Has been left for collection or delivery in any letter box,
11 mailbox, mail receptacle, or other authorized depository for mail, or
12 given to a mail carrier, or left with any private business that
13 provides mailboxes or mail addresses for customers or when left in a
14 similar location for collection or delivery by any commercial
15 carrier; or

16 (c) Is in transit with a postal service, mail carrier, letter
17 carrier, commercial carrier, or that is at or in a postal vehicle,
18 postal station, mailbox, postal airplane, transit station, or similar
19 location of a commercial carrier; or

20 (d) Has been delivered to the intended address, but has not been
21 received by the intended addressee.

22 Mail, for purposes of chapter 164, Laws of 2011, does not include
23 magazines, catalogs, direct mail inserts, newsletters, advertising
24 circulars, or any mail that is considered third-class mail by the
25 United States postal service;

26 (8) "Mailbox," in addition to its common meaning, means any
27 authorized depository or receptacle of mail for the United States
28 postal service or authorized depository for a commercial carrier that
29 provides services to the general public, including any address to
30 which mail is or can be addressed, or a place where the United States
31 postal service or equivalent commercial carrier delivers mail to its
32 addressee;

33 (9) "Merchandise pallet" means a wood or plastic carrier designed
34 and manufactured as an item on which products can be placed before or
35 during transport to retail outlets, manufacturers, or contractors,
36 and affixed with language stating "property of . . .," "owned
37 by . . .," or other markings or words identifying ownership;

38 (10) "Obtain control over" in addition to its common meaning,
39 means:

1 (a) In relation to property, to bring about a transfer or
2 purported transfer to the obtainer or another of a legally recognized
3 interest in the property; or

4 (b) In relation to labor or service, to secure performance
5 thereof for the benefits of the obtainer or another;

6 (11) "Owner" means a person, other than the actor, who has
7 possession of or any other interest in the property or services
8 involved, and without whose consent the actor has no authority to
9 exert control over the property or services;

10 (12) "Parking area" means a parking lot or other property
11 provided by retailers for use by a customer for parking an automobile
12 or other vehicle;

13 (13) "Receive" includes, but is not limited to, acquiring title,
14 possession, control, or a security interest, or any other interest in
15 the property;

16 (14) "Received by the intended addressee" means that the
17 addressee, owner of the delivery mailbox, or authorized agent has
18 removed the delivered mail from its delivery mailbox;

19 (15) "Services" includes, but is not limited to, labor,
20 professional services, transportation services, electronic computer
21 services, the supplying of hotel accommodations, restaurant services,
22 entertainment, the supplying of equipment for use, and the supplying
23 of commodities of a public utility nature such as gas, electricity,
24 steam, and water;

25 (16) "Shopping cart" means a basket mounted on wheels or similar
26 container generally used in a retail establishment by a customer for
27 the purpose of transporting goods of any kind;

28 (17) "Stolen" means obtained by theft, robbery, or extortion;

29 (18) "Subscription television service" means cable or encrypted
30 video and related audio and data services intended for viewing on a
31 home television by authorized members of the public only, who have
32 agreed to pay a fee for the service. Subscription services include
33 but are not limited to those video services presently delivered by
34 coaxial cable, fiber optic cable, terrestrial microwave, television
35 broadcast, and satellite transmission;

36 (19) "Telecommunication device" means (a) any type of instrument,
37 device, machine, or equipment that is capable of transmitting or
38 receiving telephonic or electronic communications; or (b) any part of
39 such an instrument, device, machine, or equipment, or any computer
40 circuit, computer chip, electronic mechanism, or other component,

1 that is capable of facilitating the transmission or reception of
2 telephonic or electronic communications;

3 (20) "Telecommunication service" includes any service other than
4 subscription television service provided for a charge or compensation
5 to facilitate the transmission, transfer, or reception of a
6 telephonic communication or an electronic communication;

7 (21) Value. (a) "Value" means the market value of the property or
8 services at the time and in the approximate area of the criminal act.

9 (b) Whether or not they have been issued or delivered, written
10 instruments, except those having a readily ascertained market value,
11 shall be evaluated as follows:

12 (i) The value of an instrument constituting an evidence of debt,
13 such as a check, draft, or promissory note, shall be deemed the
14 amount due or collectible thereon or thereby, that figure ordinarily
15 being the face amount of the indebtedness less any portion thereof
16 which has been satisfied;

17 (ii) The value of a ticket or equivalent instrument which
18 evidences a right to receive transportation, entertainment, or other
19 service shall be deemed the price stated thereon, if any; and if no
20 price is stated thereon, the value shall be deemed the price of such
21 ticket or equivalent instrument which the issuer charged the general
22 public;

23 (iii) The value of any other instrument that creates, releases,
24 discharges, or otherwise affects any valuable legal right, privilege,
25 or obligation shall be deemed the greatest amount of economic loss
26 which the owner of the instrument might reasonably suffer by virtue
27 of the loss of the instrument.

28 (c) Except as provided in RCW 9A.56.340(4) and 9A.56.350(4),
29 whenever any series of transactions which constitute theft, would,
30 when considered separately, constitute theft in the third degree
31 because of value, and said series of transactions are a part of a
32 criminal episode or a common scheme or plan, then the transactions
33 may be aggregated in one count and the sum of the value of all said
34 transactions shall be the value considered in determining the degree
35 of theft involved.

36 For purposes of this subsection, "criminal episode" means a
37 series of thefts committed by the same person from one or more
38 mercantile establishments on three or more occasions within a five-
39 day period.

1 (d) Whenever any person is charged with possessing stolen
2 property and such person has unlawfully in his possession at the same
3 time the stolen property of more than one person, then the stolen
4 property possessed may be aggregated in one count and the sum of the
5 value of all said stolen property shall be the value considered in
6 determining the degree of theft involved. Thefts committed by the
7 same person in different counties that have been aggregated in one
8 county may be prosecuted in any county in which one of the thefts
9 occurred.

10 (e) Property or services having value that cannot be ascertained
11 pursuant to the standards set forth above shall be deemed to be of a
12 value not exceeding two hundred and fifty dollars;

13 (22) "Vulnerable adult" includes a person eighteen years of age
14 or older who:

15 (a) Has the functional, mental, or physical inability to care for
16 himself or herself; or

17 (b) Is suffering from a cognitive impairment other than voluntary
18 intoxication;

19 (23) "Wrongfully obtains" or "exerts unauthorized control" means:

20 (a) To take the property or services of another;

21 (b) Having any property or services in one's possession, custody
22 or control as bailee, factor, lessee, pledgee, renter, servant,
23 attorney, agent, employee, trustee, executor, administrator,
24 guardian, or officer of any person, estate, association, or
25 corporation, or as a public officer, or person authorized by
26 agreement or competent authority to take or hold such possession,
27 custody, or control, to secrete, withhold, or appropriate the same to
28 his or her own use or to the use of any person other than the true
29 owner or person entitled thereto; or

30 (c) Having any property or services in one's possession, custody,
31 or control as partner, to secrete, withhold, or appropriate the same
32 to his or her use or to the use of any person other than the true
33 owner or person entitled thereto, where the use is unauthorized by
34 the partnership agreement.

35 **Sec. 108.** RCW 9A.04.080 and 2013 c 17 s 1 are each amended to
36 read as follows:

37 (1) Prosecutions for criminal offenses shall not be commenced
38 after the periods prescribed in this section.

1 (a) The following offenses may be prosecuted at any time after
2 their commission:

3 (i) Murder;

4 (ii) Homicide by abuse;

5 (iii) Arson if a death results;

6 (iv) Vehicular homicide;

7 (v) Vehicular assault if a death results;

8 (vi) Hit-and-run injury-accident if a death results (RCW
9 46.52.020(4)).

10 (b) Except as provided in (c) of this subsection, the following
11 offenses shall not be prosecuted more than ten years after their
12 commission:

13 (i) Any felony committed by a public officer if the commission is
14 in connection with the duties of his or her office or constitutes a
15 breach of his or her public duty or a violation of the oath of
16 office;

17 (ii) Arson if no death results;

18 (iii)(A) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is
19 reported to a law enforcement agency within one year of its
20 commission.

21 (B) If a violation of RCW 9A.44.040 or 9A.44.050 is not reported
22 within one year, the rape may not be prosecuted more than three years
23 after its commission; or

24 (iv) Indecent liberties under RCW 9A.44.100(1)(b).

25 (c) Violations of the following statutes, when committed against
26 a victim under the age of eighteen, may be prosecuted up to the
27 victim's thirtieth birthday: RCW 9A.44.040 (rape in the first
28 degree), 9A.44.050 (rape in the second degree), 9A.44.073 (rape of a
29 child in the first degree), 9A.44.076 (rape of a child in the second
30 degree), 9A.44.079 (rape of a child in the third degree), 9A.44.083
31 (child molestation in the first degree), 9A.44.086 (child molestation
32 in the second degree), 9A.44.089 (child molestation in the third
33 degree), 9A.44.100(1)(b) (indecent liberties), 9A.64.020 (incest), or
34 9.68A.040 (sexual exploitation of a minor).

35 (d) The following offenses shall not be prosecuted more than six
36 years after their commission or their discovery, whichever occurs
37 later:

38 (i) Violations of RCW 9A.82.060 or 9A.82.080;

39 (ii) Any felony violation of chapter 9A.83 RCW;

40 (iii) Any felony violation of chapter 9.35 RCW;

1 (iv) Theft in the first or second degree under chapter 9A.56 RCW
2 when accomplished by color or aid of deception; ((~~or~~))

3 (v) Theft from a vulnerable adult under section 106 of this act;
4 or

5 (vi) Trafficking in stolen property in the first or second degree
6 under chapter 9A.82 RCW in which the stolen property is a motor
7 vehicle or major component part of a motor vehicle as defined in RCW
8 46.80.010.

9 (e) The following offenses shall not be prosecuted more than five
10 years after their commission: Any class C felony under chapter 74.09,
11 82.36, or 82.38 RCW.

12 (f) Bigamy shall not be prosecuted more than three years after
13 the time specified in RCW 9A.64.010.

14 (g) A violation of RCW 9A.56.030 must not be prosecuted more than
15 three years after the discovery of the offense when the victim is a
16 tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

17 (h) No other felony may be prosecuted more than three years after
18 its commission; except that in a prosecution under RCW 9A.44.115, if
19 the person who was viewed, photographed, or filmed did not realize at
20 the time that he or she was being viewed, photographed, or filmed,
21 the prosecution must be commenced within two years of the time the
22 person who was viewed or in the photograph or film first learns that
23 he or she was viewed, photographed, or filmed.

24 (i) No gross misdemeanor may be prosecuted more than two years
25 after its commission.

26 (j) No misdemeanor may be prosecuted more than one year after its
27 commission.

28 (2) The periods of limitation prescribed in subsection (1) of
29 this section do not run during any time when the person charged is
30 not usually and publicly resident within this state.

31 (3) In any prosecution for a sex offense as defined in RCW
32 9.94A.030, the periods of limitation prescribed in subsection (1) of
33 this section run from the date of commission or one year from the
34 date on which the identity of the suspect is conclusively established
35 by deoxyribonucleic acid testing or by photograph as defined in RCW
36 9.68A.011, whichever is later.

37 (4) If, before the end of a period of limitation prescribed in
38 subsection (1) of this section, an indictment has been found or a
39 complaint or an information has been filed, and the indictment,
40 complaint, or information is set aside, then the period of limitation

1 is extended by a period equal to the length of time from the finding
2 or filing to the setting aside.

3 **Sec. 109.** RCW 9A.56.030 and 2013 c 322 s 2 are each amended to
4 read as follows:

5 (1) Except as provided in section 106 of this act, a person is
6 guilty of theft in the first degree if he or she commits theft of:

7 (a) Property or services which exceed(s) five thousand dollars in
8 value other than a firearm as defined in RCW 9.41.010;

9 (b) Property of any value, other than a firearm as defined in RCW
10 9.41.010 or a motor vehicle, taken from the person of another;

11 (c) A search and rescue dog, as defined in RCW 9.91.175, while
12 the search and rescue dog is on duty; or

13 (d) Commercial metal property, nonferrous metal property, or
14 private metal property, as those terms are defined in RCW 19.290.010,
15 and the costs of the damage to the owner's property exceed five
16 thousand dollars in value.

17 (2) Theft in the first degree is a class B felony.

18 **Sec. 110.** RCW 9A.56.040 and 2013 c 322 s 3 are each amended to
19 read as follows:

20 (1) Except as provided in section 106 of this act, a person is
21 guilty of theft in the second degree if he or she commits theft of:

22 (a) Property or services which exceed(s) seven hundred fifty
23 dollars in value but does not exceed five thousand dollars in value,
24 other than a firearm as defined in RCW 9.41.010 or a motor vehicle;

25 (b) A public record, writing, or instrument kept, filed, or
26 deposited according to law with or in the keeping of any public
27 office or public servant;

28 (c) Commercial metal property, nonferrous metal property, or
29 private metal property, as those terms are defined in RCW 19.290.010,
30 and the costs of the damage to the owner's property exceed seven
31 hundred fifty dollars but does not exceed five thousand dollars in
32 value; or

33 (d) An access device.

34 (2) Theft in the second degree is a class C felony.

35 **Sec. 111.** RCW 74.34.020 and 2015 c 268 s 1 are each amended to
36 read as follows:

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

3 (1) "Abandonment" means action or inaction by a person or entity
4 with a duty of care for a vulnerable adult that leaves the vulnerable
5 person without the means or ability to obtain necessary food,
6 clothing, shelter, or health care.

7 (2) "Abuse" means the willful action or inaction that inflicts
8 injury, unreasonable confinement, intimidation, or punishment on a
9 vulnerable adult. In instances of abuse of a vulnerable adult who is
10 unable to express or demonstrate physical harm, pain, or mental
11 anguish, the abuse is presumed to cause physical harm, pain, or
12 mental anguish. Abuse includes sexual abuse, mental abuse, physical
13 abuse, and personal exploitation of a vulnerable adult, and improper
14 use of restraint against a vulnerable adult which have the following
15 meanings:

16 (a) "Sexual abuse" means any form of nonconsensual sexual
17 conduct, including but not limited to unwanted or inappropriate
18 touching, rape, sodomy, sexual coercion, sexually explicit
19 photographing, and sexual harassment. Sexual abuse also includes any
20 sexual conduct between a staff person, who is not also a resident or
21 client, of a facility or a staff person of a program authorized under
22 chapter 71A.12 RCW, and a vulnerable adult living in that facility or
23 receiving service from a program authorized under chapter 71A.12 RCW,
24 whether or not it is consensual.

25 (b) "Physical abuse" means the willful action of inflicting
26 bodily injury or physical mistreatment. Physical abuse includes, but
27 is not limited to, striking with or without an object, slapping,
28 pinching, choking, kicking, shoving, or prodding.

29 (c) "Mental abuse" means a willful verbal or nonverbal action
30 that threatens, humiliates, harasses, coerces, intimidates, isolates,
31 unreasonably confines, or punishes a vulnerable adult. Mental abuse
32 may include ridiculing, yelling, or swearing.

33 (d) "Personal exploitation" means an act of forcing, compelling,
34 or exerting undue influence over a vulnerable adult causing the
35 vulnerable adult to act in a way that is inconsistent with relevant
36 past behavior, or causing the vulnerable adult to perform services
37 for the benefit of another.

38 (e) "Improper use of restraint" means the inappropriate use of
39 chemical, physical, or mechanical restraints for convenience or
40 discipline or in a manner that: (i) Is inconsistent with federal or

1 state licensing or certification requirements for facilities,
2 hospitals, or programs authorized under chapter 71A.12 RCW; (ii) is
3 not medically authorized; or (iii) otherwise constitutes abuse under
4 this section.

5 (3) "Chemical restraint" means the administration of any drug to
6 manage a vulnerable adult's behavior in a way that reduces the safety
7 risk to the vulnerable adult or others, has the temporary effect of
8 restricting the vulnerable adult's freedom of movement, and is not
9 standard treatment for the vulnerable adult's medical or psychiatric
10 condition.

11 (4) "Consent" means express written consent granted after the
12 vulnerable adult or his or her legal representative has been fully
13 informed of the nature of the services to be offered and that the
14 receipt of services is voluntary.

15 (5) "Department" means the department of social and health
16 services.

17 (6) "Facility" means a residence licensed or required to be
18 licensed under chapter 18.20 RCW, assisted living facilities; chapter
19 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes;
20 chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW,
21 residential habilitation centers; or any other facility licensed or
22 certified by the department.

23 (7) "Financial exploitation" means the illegal or improper use,
24 control over, or withholding of the property, income, resources, or
25 trust funds of the vulnerable adult by any person or entity for any
26 person's or entity's profit or advantage other than for the
27 vulnerable adult's profit or advantage. "Financial exploitation"
28 includes, but is not limited to:

29 (a) The use of deception, intimidation, or undue influence by a
30 person or entity in a position of trust and confidence with a
31 vulnerable adult to obtain or use the property, income, resources, or
32 trust funds of the vulnerable adult for the benefit of a person or
33 entity other than the vulnerable adult;

34 (b) The breach of a fiduciary duty, including, but not limited
35 to, the misuse of a power of attorney, trust, or a guardianship
36 appointment, that results in the unauthorized appropriation, sale, or
37 transfer of the property, income, resources, or trust funds of the
38 vulnerable adult for the benefit of a person or entity other than the
39 vulnerable adult; or

1 (c) Obtaining or using a vulnerable adult's property, income,
2 resources, or trust funds without lawful authority, by a person or
3 entity who knows or clearly should know that the vulnerable adult
4 lacks the capacity to consent to the release or use of his or her
5 property, income, resources, or trust funds.

6 (8) "Financial institution" has the same meaning as in RCW
7 30A.22.040 and 30A.22.041. For purposes of this chapter only,
8 "financial institution" also means a "broker-dealer" or "investment
9 adviser" as defined in RCW 21.20.005.

10 (9) "Hospital" means a facility licensed under chapter 70.41,
11 71.12, or 72.23 RCW and any employee, agent, officer, director, or
12 independent contractor thereof.

13 (10) "Incapacitated person" means a person who is at a
14 significant risk of personal or financial harm under RCW 11.88.010(1)
15 (a), (b), (c), or (d).

16 (11) "Individual provider" means a person under contract with the
17 department to provide services in the home under chapter 74.09 or
18 74.39A RCW.

19 (12) "Interested person" means a person who demonstrates to the
20 court's satisfaction that the person is interested in the welfare of
21 the vulnerable adult, that the person has a good faith belief that
22 the court's intervention is necessary, and that the vulnerable adult
23 is unable, due to incapacity, undue influence, or duress at the time
24 the petition is filed, to protect his or her own interests.

25 (13) "Mandated reporter" is an employee of the department; law
26 enforcement officer; social worker; professional school personnel;
27 individual provider; an employee of a facility; an operator of a
28 facility; an employee of a social service, welfare, mental health,
29 adult day health, adult day care, home health, home care, or hospice
30 agency; county coroner or medical examiner; Christian Science
31 practitioner; or health care provider subject to chapter 18.130 RCW.

32 (14) "Mechanical restraint" means any device attached or adjacent
33 to the vulnerable adult's body that he or she cannot easily remove
34 that restricts freedom of movement or normal access to his or her
35 body. "Mechanical restraint" does not include the use of devices,
36 materials, or equipment that are (a) medically authorized, as
37 required, and (b) used in a manner that is consistent with federal or
38 state licensing or certification requirements for facilities,
39 hospitals, or programs authorized under chapter 71A.12 RCW.

1 (15) "Neglect" means (a) a pattern of conduct or inaction by a
2 person or entity with a duty of care that fails to provide the goods
3 and services that maintain physical or mental health of a vulnerable
4 adult, or that fails to avoid or prevent physical or mental harm or
5 pain to a vulnerable adult; or (b) an act or omission by a person or
6 entity with a duty of care that demonstrates a serious disregard of
7 consequences of such a magnitude as to constitute a clear and present
8 danger to the vulnerable adult's health, welfare, or safety,
9 including but not limited to conduct prohibited under RCW 9A.42.100.

10 (16) "Permissive reporter" means any person, including, but not
11 limited to, an employee of a financial institution, attorney, or
12 volunteer in a facility or program providing services for vulnerable
13 adults.

14 (17) "Physical restraint" means the application of physical force
15 without the use of any device, for the purpose of restraining the
16 free movement of a vulnerable adult's body. "Physical restraint" does
17 not include (a) briefly holding without undue force a vulnerable
18 adult in order to calm or comfort him or her, or (b) holding a
19 vulnerable adult's hand to safely escort him or her from one area to
20 another.

21 (18) "Protective services" means any services provided by the
22 department to a vulnerable adult with the consent of the vulnerable
23 adult, or the legal representative of the vulnerable adult, who has
24 been abandoned, abused, financially exploited, neglected, or in a
25 state of self-neglect. These services may include, but are not
26 limited to case management, social casework, home care, placement,
27 arranging for medical evaluations, psychological evaluations, day
28 care, or referral for legal assistance.

29 (19) "Self-neglect" means the failure of a vulnerable adult, not
30 living in a facility, to provide for himself or herself the goods and
31 services necessary for the vulnerable adult's physical or mental
32 health, and the absence of which impairs or threatens the vulnerable
33 adult's well-being. This definition may include a vulnerable adult
34 who is receiving services through home health, hospice, or a home
35 care agency, or an individual provider when the neglect is not a
36 result of inaction by that agency or individual provider.

37 (20) "Social worker" means:

38 (a) A social worker as defined in RCW 18.320.010(2); or

39 (b) Anyone engaged in a professional capacity during the regular
40 course of employment in encouraging or promoting the health, welfare,

1 support, or education of vulnerable adults, or providing social
2 services to vulnerable adults, whether in an individual capacity or
3 as an employee or agent of any public or private organization or
4 institution.

5 (21) "Vulnerable adult" includes a person:

6 (a) Sixty years of age or older who has the functional, mental,
7 or physical inability to care for himself or herself; or

8 (b) Found incapacitated under chapter 11.88 RCW; or

9 (c) Who has a developmental disability as defined under RCW
10 71A.10.020; or

11 (d) Admitted to any facility; or

12 (e) Receiving services from home health, hospice, or home care
13 agencies licensed or required to be licensed under chapter 70.127
14 RCW; or

15 (f) Receiving services from an individual provider; or

16 (g) Who self-directs his or her own care and receives services
17 from a personal aide under chapter 74.39 RCW.

18 (22) "Vulnerable adult advocacy team" means a team of three or
19 more persons who coordinate a multidisciplinary process, in
20 compliance with this act and the protocol governed by section 112 of
21 this act, for preventing, identifying, investigating, prosecuting,
22 and providing services related to abuse, neglect, or financial
23 exploitation of vulnerable adults.

24 NEW SECTION. Sec. 112. A new section is added to chapter 74.34
25 RCW to read as follows:

26 (1) Each county is encouraged to develop a written protocol for
27 handling criminal cases involving vulnerable adults. The protocol
28 shall:

29 (a) Address the coordination of vulnerable adult mistreatment
30 investigations among the following groups as appropriate and when
31 available: The prosecutor's office; law enforcement; adult protective
32 services; vulnerable adult advocacy centers; local advocacy groups;
33 community victim advocacy programs; professional guardians; medical
34 examiners or coroners; financial analysts or forensic accountants;
35 social workers with experience or training related to the
36 mistreatment of vulnerable adults; medical personnel; the state long-
37 term care ombuds or a regional long-term care ombuds specifically
38 designated by the state long-term care ombuds; developmental
39 disabilities ombuds; the attorney general's office; and any other

1 local agency involved in the criminal investigation of vulnerable
2 adult mistreatment;

3 (b) Be developed by the prosecuting attorney with the assistance
4 of the agencies referenced in this subsection;

5 (c) Provide that participation as a member of the vulnerable
6 adult advocacy team is voluntary;

7 (d) Include a brief statement provided by the state long-term
8 care ombuds, without alteration, that describes the confidentiality
9 laws and policies governing the state long-term care ombuds program,
10 and includes citations to relevant federal and state laws;

11 (e) Require the development and use of a confidentiality
12 agreement, in compliance with this section, that includes, but is not
13 limited to, terms governing the type of information that must be
14 shared, and the means by which it is shared; the existing
15 confidentiality obligations of team members; and the circumstances
16 under which team members may disclose information outside of the
17 team;

18 (f) Require the vulnerable adult advocacy team to make a good
19 faith effort to obtain the participation of the state long-term care
20 ombuds prior to addressing any issue related to abuse, neglect, or
21 financial exploitation of a vulnerable adult residing in a long-term
22 care facility during the relevant time period.

23 (2) Members of a vulnerable adult advocacy team must disclose to
24 each other confidential or sensitive information and records, if the
25 team member disclosing the information or records reasonably believes
26 the disclosure is relevant to the duties of the vulnerable adult
27 advocacy team. The disclosure and receipt of confidential information
28 between vulnerable adult advocacy team members shall be governed by
29 the requirements of this section, and by the county protocol
30 developed pursuant to this section.

31 (3) Prior to participation, each member of the vulnerable adult
32 advocacy team must sign a confidentiality agreement that requires
33 compliance with all governing federal and state confidentiality laws.

34 (4) The information or records obtained shall be maintained in a
35 manner that ensures the maximum protection of privacy and
36 confidentiality rights.

37 (5) Information and records communicated or provided to
38 vulnerable adult advocacy team members, as well as information and
39 records created in the course of an investigation, shall be deemed
40 private and confidential and shall be protected from discovery and

1 disclosure by all applicable statutory and common law protections.
2 The disclosed information may not be further disclosed except by law
3 or by court order.

4 **PART II**
5 **SERIOUSNESS LEVEL OF CRIMES**

6 **Sec. 201.** RCW 9.94A.515 and 2016 c 213 s 5, 2016 c 164 s 13, and
7 2016 c 6 s 1 are each reenacted and amended to read as follows:

8 TABLE 2

9 CRIMES INCLUDED WITHIN EACH
10 SERIOUSNESS LEVEL

- 11 XVI Aggravated Murder 1 (RCW 10.95.020)
- 12 XV Homicide by abuse (RCW 9A.32.055)
- 13 Malicious explosion 1 (RCW
14 70.74.280(1))
- 15 Murder 1 (RCW 9A.32.030)
- 16 XIV Murder 2 (RCW 9A.32.050)
- 17 Trafficking 1 (RCW 9A.40.100(1))
- 18 XIII Malicious explosion 2 (RCW
19 70.74.280(2))
- 20 Malicious placement of an explosive 1
21 (RCW 70.74.270(1))
- 22 Rape of a Child 1 (RCW 9A.44.073)
- 23 XII Assault 1 (RCW 9A.36.011)
- 24 Assault of a Child 1 (RCW 9A.36.120)
- 25 Malicious placement of an imitation
26 device 1 (RCW 70.74.272(1)(a))
- 27 Promoting Commercial Sexual Abuse of
28 a Minor (RCW 9.68A.101)
- 29 Rape 1 (RCW 9A.44.040)
- 30 Rape of a Child (~~(1 (RCW 9A.44.073))~~)
31 2 (RCW 9A.44.076)
- 32 Trafficking 2 (RCW 9A.40.100(3))
- 33 XI Child Molestation 1 (RCW 9A.44.083)

1 Manslaughter 1 (RCW 9A.32.060)
2 Rape 2 (RCW 9A.44.050)
3 ((Rape of a Child 2 (RCW 9A.44.076)))
4 Vehicular Homicide, by being under the
5 influence of intoxicating liquor or
6 any drug (RCW 46.61.520)
7 Vehicular Homicide, by the operation of
8 any vehicle in a reckless manner
9 (RCW 46.61.520)
10 X ((Child Molestation 1 (RCW
11 9A.44.083)))
12 Criminal Mistreatment 1 (RCW
13 9A.42.020)
14 Indecent Liberties (with forcible
15 compulsion) (RCW
16 9A.44.100(1)(a))
17 Kidnapping 1 (RCW 9A.40.020)
18 Leading Organized Crime (RCW
19 9A.82.060(1)(a))
20 Malicious explosion 3 (RCW
21 70.74.280(3))
22 Sexually Violent Predator Escape (RCW
23 9A.76.115)
24 IX Abandonment of Dependent Person 1
25 (RCW 9A.42.060)
26 Assault of a Child 2 (RCW 9A.36.130)
27 Explosive devices prohibited (RCW
28 70.74.180)
29 Hit and Run—Death (RCW
30 46.52.020(4)(a))
31 Homicide by Watercraft, by being under
32 the influence of intoxicating liquor
33 or any drug (RCW 79A.60.050)
34 Inciting Criminal Profiteering (RCW
35 9A.82.060(1)(b))

1 Malicious placement of an explosive 2
2 (RCW 70.74.270(2))
3 Robbery 1 (RCW 9A.56.200)
4 Sexual Exploitation (RCW 9.68A.040)
5 VIII Arson 1 (RCW 9A.48.020)
6 Child Molestation 2 (RCW 9A.44.086)
7 Commercial Sexual Abuse of a Minor
8 (RCW 9.68A.100)
9 Homicide by Watercraft, by the
10 operation of any vessel in a reckless
11 manner (RCW 79A.60.050)
12 Manslaughter 2 (RCW 9A.32.070)
13 Promoting Prostitution 1 (RCW
14 9A.88.070)
15 Theft of Ammonia (RCW 69.55.010)
16 VII Air bag diagnostic systems (causing
17 bodily injury or death) (RCW
18 46.37.660(2)(b))
19 Air bag replacement requirements
20 (causing bodily injury or death)
21 (RCW 46.37.660(1)(b))
22 Burglary 1 (RCW 9A.52.020)
23 ~~((Child Molestation 2 (RCW
24 9A.44.086)))~~
25 Civil Disorder Training (RCW
26 9A.48.120)
27 Dealing in depictions of minor engaged
28 in sexually explicit conduct 1
29 (RCW 9.68A.050(1))
30 Drive-by Shooting (RCW 9A.36.045)
31 Homicide by Watercraft, by disregard
32 for the safety of others (RCW
33 79A.60.050)

1 Indecent Liberties (without forcible
2 compulsion) (RCW 9A.44.100(1)
3 (b) and (c))
4 Introducing Contraband 1 (RCW
5 9A.76.140)
6 Malicious placement of an explosive 3
7 (RCW 70.74.270(3))
8 Manufacture or import counterfeit,
9 nonfunctional, damaged, or
10 previously deployed air bag
11 (causing bodily injury or death)
12 (RCW 46.37.650(1)(b))
13 Negligently Causing Death By Use of a
14 Signal Preemption Device (RCW
15 46.37.675)
16 Rape of a Child 3 (RCW 9A.44.079)
17 Sale, install, (~~or~~) or reinstall
18 counterfeit, nonfunctional,
19 damaged, or previously deployed
20 airbag (RCW 46.37.650(2)(b))
21 Sending, bringing into state depictions
22 of minor engaged in sexually
23 explicit conduct 1 (RCW
24 9.68A.060(1))
25 Unlawful Possession of a Firearm in the
26 first degree (RCW 9.41.040(1))
27 Use of a Machine Gun in Commission
28 of a Felony (RCW 9.41.225)
29 Vehicular Homicide, by disregard for
30 the safety of others (RCW
31 46.61.520)
32 VI Bail Jumping with Murder 1 (RCW
33 9A.76.170(3)(a))
34 Bribery (RCW 9A.68.010)
35 Child Molestation 3 (RCW 9A.44.089)
36 Incest 1 (RCW 9A.64.020(1))

1 Intimidating a Judge (RCW 9A.72.160)
2 Intimidating a Juror/Witness (RCW
3 9A.72.110, 9A.72.130)
4 Malicious placement of an imitation
5 device 2 (RCW 70.74.272(1)(b))
6 Possession of Depictions of a Minor
7 Engaged in Sexually Explicit
8 Conduct 1 (RCW 9.68A.070(1))
9 ~~((Rape of a Child 3 (RCW 9A.44.079)))~~
10 Theft from a Vulnerable Adult 1
11 (section 106(1) of this act)
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 2
16 (RCW 9A.42.070)
17 Advancing money or property for
18 extortionate extension of credit
19 (RCW 9A.82.030)
20 Air bag diagnostic systems (RCW
21 46.37.660(2)(c))
22 Air bag replacement requirements
23 (RCW 46.37.660(1)(c))
24 Bail Jumping with class A Felony
25 (RCW 9A.76.170(3)(b))
26 ~~((Child Molestation 3 (RCW
27 9A.44.089)))~~
28 Criminal Mistreatment 2 (RCW
29 9A.42.030)
30 Custodial Sexual Misconduct 1 (RCW
31 9A.44.160)
32 Dealing in Depictions of Minor
33 Engaged in Sexually Explicit
34 Conduct 2 (RCW 9.68A.050(2))

1 Domestic Violence Court Order
2 Violation (RCW 10.99.040,
3 10.99.050, 26.09.300, 26.10.220,
4 26.26.138, 26.50.110, 26.52.070, or
5 74.34.145)
6 ~~((Driving While Under the Influence~~
7 ~~(RCW 46.61.502(6))))~~
8 Extortion 1 (RCW 9A.56.120)
9 Extortionate Extension of Credit (RCW
10 9A.82.020)
11 Extortionate Means to Collect
12 Extensions of Credit (RCW
13 9A.82.040)
14 Incest 2 (RCW 9A.64.020(2))
15 Kidnapping 2 (RCW 9A.40.030)
16 Manufacture or import counterfeit,
17 nonfunctional, damaged, or
18 previously deployed air bag (RCW
19 46.37.650(1)(c))
20 Perjury 1 (RCW 9A.72.020)
21 Persistent prison misbehavior (RCW
22 9.94.070)
23 ~~((Physical Control of a Vehicle While~~
24 ~~Under the Influence (RCW~~
25 ~~46.61.504(6))))~~
26 Possession of a Stolen Firearm (RCW
27 9A.56.310)
28 Rape 3 (RCW 9A.44.060)
29 Rendering Criminal Assistance 1 (RCW
30 9A.76.070)
31 Sale, install, ~~((for))~~ or reinstall
32 counterfeit, nonfunctional,
33 damaged, or previously deployed
34 airbag (RCW 46.37.650(2)(c))

1 Sending, Bringing into State Depictions
2 of Minor Engaged in Sexually
3 Explicit Conduct 2 (RCW
4 9.68A.060(2))
5 Sexual Misconduct with a Minor 1
6 (RCW 9A.44.093)
7 Sexually Violating Human Remains
8 (RCW 9A.44.105)
9 Stalking (RCW 9A.46.110)
10 Taking Motor Vehicle Without
11 Permission 1 (RCW 9A.56.070)
12 IV Arson 2 (RCW 9A.48.030)
13 Assault 2 (RCW 9A.36.021)
14 Assault 3 (of a Peace Officer with a
15 Projectile Stun Gun) (RCW
16 9A.36.031(1)(h))
17 Assault 4 (third domestic violence
18 offense) (RCW 9A.36.041(3))
19 Assault by Watercraft (RCW
20 79A.60.060)
21 Bribing a Witness/Bribe Received by
22 Witness (RCW 9A.72.090,
23 9A.72.100)
24 Cheating 1 (RCW 9.46.1961)
25 Commercial Bribery (RCW 9A.68.060)
26 Counterfeiting (RCW 9.16.035(4))
27 Driving While Under the Influence
28 (RCW 46.61.502(6))
29 Endangerment with a Controlled
30 Substance (RCW 9A.42.100)
31 Escape 1 (RCW 9A.76.110)
32 Hit and Run—Injury (RCW
33 46.52.020(4)(b))
34 Hit and Run with Vessel—Injury
35 Accident (RCW 79A.60.200(3))

1 Identity Theft 1 (RCW 9.35.020(2))
2 Indecent Exposure to Person Under Age
3 Fourteen (subsequent sex offense)
4 (RCW 9A.88.010)
5 Influencing Outcome of Sporting Event
6 (RCW 9A.82.070)
7 Malicious Harassment (RCW
8 9A.36.080)
9 Physical Control of a Vehicle While
10 Under the Influence (RCW
11 46.61.504(6))
12 Possession of Depictions of a Minor
13 Engaged in Sexually Explicit
14 Conduct 2 (RCW 9.68A.070(2))
15 Residential Burglary (RCW 9A.52.025)
16 Robbery 2 (RCW 9A.56.210)
17 Theft of Livestock 1 (RCW 9A.56.080)
18 Threats to Bomb (RCW 9.61.160)
19 Trafficking in Stolen Property 1 (RCW
20 9A.82.050)
21 Unlawful factoring of a credit card or
22 payment card transaction (RCW
23 9A.56.290(4)(b))
24 Unlawful transaction of health coverage
25 as a health care service contractor
26 (RCW 48.44.016(3))
27 Unlawful transaction of health coverage
28 as a health maintenance
29 organization (RCW 48.46.033(3))
30 Unlawful transaction of insurance
31 business (RCW 48.15.023(3))
32 Unlicensed practice as an insurance
33 professional (RCW 48.17.063(2))
34 Use of Proceeds of Criminal
35 Profiteering (RCW 9A.82.080 (1)
36 and (2))

1 Vehicle Prowling 2 (third or subsequent
2 offense) (RCW 9A.52.100(3))
3 Vehicular Assault, by being under the
4 influence of intoxicating liquor or
5 any drug, or by the operation or
6 driving of a vehicle in a reckless
7 manner (RCW 46.61.522)
8 Viewing of Depictions of a Minor
9 Engaged in Sexually Explicit
10 Conduct 1 (RCW 9.68A.075(1))
11 Willful Failure to Return from Furlough
12 (RCW 72.66.060)
13 III Animal Cruelty 1 (Sexual Conduct or
14 Contact) (RCW 16.52.205(3))
15 Assault 3 (Except Assault 3 of a Peace
16 Officer With a Projectile Stun Gun)
17 (RCW 9A.36.031 except subsection
18 (1)(h))
19 Assault of a Child 3 (RCW 9A.36.140)
20 Bail Jumping with class B or C Felony
21 (RCW 9A.76.170(3)(c))
22 Burglary 2 (RCW 9A.52.030)
23 Communication with a Minor for
24 Immoral Purposes (RCW
25 9.68A.090)
26 Criminal Gang Intimidation (RCW
27 9A.46.120)
28 Custodial Assault (RCW 9A.36.100)
29 Cyberstalking (subsequent conviction or
30 threat of death) (RCW 9.61.260(3))
31 Escape 2 (RCW 9A.76.120)
32 Extortion 2 (RCW 9A.56.130)
33 Harassment (RCW 9A.46.020)
34 Intimidating a Public Servant (RCW
35 9A.76.180)

1 Introducing Contraband 2 (RCW
2 9A.76.150)
3 Malicious Injury to Railroad Property
4 (RCW 81.60.070)
5 Mortgage Fraud (RCW 19.144.080)
6 Negligently Causing Substantial Bodily
7 Harm By Use of a Signal
8 Preemption Device (RCW
9 46.37.674)
10 Organized Retail Theft 1 (RCW
11 9A.56.350(2))
12 Perjury 2 (RCW 9A.72.030)
13 Possession of Incendiary Device (RCW
14 9.40.120)
15 Possession of Machine Gun or Short-
16 Barreled Shotgun or Rifle (RCW
17 9.41.190)
18 Promoting Prostitution 2 (RCW
19 9A.88.080)
20 Retail Theft with Special Circumstances
21 1 (RCW 9A.56.360(2))
22 Securities Act violation (RCW
23 21.20.400)
24 Tampering with a Witness (RCW
25 9A.72.120)
26 Telephone Harassment (subsequent
27 conviction or threat of death) (RCW
28 9.61.230(2))
29 Theft of Livestock 2 (RCW 9A.56.083)
30 Theft with the Intent to Resell 1 (RCW
31 9A.56.340(2))
32 Trafficking in Stolen Property 2 (RCW
33 9A.82.055)
34 Unlawful Hunting of Big Game 1 (RCW
35 77.15.410(3)(b))

1 Unlawful Imprisonment (RCW
2 9A.40.040)

3 Unlawful Misbranding of Food Fish or
4 Shellfish 1 (RCW 69.04.938(3))

5 Unlawful possession of firearm in the
6 second degree (RCW 9.41.040(2))

7 Unlawful Taking of Endangered Fish or
8 Wildlife 1 (RCW 77.15.120(3)(b))

9 Unlawful Trafficking in Fish, Shellfish,
10 or Wildlife 1 (RCW
11 77.15.260(3)(b))

12 Unlawful Use of a Nondesignated
13 Vessel (RCW 77.15.530(4))

14 Vehicular Assault, by the operation or
15 driving of a vehicle with disregard
16 for the safety of others (RCW
17 46.61.522)

18 Willful Failure to Return from Work
19 Release (RCW 72.65.070)

20 II Commercial Fishing Without a License
21 1 (RCW 77.15.500(3)(b))

22 Computer Trespass 1 (RCW 9A.90.040)

23 Counterfeiting (RCW 9.16.035(3))

24 Electronic Data Service Interference
25 (RCW 9A.90.060)

26 Electronic Data Tampering 1 (RCW
27 9A.90.080)

28 Electronic Data Theft (RCW 9A.90.100)

29 Engaging in Fish Dealing Activity
30 Unlicensed 1 (RCW 77.15.620(3))

31 Escape from Community Custody
32 (RCW 72.09.310)

33 Failure to Register as a Sex Offender
34 (second or subsequent offense)
35 (RCW 9A.44.130 prior to June 10,
36 2010, and RCW 9A.44.132)

1 Health Care False Claims (RCW
2 48.80.030)
3 Identity Theft 2 (RCW 9.35.020(3))
4 Improperly Obtaining Financial
5 Information (RCW 9.35.010)
6 Malicious Mischief 1 (RCW 9A.48.070)
7 Organized Retail Theft 2 (RCW
8 9A.56.350(3))
9 Possession of Stolen Property 1 (RCW
10 9A.56.150)
11 Possession of a Stolen Vehicle (RCW
12 9A.56.068)
13 Retail Theft with Special Circumstances
14 2 (RCW 9A.56.360(3))
15 Scrap Processing, Recycling, or
16 Supplying Without a License
17 (second or subsequent offense)
18 (RCW 19.290.100)
19 Theft 1 (RCW 9A.56.030)
20 Theft of a Motor Vehicle (RCW
21 9A.56.065)
22 Theft of Rental, Leased, Lease-
23 purchased, or Loaned Property
24 (valued at five thousand dollars or
25 more) (RCW 9A.56.096(5)(a))
26 Theft with the Intent to Resell 2 (RCW
27 9A.56.340(3))
28 Trafficking in Insurance Claims (RCW
29 48.30A.015)
30 Unlawful factoring of a credit card or
31 payment card transaction (RCW
32 9A.56.290(4)(a))
33 Unlawful Participation of Non-Indians
34 in Indian Fishery (RCW
35 77.15.570(2))

1 Unlawful Practice of Law (RCW
2 2.48.180)
3 Unlawful Purchase or Use of a License
4 (RCW 77.15.650(3)(b))
5 Unlawful Trafficking in Fish, Shellfish,
6 or Wildlife 2 (RCW
7 77.15.260(3)(a))
8 Unlicensed Practice of a Profession or
9 Business (RCW 18.130.190(7))
10 Voyeurism (RCW 9A.44.115)
11 I Attempting to Elude a Pursuing Police
12 Vehicle (RCW 46.61.024)
13 False Verification for Welfare (RCW
14 74.08.055)
15 Forgery (RCW 9A.60.020)
16 Fraudulent Creation or Revocation of a
17 Mental Health Advance Directive
18 (RCW 9A.60.060)
19 Malicious Mischief 2 (RCW 9A.48.080)
20 Mineral Trespass (RCW 78.44.330)
21 Possession of Stolen Property 2 (RCW
22 9A.56.160)
23 Reckless Burning 1 (RCW 9A.48.040)
24 Spotlighting Big Game 1 (RCW
25 77.15.450(3)(b))
26 Suspension of Department Privileges 1
27 (RCW 77.15.670(3)(b))
28 Taking Motor Vehicle Without
29 Permission 2 (RCW 9A.56.075)
30 Theft 2 (RCW 9A.56.040)
31 Theft from a Vulnerable Adult 2
32 (section 106(2) of this act)

1 Theft of Rental, Leased, Lease-
2 purchased, or Loaned Property
3 (valued at seven hundred fifty
4 dollars or more but less than five
5 thousand dollars) (RCW
6 9A.56.096(5)(b))
7 Transaction of insurance business
8 beyond the scope of licensure
9 (RCW 48.17.063)
10 Unlawful Fish and Shellfish Catch
11 Accounting (RCW 77.15.630(3)(b))
12 Unlawful Issuance of Checks or Drafts
13 (RCW 9A.56.060)
14 Unlawful Possession of Fictitious
15 Identification (RCW 9A.56.320)
16 Unlawful Possession of Instruments of
17 Financial Fraud (RCW 9A.56.320)
18 Unlawful Possession of Payment
19 Instruments (RCW 9A.56.320)
20 Unlawful Possession of a Personal
21 Identification Device (RCW
22 9A.56.320)
23 Unlawful Production of Payment
24 Instruments (RCW 9A.56.320)
25 Unlawful Releasing, Planting,
26 Possessing, or Placing Deleterious
27 Exotic Wildlife (RCW
28 77.15.250(2)(b))
29 Unlawful Trafficking in Food Stamps
30 (RCW 9.91.142)
31 Unlawful Use of Food Stamps (RCW
32 9.91.144)
33 Unlawful Use of Net to Take Fish 1
34 (RCW 77.15.580(3)(b))
35 Unlawful Use of Prohibited Aquatic
36 Animal Species (RCW
37 77.15.253(3))

1 Vehicle Prowl 1 (RCW 9A.52.095)
2 Violating Commercial Fishing Area or
3 Time 1 (RCW 77.15.550(3)(b))

4 **PART III**
5 **DRIVING UNDER THE INFLUENCE**

6 **Sec. 301.** RCW 46.61.502 and 2016 c 87 s 1 are each amended to
7 read as follows:

8 (1) A person is guilty of driving while under the influence of
9 intoxicating liquor, marijuana, or any drug if the person drives a
10 vehicle within this state:

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

14 (b) The person has, within two hours after driving, a THC
15 concentration of 5.00 or higher as shown by analysis of the person's
16 blood made under RCW 46.61.506; or

17 (c) While the person is under the influence of or affected by
18 intoxicating liquor, marijuana, or any drug; or

19 (d) While the person is under the combined influence of or
20 affected by intoxicating liquor, marijuana, and any drug.

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

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

35 (b) It is an affirmative defense to a violation of subsection
36 (1)(b) of this section, which the defendant must prove by a
37 preponderance of the evidence, that the defendant consumed a

1 sufficient quantity of marijuana after the time of driving and before
2 the administration of an analysis of the person's blood to cause the
3 defendant's THC concentration to be 5.00 or more within two hours
4 after driving. The court shall not admit evidence of this defense
5 unless the defendant notifies the prosecution prior to the omnibus or
6 pretrial hearing in the case of the defendant's intent to assert the
7 affirmative defense.

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

16 (b) Analyses of blood samples obtained more than two hours after
17 the alleged driving may be used as evidence that within two hours of
18 the alleged driving, a person had a THC concentration of 5.00 or more
19 in violation of subsection (1)(b) of this section, and in any case in
20 which the analysis shows a THC concentration above 0.00 may be used
21 as evidence that a person was under the influence of or affected by
22 marijuana in violation of subsection (1)(c) or (d) of this section.

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

25 (6) It is a class B felony punishable under chapter 9.94A RCW, or
26 chapter 13.40 RCW if the person is a juvenile, if:

27 (a) The person has (~~four~~) three or more prior offenses within
28 ten years as defined in RCW 46.61.5055; or

29 (b) The person has ever previously been convicted of:

30 (i) Vehicular homicide while under the influence of intoxicating
31 liquor or any drug, RCW 46.61.520(1)(a);

32 (ii) Vehicular assault while under the influence of intoxicating
33 liquor or any drug, RCW 46.61.522(1)(b);

34 (iii) An out-of-state offense comparable to the offense specified
35 in (b)(i) or (ii) of this subsection; or

36 (iv) A violation of this subsection (6) or RCW 46.61.504(6).

37 **Sec. 302.** RCW 46.61.504 and 2015 2nd sp.s. c 3 s 24 are each
38 amended to read 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
4 this 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
8 under RCW 46.61.506; or

9 (b) The person has, within two hours after being in actual
10 physical control of a vehicle, a THC concentration of 5.00 or higher
11 as shown by analysis of the person's blood made under RCW 46.61.506;
12 or

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

15 (d) While the person is under the combined influence of or
16 affected by intoxicating liquor and any drug.

17 (2) The fact that a person charged with a violation of this
18 section is or has been entitled to use a drug under the laws of this
19 state does not constitute a defense against any charge of violating
20 this section. No person may be convicted under this section and it is
21 an affirmative defense to any action pursuant to RCW 46.20.308 to
22 suspend, revoke, or deny the privilege to drive if, prior to being
23 pursued by a law enforcement officer, the person has moved the
24 vehicle safely off the roadway.

25 (3)(a) It is an affirmative defense to a violation of subsection
26 (1)(a) of this section which the defendant must prove by a
27 preponderance of the evidence that the defendant consumed a
28 sufficient quantity of alcohol after the time of being in actual
29 physical control of the vehicle and before the administration of an
30 analysis of the person's breath or blood to cause the defendant's
31 alcohol concentration to be 0.08 or more within two hours after being
32 in such control. The court shall not admit evidence of this defense
33 unless the defendant notifies the prosecution prior to the omnibus or
34 pretrial hearing in the case of the defendant's intent to assert the
35 affirmative defense.

36 (b) It is an affirmative defense to a violation of subsection
37 (1)(b) of this section, which the defendant must prove by a
38 preponderance of the evidence, that the defendant consumed a
39 sufficient quantity of marijuana after the time of being in actual
40 physical control of the vehicle and before the administration of an

1 analysis of the person's blood to cause the defendant's THC
2 concentration to be 5.00 or more within two hours after being in
3 control of the vehicle. The court shall not admit evidence of this
4 defense unless the defendant notifies the prosecution prior to the
5 omnibus or pretrial hearing in the case of the defendant's intent to
6 assert the affirmative defense.

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

16 (b) Analyses of blood samples obtained more than two hours after
17 the alleged being in actual physical control of a vehicle may be used
18 as evidence that within two hours of the alleged being in control of
19 the vehicle, a person had a THC concentration of 5.00 or more in
20 violation of subsection (1)(b) of this section, and in any case in
21 which the analysis shows a THC concentration above 0.00 may be used
22 as evidence that a person was under the influence of or affected by
23 marijuana in violation of subsection (1)(c) or (d) of this section.

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

26 (6) It is a class C felony punishable under chapter 9.94A RCW, or
27 chapter 13.40 RCW if the person is a juvenile, if:

28 (a) The person has (~~four~~) three or more prior offenses within
29 ten years as defined in RCW 46.61.5055; or

30 (b) The person has ever previously been convicted of:

31 (i) Vehicular homicide while under the influence of intoxicating
32 liquor or any drug, RCW 46.61.520(1)(a);

33 (ii) Vehicular assault while under the influence of intoxicating
34 liquor or any drug, RCW 46.61.522(1)(b);

35 (iii) An out-of-state offense comparable to the offense specified
36 in (b)(i) or (ii) of this subsection; or

37 (iv) A violation of this subsection (6) or RCW 46.61.502(6).

38 **Sec. 303.** RCW 46.61.5055 and 2016 sp.s. c 29 s 530 and 2016 c
39 203 s 17 are each reenacted and amended to read as follows:

1 (1) **No prior offenses in seven years.** Except as provided in RCW
2 46.61.502(6) or 46.61.504(6), a person who is convicted of a
3 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
4 within seven years shall be punished as follows:

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

10 (i) By imprisonment for not less than one day nor more than three
11 hundred sixty-four days. Twenty-four consecutive hours of the
12 imprisonment may not be suspended unless the court finds that the
13 imposition of this mandatory minimum sentence would impose a
14 substantial risk to the offender's physical or mental well-being.
15 Whenever the mandatory minimum sentence is suspended, the court shall
16 state in writing the reason for granting the suspension and the facts
17 upon which the suspension is based. In lieu of the mandatory minimum
18 term of imprisonment required under this subsection (1)(a)(i), the
19 court may order not less than fifteen days of electronic home
20 monitoring or a ninety-day period of 24/7 sobriety program
21 monitoring. The court may consider the offender's pretrial 24/7
22 sobriety program monitoring as fulfilling a portion of posttrial
23 sentencing. The offender shall pay the cost of electronic home
24 monitoring. The county or municipality in which the penalty is being
25 imposed shall determine the cost. The court may also require the
26 offender's electronic home monitoring device or other separate
27 alcohol monitoring device to include an alcohol detection
28 breathalyzer, and the court may restrict the amount of alcohol the
29 offender may consume during the time the offender is on electronic
30 home monitoring; and

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

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

1 (i) By imprisonment for not less than two days nor more than
2 three hundred sixty-four days. Forty-eight consecutive hours of the
3 imprisonment may not be suspended unless the court finds that the
4 imposition of this mandatory minimum sentence would impose a
5 substantial risk to the offender's physical or mental well-being.
6 Whenever the mandatory minimum sentence is suspended, the court shall
7 state in writing the reason for granting the suspension and the facts
8 upon which the suspension is based. In lieu of the mandatory minimum
9 term of imprisonment required under this subsection (1)(b)(i), the
10 court may order not less than thirty days of electronic home
11 monitoring or a one hundred twenty day period of 24/7 sobriety
12 program monitoring. The court may consider the offender's pretrial
13 24/7 sobriety program testing as fulfilling a portion of posttrial
14 sentencing. The offender shall pay the cost of electronic home
15 monitoring. The county or municipality in which the penalty is being
16 imposed shall determine the cost. The court may also require the
17 offender's electronic home monitoring device to include an alcohol
18 detection breathalyzer or other separate alcohol monitoring device,
19 and the court may restrict the amount of alcohol the offender may
20 consume during the time the offender is on electronic home
21 monitoring; and

22 (ii) By a fine of not less than five hundred dollars nor more
23 than five thousand dollars. Five hundred dollars of the fine may not
24 be suspended unless the court finds the offender to be indigent.

25 (2) **One prior offense in seven years.** Except as provided in RCW
26 46.61.502(6) or 46.61.504(6), a person who is convicted of a
27 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense
28 within seven years shall be punished as follows:

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

34 (i) By imprisonment for not less than thirty days nor more than
35 three hundred sixty-four days and sixty days of electronic home
36 monitoring. In lieu of the mandatory minimum term of sixty days
37 electronic home monitoring, the court may order at least an
38 additional four days in jail or, if available in that county or city,
39 a six-month period of 24/7 sobriety program monitoring pursuant to
40 RCW 36.28A.300 through 36.28A.390, and the court shall order an

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

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

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

24 (i) By imprisonment for not less than forty-five days nor more
25 than three hundred sixty-four days and ninety days of electronic home
26 monitoring. In lieu of the mandatory minimum term of ninety days
27 electronic home monitoring, the court may order at least an
28 additional six days in jail or, if available in that county or city,
29 a six-month period of 24/7 sobriety program monitoring pursuant to
30 RCW 36.28A.300 through 36.28A.390, and the court shall order an
31 expanded alcohol assessment and treatment, if deemed appropriate by
32 the assessment. The offender shall pay for the cost of the electronic
33 monitoring. The county or municipality where the penalty is being
34 imposed shall determine the cost. The court may also require the
35 offender's electronic home monitoring device include an alcohol
36 detection breathalyzer or other separate alcohol monitoring device,
37 and may restrict the amount of alcohol the offender may consume
38 during the time the offender is on electronic home monitoring. Forty-
39 five days of imprisonment and ninety days of electronic home
40 monitoring may not be suspended unless the court finds that the

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

6 (ii) By a fine of not less than seven hundred fifty dollars nor
7 more than five thousand dollars. Seven hundred fifty dollars of the
8 fine may not be suspended unless the court finds the offender to be
9 indigent.

10 (3) **Two ((~~or three~~)) prior offenses in seven years.** Except as
11 provided in RCW 46.61.502(6) or 46.61.504(6), a person who is
12 convicted of a violation of RCW 46.61.502 or 46.61.504 and who has
13 two ((~~or three~~)) prior offenses within seven years shall be punished
14 as follows:

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

20 (i) By imprisonment for not less than ninety days nor more than
21 three hundred sixty-four days, if available in that county or city, a
22 six-month period of 24/7 sobriety program monitoring pursuant to RCW
23 36.28A.300 through 36.28A.390, and one hundred twenty days of
24 electronic home monitoring. In lieu of the mandatory minimum term of
25 one hundred twenty days of electronic home monitoring, the court may
26 order at least an additional eight days in jail. The court shall
27 order an expanded alcohol assessment and treatment, if deemed
28 appropriate by the assessment. The offender shall pay for the cost of
29 the electronic monitoring. The county or municipality where the
30 penalty is being imposed shall determine the cost. The court may also
31 require the offender's electronic home monitoring device include an
32 alcohol detection breathalyzer or other separate alcohol monitoring
33 device, and may restrict the amount of alcohol the offender may
34 consume during the time the offender is on electronic home
35 monitoring. Ninety days of imprisonment and one hundred twenty days
36 of electronic home monitoring may not be suspended unless the court
37 finds that the imposition of this mandatory minimum sentence would
38 impose a substantial risk to the offender's physical or mental well-
39 being. Whenever the mandatory minimum sentence is suspended, the

1 court shall state in writing the reason for granting the suspension
2 and the facts upon which the suspension is based; and

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

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

11 (i) By imprisonment for not less than one hundred twenty days nor
12 more than three hundred sixty-four days, if available in that county
13 or city, a six-month period of 24/7 sobriety program monitoring
14 pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty
15 days of electronic home monitoring. In lieu of the mandatory minimum
16 term of one hundred fifty days of electronic home monitoring, the
17 court may order at least an additional ten days in jail. The offender
18 shall pay for the cost of the electronic monitoring. The court shall
19 order an expanded alcohol assessment and treatment, if deemed
20 appropriate by the assessment. The county or municipality where the
21 penalty is being imposed shall determine the cost. The court may also
22 require the offender's electronic home monitoring device include an
23 alcohol detection breathalyzer or other separate alcohol monitoring
24 device, and may restrict the amount of alcohol the offender may
25 consume during the time the offender is on electronic home
26 monitoring. One hundred twenty days of imprisonment and one hundred
27 fifty days of electronic home monitoring may not be suspended unless
28 the court finds that the imposition of this mandatory minimum
29 sentence would impose a substantial risk to the offender's physical
30 or mental well-being. Whenever the mandatory minimum sentence is
31 suspended, the court shall state in writing the reason for granting
32 the suspension and the facts upon which the suspension is based; and

33 (ii) By a fine of not less than one thousand five hundred dollars
34 nor more than five thousand dollars. One thousand five hundred
35 dollars of the fine may not be suspended unless the court finds the
36 offender to be indigent.

37 (4) (~~Four~~) **Three or more prior offenses in ten years.** A person
38 who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall
39 be punished under chapter 9.94A RCW if:

1 (a) The person has (~~four~~) three or more prior offenses within
2 ten years; or
3 (b) The person has ever previously been convicted of:
4 (i) A violation of RCW 46.61.520 committed while under the
5 influence of intoxicating liquor or any drug;
6 (ii) A violation of RCW 46.61.522 committed while under the
7 influence of intoxicating liquor or any drug;
8 (iii) An out-of-state offense comparable to the offense specified
9 in (b)(i) or (ii) of this subsection; or
10 (iv) A violation of RCW 46.61.502(6) or 46.61.504(6).
11 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall
12 require any person convicted of a violation of RCW 46.61.502 or
13 46.61.504 or an equivalent local ordinance to comply with the rules
14 and requirements of the department regarding the installation and use
15 of a functioning ignition interlock device installed on all motor
16 vehicles operated by the person.
17 (b) **Monitoring devices.** If the court orders that a person refrain
18 from consuming any alcohol, the court may order the person to submit
19 to alcohol monitoring through an alcohol detection breathalyzer
20 device, transdermal sensor device, or other technology designed to
21 detect alcohol in a person's system. The person shall pay for the
22 cost of the monitoring, unless the court specifies that the cost of
23 monitoring will be paid with funds that are available from an
24 alternative source identified by the court. The county or
25 municipality where the penalty is being imposed shall determine the
26 cost.
27 (c) **24/7 sobriety program monitoring.** In any county or city where
28 a 24/7 sobriety program is available and verified by the Washington
29 association of sheriffs and police chiefs, the court shall:
30 (i) Order the person to install and use a functioning ignition
31 interlock or other device in lieu of such period of 24/7 sobriety
32 program monitoring;
33 (ii) Order the person to a period of 24/7 sobriety program
34 monitoring pursuant to subsections (1) through (3) of this section;
35 or
36 (iii) Order the person to install and use a functioning ignition
37 interlock or other device in addition to a period of 24/7 sobriety
38 program monitoring pursuant to subsections (1) through (3) of this
39 section.

1 (6) **Penalty for having a minor passenger in vehicle.** If a person
2 who is convicted of a violation of RCW 46.61.502 or 46.61.504
3 committed the offense while a passenger under the age of sixteen was
4 in the vehicle, the court shall:

5 (a) Order the use of an ignition interlock or other device for an
6 additional six months;

7 (b) In any case in which the person has no prior offenses within
8 seven years, and except as provided in RCW 46.61.502(6) or
9 46.61.504(6), order an additional twenty-four hours of imprisonment
10 and a fine of not less than one thousand dollars and not more than
11 five thousand dollars. One thousand dollars of the fine may not be
12 suspended unless the court finds the offender to be indigent;

13 (c) In any case in which the person has one prior offense within
14 seven years, and except as provided in RCW 46.61.502(6) or
15 46.61.504(6), order an additional five days of imprisonment and a
16 fine of not less than two thousand dollars and not more than five
17 thousand dollars. One thousand dollars of the fine may not be
18 suspended unless the court finds the offender to be indigent;

19 (d) In any case in which the person has two (~~or three~~) prior
20 offenses within seven years, and except as provided in RCW
21 46.61.502(6) or 46.61.504(6), order an additional ten days of
22 imprisonment and a fine of not less than three thousand dollars and
23 not more than ten thousand dollars. One thousand dollars of the fine
24 may not be suspended unless the court finds the offender to be
25 indigent.

26 (7) **Other items courts must consider while setting penalties.** In
27 exercising its discretion in setting penalties within the limits
28 allowed by this section, the court shall particularly consider the
29 following:

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

32 (b) Whether at the time of the offense the person was driving or
33 in physical control of a vehicle with one or more passengers;

34 (c) Whether the driver was driving in the opposite direction of
35 the normal flow of traffic on a multiple lane highway, as defined by
36 RCW 46.04.350, with a posted speed limit of forty-five miles per hour
37 or greater; and

38 (d) Whether a child passenger under the age of sixteen was an
39 occupant in the driver's vehicle.

1 (8) **Treatment and information school.** An offender punishable
2 under this section is subject to the alcohol assessment and treatment
3 provisions of RCW 46.61.5056.

4 (9) **Driver's license privileges of the defendant.** The license,
5 permit, or nonresident privilege of a person convicted of driving or
6 being in physical control of a motor vehicle while under the
7 influence of intoxicating liquor or drugs must:

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

13 (i) Where there has been no prior offense within seven years, be
14 suspended or denied by the department for ninety days or until the
15 person is evaluated by an alcoholism agency or probation department
16 pursuant to RCW 46.20.311 and the person completes or is enrolled in
17 a ninety-day period of 24/7 sobriety program monitoring. In no
18 circumstances shall the license suspension be for fewer than two
19 days;

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

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

24 (b) **Penalty for alcohol concentration at least 0.15.** If the
25 person's alcohol concentration was at least 0.15:

26 (i) Where there has been no prior offense within seven years, be
27 revoked or denied by the department for one year or until the person
28 is evaluated by an alcoholism agency or probation department pursuant
29 to RCW 46.20.311 and the person completes or is enrolled in a one
30 hundred twenty day period of 24/7 sobriety program monitoring. In no
31 circumstances shall the license revocation be for fewer than four
32 days;

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

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

38 (c) **Penalty for refusing to take test.** If by reason of the
39 person's refusal to take a test offered under RCW 46.20.308, there is
40 no test result indicating the person's alcohol concentration:

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

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

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

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

11 Upon receipt of a notice from the court under RCW 36.28A.390 that
12 a participant has been removed from a 24/7 sobriety program, the
13 department must resume any suspension, revocation, or denial that had
14 been terminated early under this subsection due to participation in
15 the program, granting credit on a day-for-day basis for any portion
16 of a suspension, revocation, or denial already served under RCW
17 46.20.3101 or this section arising out of the same incident.

18 Upon its own motion or upon motion by a person, a court may find,
19 on the record, that notice to the department under RCW 46.20.270 has
20 been delayed for three years or more as a result of a clerical or
21 court error. If so, the court may order that the person's license,
22 permit, or nonresident privilege shall not be revoked, suspended, or
23 denied for that offense. The court shall send notice of the finding
24 and order to the department and to the person. Upon receipt of the
25 notice from the court, the department shall not revoke, suspend, or
26 deny the license, permit, or nonresident privilege of the person for
27 that offense.

28 For purposes of this subsection (9), the department shall refer
29 to the driver's record maintained under RCW 46.52.120 when
30 determining the existence of prior offenses.

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

36 **(11) Conditions of probation.** (a) In addition to any
37 nonsuspendable and nondeferrable jail sentence required by this
38 section, whenever the court imposes up to three hundred sixty-four
39 days in jail, the court shall also suspend but shall not defer a
40 period of confinement for a period not exceeding five years. The

1 court shall impose conditions of probation that include: (i) Not
2 driving a motor vehicle within this state without a valid license to
3 drive; (ii) not driving a motor vehicle within this state without
4 proof of liability insurance or other financial responsibility for
5 the future pursuant to RCW 46.30.020; (iii) not driving or being in
6 physical control of a motor vehicle within this state while having an
7 alcohol concentration of 0.08 or more or a THC concentration of 5.00
8 nanograms per milliliter of whole blood or higher, within two hours
9 after driving; (iv) not refusing to submit to a test of his or her
10 breath or blood to determine alcohol or drug concentration upon
11 request of a law enforcement officer who has reasonable grounds to
12 believe the person was driving or was in actual physical control of a
13 motor vehicle within this state while under the influence of
14 intoxicating liquor or drug; and (v) not driving a motor vehicle in
15 this state without a functioning ignition interlock device as
16 required by the department under RCW 46.20.720. The court may impose
17 conditions of probation that include nonrepetition, installation of
18 an ignition interlock device on the probationer's motor vehicle,
19 alcohol or drug treatment, supervised probation, or other conditions
20 that may be appropriate. The sentence may be imposed in whole or in
21 part upon violation of a condition of probation during the suspension
22 period.

23 (b) For each violation of mandatory conditions of probation under
24 (a)(i), (ii), (iii), (iv), or (v) of this subsection, the court shall
25 order the convicted person to be confined for thirty days, which
26 shall not be suspended or deferred.

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

37 (12) **Waiver of electronic home monitoring.** A court may waive the
38 electronic home monitoring requirements of this chapter when:

39 (a) The offender does not have a dwelling, telephone service, or
40 any other necessity to operate an electronic home monitoring system.

1 However, if a court determines that an alcohol monitoring device
2 utilizing wireless reporting technology is reasonably available, the
3 court may require the person to obtain such a device during the
4 period of required electronic home monitoring;

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

6 (c) The court determines that there is reason to believe that the
7 offender would violate the conditions of the electronic home
8 monitoring penalty.

9 Whenever the mandatory minimum term of electronic home monitoring
10 is waived, the court shall state in writing the reason for granting
11 the waiver and the facts upon which the waiver is based, and shall
12 impose an alternative sentence with similar punitive consequences.
13 The alternative sentence may include, but is not limited to, use of
14 an ignition interlock device, the 24/7 sobriety program monitoring,
15 additional jail time, work crew, or work camp.

16 Whenever the combination of jail time and electronic home
17 monitoring or alternative sentence would exceed three hundred sixty-
18 four days, the offender shall serve the jail portion of the sentence
19 first, and the electronic home monitoring or alternative portion of
20 the sentence shall be reduced so that the combination does not exceed
21 three hundred sixty-four days.

22 (13) **Extraordinary medical placement.** An offender serving a
23 sentence under this section, whether or not a mandatory minimum term
24 has expired, may be granted an extraordinary medical placement by the
25 jail administrator subject to the standards and limitations set forth
26 in RCW 9.94A.728(1)(c).

27 (14) **Definitions.** For purposes of this section and RCW 46.61.502
28 and 46.61.504:

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

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

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

34 (iii) A conviction for a violation of RCW 46.25.110 or an
35 equivalent local ordinance;

36 (iv) A conviction for a violation of RCW 79A.60.040(2) or an
37 equivalent local ordinance;

38 (v) A conviction for a violation of RCW 79A.60.040(1) or an
39 equivalent local ordinance committed in a reckless manner if the

1 conviction is the result of a charge that was originally filed as a
2 violation of RCW 79A.60.040(2) or an equivalent local ordinance;

3 (vi) A conviction for a violation of RCW 47.68.220 or an
4 equivalent local ordinance committed while under the influence of
5 intoxicating liquor or any drug;

6 (vii) A conviction for a violation of RCW 47.68.220 or an
7 equivalent local ordinance committed in a careless or reckless manner
8 if the conviction is the result of a charge that was originally filed
9 as a violation of RCW 47.68.220 or an equivalent local ordinance
10 while under the influence of intoxicating liquor or any drug;

11 (viii) A conviction for a violation of RCW 46.09.470(2) or an
12 equivalent local ordinance;

13 (ix) A conviction for a violation of RCW 46.10.490(2) or an
14 equivalent local ordinance;

15 (x) A conviction for a violation of RCW 46.61.520 committed while
16 under the influence of intoxicating liquor or any drug, or a
17 conviction for a violation of RCW 46.61.520 committed in a reckless
18 manner or with the disregard for the safety of others if the
19 conviction is the result of a charge that was originally filed as a
20 violation of RCW 46.61.520 committed while under the influence of
21 intoxicating liquor or any drug;

22 (xi) A conviction for a violation of RCW 46.61.522 committed
23 while under the influence of intoxicating liquor or any drug, or a
24 conviction for a violation of RCW 46.61.522 committed in a reckless
25 manner or with the disregard for the safety of others if the
26 conviction is the result of a charge that was originally filed as a
27 violation of RCW 46.61.522 committed while under the influence of
28 intoxicating liquor or any drug;

29 (xii) A conviction for a violation of RCW 46.61.5249, 46.61.500,
30 or 9A.36.050 or an equivalent local ordinance, if the conviction is
31 the result of a charge that was originally filed as a violation of
32 RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of
33 RCW 46.61.520 or 46.61.522;

34 (xiii) An out-of-state conviction for a violation that would have
35 been a violation of (a)(i), (ii), (x), (xi), or (xii) of this
36 subsection if committed in this state;

37 (xiv) A deferred prosecution under chapter 10.05 RCW granted in a
38 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
39 equivalent local ordinance;

1 (xv) A deferred prosecution under chapter 10.05 RCW granted in a
2 prosecution for a violation of RCW 46.61.5249, or an equivalent local
3 ordinance, if the charge under which the deferred prosecution was
4 granted was originally filed as a violation of RCW 46.61.502 or
5 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
6 46.61.522;

7 (xvi) A deferred prosecution granted in another state for a
8 violation of driving or having physical control of a vehicle while
9 under the influence of intoxicating liquor or any drug if the out-of-
10 state deferred prosecution is equivalent to the deferred prosecution
11 under chapter 10.05 RCW, including a requirement that the defendant
12 participate in a chemical dependency treatment program; or

13 (xvii) A deferred sentence imposed in a prosecution for a
14 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
15 equivalent local ordinance, if the charge under which the deferred
16 sentence was imposed was originally filed as a violation of RCW
17 46.61.502 or 46.61.504, or an equivalent local ordinance, or a
18 violation of RCW 46.61.520 or 46.61.522;

19 If a deferred prosecution is revoked based on a subsequent
20 conviction for an offense listed in this subsection (14)(a), the
21 subsequent conviction shall not be treated as a prior offense of the
22 revoked deferred prosecution for the purposes of sentencing;

23 (b) "Treatment" means substance use disorder treatment approved
24 by the department of social and health services;

25 (c) "Within seven years" means that the arrest for a prior
26 offense occurred within seven years before or after the arrest for
27 the current offense; and

28 (d) "Within ten years" means that the arrest for a prior offense
29 occurred within ten years before or after the arrest for the current
30 offense.

31 (15) All fines imposed by this section apply to adult offenders
32 only.

33 **Sec. 304.** RCW 46.61.5054 and 2015 c 265 s 32 are each amended to
34 read as follows:

35 (1)(a) In addition to penalties set forth in RCW 46.61.5051
36 through 46.61.5053 until September 1, 1995, and RCW 46.61.5055
37 thereafter, a two hundred fifty dollar fee shall be assessed to a
38 person who is either convicted, sentenced to a lesser charge, or
39 given deferred prosecution, as a result of an arrest for violating

1 RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for
2 the purpose of funding the Washington state toxicology laboratory and
3 the Washington state patrol for grants and activities to increase the
4 conviction rate and decrease the incidence of persons driving under
5 the influence of alcohol or drugs.

6 (b) Upon a verified petition by the person assessed the fee, the
7 court may suspend payment of all or part of the fee if it finds that
8 the person does not have the ability to pay.

9 (2) The fee assessed under subsection (1) of this section shall
10 be collected by the clerk of the court and, subject to subsection
11 (~~((4))~~) (5) of this section, one hundred seventy-five dollars of the
12 fee must be distributed as follows:

13 (a) Forty percent shall be subject to distribution under RCW
14 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

15 (b) The remainder of the fee shall be forwarded to the state
16 treasurer who shall, through June 30, 1997, deposit: Fifty percent in
17 the death investigations' account to be used solely for funding the
18 state toxicology laboratory blood or breath testing programs; and
19 fifty percent in the state patrol highway account to be used solely
20 for funding activities to increase the conviction rate and decrease
21 the incidence of persons driving under the influence of alcohol or
22 drugs. Effective July 1, 1997, the remainder of the fee shall be
23 forwarded to the state treasurer who shall deposit: Fifteen percent
24 in the death investigations' account to be used solely for funding
25 the state toxicology laboratory blood or breath testing programs; and
26 eighty-five percent in the state patrol highway account to be used
27 solely for funding activities to increase the conviction rate and
28 decrease the incidence of persons driving under the influence of
29 alcohol or drugs.

30 (3) Twenty-five dollars of the fee assessed under subsection (1)
31 of this section must be distributed to the highway safety fund to be
32 used solely for funding Washington traffic safety commission grants
33 to reduce statewide collisions caused by persons driving under the
34 influence of alcohol or drugs. Grants awarded under this subsection
35 may be for projects that encourage collaboration with other
36 community, governmental, and private organizations, and that utilize
37 innovative approaches based on best practices or proven strategies
38 supported by research or rigorous evaluation. Grants recipients may
39 include, for example:

40 (a) DUI courts; and

1 (b) Jurisdictions implementing the victim impact panel registries
2 under RCW 46.61.5152 and 10.01.230.

3 (4) Fifty dollars of the fee assessed under subsection (1) of
4 this section must be distributed to the highway safety fund to be
5 used solely for funding Washington traffic safety commission grants
6 to organizations within counties targeted for programs to reduce
7 driving under the influence of alcohol or drugs.

8 (5) If the court has suspended payment of part of the fee
9 pursuant to subsection (1)(b) of this section, amounts collected
10 shall be distributed proportionately.

11 ((+5)) (6) This section applies to any offense committed on or
12 after July 1, 1993, and only to adult offenders.

13 **PART IV**

14 **COMMUNITY CUSTODY: CONCURRENT**

15 **Sec. 401.** RCW 9.94A.589 and 2015 2nd sp.s. c 3 s 13 are each
16 amended to read as follows:

17 (1)(a) Except as provided in (b), (c), or (d) of this subsection,
18 whenever a person is to be sentenced for two or more current
19 offenses, the sentence range for each current offense shall be
20 determined by using all other current and prior convictions as if
21 they were prior convictions for the purpose of the offender score:
22 PROVIDED, That if the court enters a finding that some or all of the
23 current offenses encompass the same criminal conduct then those
24 current offenses shall be counted as one crime. Sentences imposed
25 under this subsection shall be served concurrently. Consecutive
26 sentences may only be imposed under the exceptional sentence
27 provisions of RCW 9.94A.535. "Same criminal conduct," as used in this
28 subsection, means two or more crimes that require the same criminal
29 intent, are committed at the same time and place, and involve the
30 same victim. This definition applies in cases involving vehicular
31 assault or vehicular homicide even if the victims occupied the same
32 vehicle.

33 (b) Whenever a person is convicted of two or more serious violent
34 offenses arising from separate and distinct criminal conduct, the
35 standard sentence range for the offense with the highest seriousness
36 level under RCW 9.94A.515 shall be determined using the offender's
37 prior convictions and other current convictions that are not serious
38 violent offenses in the offender score and the standard sentence

1 range for other serious violent offenses shall be determined by using
2 an offender score of zero. The standard sentence range for any
3 offenses that are not serious violent offenses shall be determined
4 according to (a) of this subsection. All sentences imposed under this
5 subsection (1)(b) shall be served consecutively to each other and
6 concurrently with sentences imposed under (a) of this subsection.
7 However, unless the court expressly orders that the community custody
8 terms run consecutively to each other, such terms shall run
9 concurrently to each other even if the court orders the confinement
10 terms to run consecutively to each other.

11 (c) If an offender is convicted under RCW 9.41.040 for unlawful
12 possession of a firearm in the first or second degree and for the
13 felony crimes of theft of a firearm or possession of a stolen
14 firearm, or both, the standard sentence range for each of these
15 current offenses shall be determined by using all other current and
16 prior convictions, except other current convictions for the felony
17 crimes listed in this subsection (1)(c), as if they were prior
18 convictions. The offender shall serve consecutive sentences for each
19 conviction of the felony crimes listed in this subsection (1)(c), and
20 for each firearm unlawfully possessed.

21 (d) All sentences imposed under RCW 46.61.502(6), 46.61.504(6),
22 or 46.61.5055(4) shall be served consecutively to any sentences
23 imposed under RCW 46.20.740 and 46.20.750.

24 (2)(a) (~~Except as provided in (b) of this subsection,~~) Whenever
25 a person while under sentence for conviction of a felony commits
26 another felony and is sentenced to another term of confinement, the
27 latter term of confinement shall not begin until expiration of all
28 prior terms of confinement. However, any terms of community custody
29 shall run concurrently to each other, unless the court pronouncing
30 the current sentence expressly orders that they be served
31 consecutively.

32 (b) Whenever a second or later felony conviction results in
33 consecutive community (~~supervision~~) custody with conditions not
34 currently in effect, under the prior sentence or sentences of
35 community (~~supervision~~) custody the court may require that the
36 conditions of community (~~supervision~~) custody contained in the
37 second or later sentence begin during the immediate term of community
38 (~~supervision~~) custody and continue throughout the duration of the
39 consecutive term of community (~~supervision~~) custody.

1 (3) Subject to subsections (1) and (2) of this section, whenever
2 a person is sentenced for a felony that was committed while the
3 person was not under sentence for conviction of a felony, the
4 sentence shall run concurrently with any felony sentence which has
5 been imposed by any court in this or another state or by a federal
6 court subsequent to the commission of the crime being sentenced
7 unless the court pronouncing the current sentence expressly orders
8 that ~~((they))~~ the confinement terms be served consecutively to each
9 other. Unless the court expressly orders that the community custody
10 terms run consecutively, such terms run concurrently to each other
11 even if the court orders the confinement terms to run consecutively
12 to each other.

13 (4) Whenever any person granted probation under RCW 9.95.210 or
14 9.92.060, or both, has the probationary sentence revoked and a prison
15 sentence imposed, that sentence shall run consecutively to any
16 sentence imposed pursuant to this chapter, unless the court
17 pronouncing the subsequent sentence expressly orders that they be
18 served concurrently.

19 (5) ~~((In the case of consecutive sentences,))~~ All periods of
20 total confinement shall be served before any partial confinement,
21 community ~~((restitution, community supervision))~~ custody, or any
22 other requirement or conditions of any of the sentences. ~~((Except for~~
23 ~~exceptional sentences as authorized under RCW 9.94A.535, if two or~~
24 ~~more sentences that run consecutively include periods of community~~
25 ~~supervision, the aggregate of the community supervision period shall~~
26 ~~not exceed twenty four months.))~~

27 **Sec. 402.** RCW 9.94B.050 and 2003 c 379 s 4 are each amended to
28 read as follows:

29 When a court sentences an offender to a term of total confinement
30 in the custody of the department for any of the offenses specified in
31 this section, the court shall also sentence the offender to a term of
32 community placement as provided in this section. Except as provided
33 in RCW 9.94A.501, the department shall supervise any sentence of
34 community placement imposed under this section.

35 (1) The court shall order a one-year term of community placement
36 for the following:

37 (a) A sex offense or a serious violent offense committed after
38 July 1, 1988, but before July 1, 1990; or

1 (b) An offense committed on or after July 1, 1988, but before
2 July 25, 1999, that is:

3 (i) Assault in the second degree;

4 (ii) Assault of a child in the second degree;

5 (iii) A crime against persons where it is determined in
6 accordance with RCW (~~9.94A.602~~) 9.94A.825 that the offender or an
7 accomplice was armed with a deadly weapon at the time of commission;
8 or

9 (iv) A felony offense under chapter 69.50 or 69.52 RCW not
10 sentenced under RCW 9.94A.660.

11 (2) The court shall sentence the offender to a term of community
12 placement of two years or up to the period of earned release awarded
13 pursuant to RCW 9.94A.728, whichever is longer, for:

14 (a) An offense categorized as a sex offense committed on or after
15 July 1, 1990, but before June 6, 1996, including those sex offenses
16 also included in other offense categories;

17 (b) A serious violent offense other than a sex offense committed
18 on or after July 1, 1990, but before July 1, 2000; or

19 (c) A vehicular homicide or vehicular assault committed on or
20 after July 1, 1990, but before July 1, 2000.

21 (3) The community placement ordered under this section shall
22 begin either upon completion of the term of confinement or at such
23 time as the offender is transferred to community custody in lieu of
24 earned release. When the court sentences an offender to the statutory
25 maximum sentence then the community placement portion of the sentence
26 shall consist entirely of the community custody to which the offender
27 may become eligible. Any period of community custody actually served
28 shall be credited against the community placement portion of the
29 sentence. The community placement shall run concurrently to any
30 period of probation, parole, community supervision, community
31 placement, or community custody previously imposed by any court in
32 any jurisdiction, unless the court pronouncing the current sentence
33 expressly orders that they be served consecutively to each other.

34 (4) Unless a condition is waived by the court, the terms of any
35 community placement imposed under this section shall include the
36 following conditions:

37 (a) The offender shall report to and be available for contact
38 with the assigned community corrections officer as directed;

39 (b) The offender shall work at department-approved education,
40 employment, or community restitution, or any combination thereof;

1 (c) The offender shall not possess or consume controlled
2 substances except pursuant to lawfully issued prescriptions;

3 (d) The offender shall pay supervision fees as determined by the
4 department; and

5 (e) The residence location and living arrangements shall be
6 subject to the prior approval of the department during the period of
7 community placement.

8 (5) As a part of any terms of community placement imposed under
9 this section, the court may also order one or more of the following
10 special conditions:

11 (a) The offender shall remain within, or outside of, a specified
12 geographical boundary;

13 (b) The offender shall not have direct or indirect contact with
14 the victim of the crime or a specified class of individuals;

15 (c) The offender shall participate in crime-related treatment or
16 counseling services;

17 (d) The offender shall not consume alcohol; or

18 (e) The offender shall comply with any crime-related
19 prohibitions.

20 (6) An offender convicted of a felony sex offense against a minor
21 victim after June 6, 1996, shall comply with any terms and conditions
22 of community placement imposed by the department relating to contact
23 between the sex offender and a minor victim or a child of similar age
24 or circumstance as a previous victim.

25 (7) Prior to or during community placement, upon recommendation
26 of the department, the sentencing court may remove or modify any
27 conditions of community placement so as not to be more restrictive.

28 NEW SECTION. **Sec. 403.** A new section is added to chapter 9.94B
29 RCW to read as follows:

30 Except for exceptional sentences as authorized under RCW
31 9.94A.535, if two or more sentences that run consecutively include
32 periods of community supervision that the court has expressly ordered
33 to run consecutively, the aggregate of the community supervision
34 period shall not exceed twenty-four months.

35 NEW SECTION. **Sec. 404.** The department of corrections must
36 recalculate the scheduled end dates for terms of community custody,
37 community supervision, and community placement so that they run
38 concurrently to previously imposed sentences of community custody,

1 community supervision, community placement, probation, and parole.
2 This section applies to each offender currently in confinement or
3 under active supervision, regardless of whether the offender is
4 sentenced after the effective date of this section, and regardless of
5 whether the offender's date of offense occurred prior to the
6 effective date of this section or after.

7 NEW SECTION. **Sec. 405.** The legislature declares that the
8 department of corrections' recalculations of community custody terms
9 pursuant to this act do not create any expectations that a particular
10 community custody term will end before July 1, 2017, and offenders
11 have no reason to conclude that the recalculation of their community
12 custody terms before July 1, 2017, is an entitlement or creates any
13 liberty interest in their community custody term ending before July
14 1, 2017.

15 NEW SECTION. **Sec. 406.** The department of corrections has the
16 authority to begin implementing sections 401 through 404 of this act
17 upon the effective date of this section.

18 **PART V**

19 **COMMUNITY CUSTODY: MOTOR VEHICLE OFFENSE PILOT**

20 NEW SECTION. **Sec. 501.** A new section is added to chapter 9.94A
21 RCW to read as follows:

22 (1) Subject to the availability of amounts appropriated for this
23 purpose, a pilot program is established for the supervision of
24 offenders convicted of felonies relating to the theft or taking of a
25 motor vehicle.

26 (2) Notwithstanding the provisions of RCW 9.94A.701, until June
27 30, 2019, the court may sentence an offender to community custody for
28 a term of one year when the court sentences the person to the custody
29 of the department for theft of a motor vehicle (RCW 9A.56.065),
30 possession of a stolen vehicle (RCW 9A.56.068), taking a motor
31 vehicle without permission in the first degree (RCW 9A.56.070),
32 taking a motor vehicle without permission in the second degree (RCW
33 9A.56.075), or a crime against property with a prior conviction for
34 one of the preceding motor vehicle crimes.

1 (3) Notwithstanding the provisions of RCW 9.94A.501, the
2 department shall supervise any offender sentenced to community
3 custody pursuant to subsection (2) of this section.

4 (4) No later than November 1, 2020, the department must submit a
5 report to the governor and the appropriate committees of the
6 legislature analyzing the effectiveness of supervision in reducing
7 recidivism among offenders committing felonies relating to the theft
8 or taking of a motor vehicle. The department shall consult with the
9 Washington state institute for public policy in guiding its data
10 tracking efforts and preparing the report.

11 (5) This section expires December 31, 2020.

12 **PART VI**

13 **COMMUNITY CUSTODY: GOOD TIME**

14 **Sec. 601.** RCW 9.94A.501 and 2016 sp.s. c 28 s 1 are each amended
15 to read as follows:

16 (1) The department shall supervise the following offenders who
17 are sentenced to probation in superior court, pursuant to RCW
18 9.92.060, 9.95.204, or 9.95.210:

19 (a) Offenders convicted of:

20 (i) Sexual misconduct with a minor second degree;

21 (ii) Custodial sexual misconduct second degree;

22 (iii) Communication with a minor for immoral purposes; and

23 (iv) Violation of RCW 9A.44.132(2) (failure to register); and

24 (b) Offenders who have:

25 (i) A current conviction for a repetitive domestic violence
26 offense where domestic violence has been pleaded and proven after
27 August 1, 2011; and

28 (ii) A prior conviction for a repetitive domestic violence
29 offense or domestic violence felony offense where domestic violence
30 has been pleaded and proven after August 1, 2011.

31 (2) Misdemeanor and gross misdemeanor offenders supervised by the
32 department pursuant to this section shall be placed on community
33 custody.

34 (3) The department shall supervise every felony offender
35 sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702
36 whose risk assessment classifies the offender as one who is at a high
37 risk to reoffend.

1 (4) Notwithstanding any other provision of this section, the
2 department shall supervise an offender sentenced to community custody
3 regardless of risk classification if the offender:

4 (a) Has a current conviction for a sex offense or a serious
5 violent offense and was sentenced to a term of community custody
6 pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

7 (b) Has been identified by the department as a dangerous mentally
8 ill offender pursuant to RCW 72.09.370;

9 (c) Has an indeterminate sentence and is subject to parole
10 pursuant to RCW 9.95.017;

11 (d) Has a current conviction for violating RCW 9A.44.132(1)
12 (failure to register) and was sentenced to a term of community
13 custody pursuant to RCW 9.94A.701;

14 (e)(i) Has a current conviction for a domestic violence felony
15 offense where domestic violence has been pleaded and proven after
16 August 1, 2011, and a prior conviction for a repetitive domestic
17 violence offense or domestic violence felony offense where domestic
18 violence was pleaded and proven after August 1, 2011. This subsection
19 (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

20 (ii) Has a current conviction for a domestic violence felony
21 offense where domestic violence was pleaded and proven. The state and
22 its officers, agents, and employees shall not be held criminally or
23 civilly liable for its supervision of an offender under this
24 subsection (4)(e)(ii) unless the state and its officers, agents, and
25 employees acted with gross negligence;

26 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or
27 9.94A.670;

28 (g) Is subject to supervision pursuant to RCW 9.94A.745; or

29 (h) Was convicted and sentenced under RCW 46.61.520 (vehicular
30 homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6)
31 (felony DUI), or RCW 46.61.504(6) (felony physical control).

32 (5) The department shall supervise any offender who is released
33 by the indeterminate sentence review board and who was sentenced to
34 community custody or subject to community custody under the terms of
35 release.

36 (6) The department is not authorized to, and may not, supervise
37 any offender sentenced to a term of community custody or any
38 probationer unless the offender or probationer is one for whom
39 supervision is required under this section or RCW 9.94A.5011.

1 (7) The department shall conduct a risk assessment for every
2 felony offender sentenced to a term of community custody who may be
3 subject to supervision under this section or RCW 9.94A.5011.

4 (8) The period of time the department is authorized to supervise
5 an offender under this section may not exceed the duration of
6 community custody specified under RCW 9.94B.050, 9.94A.701 (1)
7 through (8), or 9.94A.702, except in cases where the court has
8 imposed an exceptional term of community custody under RCW 9.94A.535.

9 (9) The period of time the department is authorized to supervise
10 an offender under this section may be reduced by the earned award of
11 positive achievement time pursuant to section 602 of this act.

12 NEW SECTION. Sec. 602. A new section is added to chapter 9.94A
13 RCW to read as follows:

14 (1) If an offender sentenced under this chapter or chapter 9.94B
15 RCW is supervised by the department, the offender may earn positive
16 achievement time in accordance with procedures that are developed and
17 adopted by the department.

18 (a) The positive achievement time shall be awarded to offenders
19 who are in compliance with supervision terms and are making progress
20 towards the goals of their individualized supervision case plan,
21 including: Participation in specific targeted interventions, risk-
22 related programming or treatment; or completing steps towards
23 specific targeted goals that enhance protective factors and
24 stability, as determined by the department.

25 (b) For each month of community custody served, offenders may
26 earn positive achievement time of fifteen days.

27 (c) Positive achievement time is accrued monthly and time shall
28 not be applied to an offender's term of supervision prior to the
29 earning of the time.

30 (2) An offender is not eligible to earn positive achievement time
31 if he or she:

32 (a) Was sentenced under RCW 9.94A.507 or 10.95.030;

33 (b) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or
34 9.94A.670;

35 (c) Is subject to supervision pursuant to RCW 9.94A.745;

36 (d) Has been identified by the department as a dangerous mentally
37 ill offender pursuant to RCW 72.09.370;

38 (e) Has an indeterminate sentence and is subject to parole
39 pursuant to RCW 9.95.017; or

1 (f) Is serving community custody pursuant to early release under
2 RCW 9.94A.730.

3 NEW SECTION. **Sec. 603.** The department of corrections has
4 discretion to implement sections 601 and 602 of this act over a
5 period of time not to exceed twelve months. For any offender under
6 active supervision by the department as of the effective date of this
7 section, he or she is not eligible to earn positive achievement time
8 pursuant to section 602 of this act until he or she has received an
9 orientation by the department regarding positive time.

10 **PART VII**

11 **COMMUNITY CUSTODY: JAIL OFFENDERS**

12 **Sec. 701.** RCW 9.94A.702 and 2010 c 267 s 12 are each amended to
13 read as follows:

14 (1) If an offender is sentenced to a term of confinement for one
15 year or less for (~~one of the following offenses~~) a sex offense or a
16 violent offense, the court may impose up to one year of community
17 custody(~~(:~~

18 ~~(a) A sex offense;~~

19 ~~(b) A violent offense;~~

20 ~~(c) A crime against a person under RCW 9.94A.411;~~

21 ~~(d) A felony violation of chapter 69.50 or 69.52 RCW, or an~~
22 ~~attempt, conspiracy, or solicitation to commit such a crime; or~~

23 ~~(e) A felony violation of RCW 9A.44.132(1) (failure to~~
24 ~~register)).~~

25 (2) If an offender is sentenced to a first-time offender waiver,
26 the court may impose community custody as provided in RCW 9.94A.650.

27 **PART VIII**

28 **HABITUAL PROPERTY OFFENDERS**

29 NEW SECTION. **Sec. 801.** (1) The legislature finds there to be a
30 significant number of property crimes in Washington and that the
31 current practices in the criminal justice system are ineffective in
32 reducing recidivism.

33 (2) The legislature further finds that a large portion of
34 property crimes in Washington are committed by habitual offenders.
35 Increasing the sanctions for habitual property offenders will provide

1 more effective deterrents to recidivism. The legislature intends to
2 enhance the courts' discretion to more appropriately sentence
3 habitual property offenders with significant histories of burglary
4 and theft.

5 NEW SECTION. **Sec. 802.** A new section is added to chapter 9.94A
6 RCW to read as follows:

7 (1) The prosecuting attorney may file a special allegation when
8 sufficient evidence exists to show that the accused is a habitual
9 property offender.

10 (2) In a criminal case in which there has been a special
11 allegation and the accused has been convicted of the underlying
12 crime, the court shall make a finding of fact prior to sentencing
13 whether the person is a habitual property offender based on the
14 person's criminal history. If the court finds beyond a reasonable
15 doubt that the person is a habitual property offender, the person
16 shall be sentenced in accordance with RCW 9.94A.533(15).

17 (3) For purposes of this section, a person is a habitual property
18 offender if:

19 (a) The present felony conviction for which the person is being
20 sentenced is for residential burglary, burglary in the second degree,
21 theft in the first degree, theft in the second degree, theft of a
22 firearm, unlawful issuance of checks or drafts, organized retail
23 theft, theft with special circumstances, or mail theft;

24 (b) The person has an offender score of nine points or higher;

25 (c) At least nine of the points in the person's offender score
26 result from any combination of the following felony offenses:
27 Residential burglary, burglary in the second degree, theft in the
28 first degree, theft in the second degree, theft of a firearm,
29 unlawful issuance of checks or drafts, organized retail theft, theft
30 with special circumstances, or mail theft; and

31 (d) The person has either received drug treatment related to any
32 felony conviction or has refused drug treatment related to any felony
33 conviction.

34 **Sec. 803.** RCW 9.94A.533 and 2016 c 203 s 7 are each amended to
35 read as follows:

36 (1) The provisions of this section apply to the standard sentence
37 ranges determined by RCW 9.94A.510 or 9.94A.517.

1 (2) For persons convicted of the anticipatory offenses of
2 criminal attempt, solicitation, or conspiracy under chapter 9A.28
3 RCW, the standard sentence range is determined by locating the
4 sentencing grid sentence range defined by the appropriate offender
5 score and the seriousness level of the completed crime, and
6 multiplying the range by seventy-five percent.

7 (3) The following additional times shall be added to the standard
8 sentence range for felony crimes committed after July 23, 1995, if
9 the offender or an accomplice was armed with a firearm as defined in
10 RCW 9.41.010 and the offender is being sentenced for one of the
11 crimes listed in this subsection as eligible for any firearm
12 enhancements based on the classification of the completed felony
13 crime. If the offender is being sentenced for more than one offense,
14 the firearm enhancement or enhancements must be added to the total
15 period of confinement for all offenses, regardless of which
16 underlying offense is subject to a firearm enhancement. If the
17 offender or an accomplice was armed with a firearm as defined in RCW
18 9.41.010 and the offender is being sentenced for an anticipatory
19 offense under chapter 9A.28 RCW to commit one of the crimes listed in
20 this subsection as eligible for any firearm enhancements, the
21 following additional times shall be added to the standard sentence
22 range determined under subsection (2) of this section based on the
23 felony crime of conviction as classified under RCW 9A.28.020:

24 (a) Five years for any felony defined under any law as a class A
25 felony or with a statutory maximum sentence of at least twenty years,
26 or both, and not covered under (f) of this subsection;

27 (b) Three years for any felony defined under any law as a class B
28 felony or with a statutory maximum sentence of ten years, or both,
29 and not covered under (f) of this subsection;

30 (c) Eighteen months for any felony defined under any law as a
31 class C felony or with a statutory maximum sentence of five years, or
32 both, and not covered under (f) of this subsection;

33 (d) If the offender is being sentenced for any firearm
34 enhancements under (a), (b), and/or (c) of this subsection and the
35 offender has previously been sentenced for any deadly weapon
36 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
37 subsection or subsection (4)(a), (b), and/or (c) of this section, or
38 both, all firearm enhancements under this subsection shall be twice
39 the amount of the enhancement listed;

1 (e) Notwithstanding any other provision of law, all firearm
2 enhancements under this section are mandatory, shall be served in
3 total confinement, and shall run consecutively to all other
4 sentencing provisions, including other firearm or deadly weapon
5 enhancements, for all offenses sentenced under this chapter. However,
6 whether or not a mandatory minimum term has expired, an offender
7 serving a sentence under this subsection may be:

8 (i) Granted an extraordinary medical placement when authorized
9 under RCW 9.94A.728(1)(c); or

10 (ii) Released under the provisions of RCW 9.94A.730;

11 (f) The firearm enhancements in this section shall apply to all
12 felony crimes except the following: Possession of a machine gun,
13 possessing a stolen firearm, drive-by shooting, theft of a firearm,
14 unlawful possession of a firearm in the first and second degree, and
15 use of a machine gun in a felony;

16 (g) If the standard sentence range under this section exceeds the
17 statutory maximum sentence for the offense, the statutory maximum
18 sentence shall be the presumptive sentence unless the offender is a
19 persistent offender. If the addition of a firearm enhancement
20 increases the sentence so that it would exceed the statutory maximum
21 for the offense, the portion of the sentence representing the
22 enhancement may not be reduced.

23 (4) The following additional times shall be added to the standard
24 sentence range for felony crimes committed after July 23, 1995, if
25 the offender or an accomplice was armed with a deadly weapon other
26 than a firearm as defined in RCW 9.41.010 and the offender is being
27 sentenced for one of the crimes listed in this subsection as eligible
28 for any deadly weapon enhancements based on the classification of the
29 completed felony crime. If the offender is being sentenced for more
30 than one offense, the deadly weapon enhancement or enhancements must
31 be added to the total period of confinement for all offenses,
32 regardless of which underlying offense is subject to a deadly weapon
33 enhancement. If the offender or an accomplice was armed with a deadly
34 weapon other than a firearm as defined in RCW 9.41.010 and the
35 offender is being sentenced for an anticipatory offense under chapter
36 9A.28 RCW to commit one of the crimes listed in this subsection as
37 eligible for any deadly weapon enhancements, the following additional
38 times shall be added to the standard sentence range determined under
39 subsection (2) of this section based on the felony crime of
40 conviction as classified under RCW 9A.28.020:

1 (a) Two years for any felony defined under any law as a class A
2 felony or with a statutory maximum sentence of at least twenty years,
3 or both, and not covered under (f) of this subsection;

4 (b) One year for any felony defined under any law as a class B
5 felony or with a statutory maximum sentence of ten years, or both,
6 and not covered under (f) of this subsection;

7 (c) Six months for any felony defined under any law as a class C
8 felony or with a statutory maximum sentence of five years, or both,
9 and not covered under (f) of this subsection;

10 (d) If the offender is being sentenced under (a), (b), and/or (c)
11 of this subsection for any deadly weapon enhancements and the
12 offender has previously been sentenced for any deadly weapon
13 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
14 subsection or subsection (3)(a), (b), and/or (c) of this section, or
15 both, all deadly weapon enhancements under this subsection shall be
16 twice the amount of the enhancement listed;

17 (e) Notwithstanding any other provision of law, all deadly weapon
18 enhancements under this section are mandatory, shall be served in
19 total confinement, and shall run consecutively to all other
20 sentencing provisions, including other firearm or deadly weapon
21 enhancements, for all offenses sentenced under this chapter. However,
22 whether or not a mandatory minimum term has expired, an offender
23 serving a sentence under this subsection may be:

24 (i) Granted an extraordinary medical placement when authorized
25 under RCW 9.94A.728(1)(c); or

26 (ii) Released under the provisions of RCW 9.94A.730;

27 (f) The deadly weapon enhancements in this section shall apply to
28 all felony crimes except the following: Possession of a machine gun,
29 possessing a stolen firearm, drive-by shooting, theft of a firearm,
30 unlawful possession of a firearm in the first and second degree, and
31 use of a machine gun in a felony;

32 (g) If the standard sentence range under this section exceeds the
33 statutory maximum sentence for the offense, the statutory maximum
34 sentence shall be the presumptive sentence unless the offender is a
35 persistent offender. If the addition of a deadly weapon enhancement
36 increases the sentence so that it would exceed the statutory maximum
37 for the offense, the portion of the sentence representing the
38 enhancement may not be reduced.

39 (5) The following additional times shall be added to the standard
40 sentence range if the offender or an accomplice committed the offense

1 while in a county jail or state correctional facility and the
2 offender is being sentenced for one of the crimes listed in this
3 subsection. If the offender or an accomplice committed one of the
4 crimes listed in this subsection while in a county jail or state
5 correctional facility, and the offender is being sentenced for an
6 anticipatory offense under chapter 9A.28 RCW to commit one of the
7 crimes listed in this subsection, the following additional times
8 shall be added to the standard sentence range determined under
9 subsection (2) of this section:

10 (a) Eighteen months for offenses committed under RCW 69.50.401(2)

11 (a) or (b) or 69.50.410;

12 (b) Fifteen months for offenses committed under RCW 69.50.401(2)

13 (c), (d), or (e);

14 (c) Twelve months for offenses committed under RCW 69.50.4013.

15 For the purposes of this subsection, all of the real property of
16 a state correctional facility or county jail shall be deemed to be
17 part of that facility or county jail.

18 (6) An additional twenty-four months shall be added to the
19 standard sentence range for any ranked offense involving a violation
20 of chapter 69.50 RCW if the offense was also a violation of RCW
21 69.50.435 or 9.94A.827. All enhancements under this subsection shall
22 run consecutively to all other sentencing provisions, for all
23 offenses sentenced under this chapter.

24 (7) An additional two years shall be added to the standard
25 sentence range for vehicular homicide committed while under the
26 influence of intoxicating liquor or any drug as defined by RCW
27 46.61.502 for each prior offense as defined in RCW 46.61.5055.

28 Notwithstanding any other provision of law, all impaired driving
29 enhancements under this subsection are mandatory, shall be served in
30 total confinement, and shall run consecutively to all other
31 sentencing provisions, including other impaired driving enhancements,
32 for all offenses sentenced under this chapter.

33 An offender serving a sentence under this subsection may be
34 granted an extraordinary medical placement when authorized under RCW
35 9.94A.728(1)(c).

36 (8)(a) The following additional times shall be added to the
37 standard sentence range for felony crimes committed on or after July
38 1, 2006, if the offense was committed with sexual motivation, as that
39 term is defined in RCW 9.94A.030. If the offender is being sentenced
40 for more than one offense, the sexual motivation enhancement must be

1 added to the total period of total confinement for all offenses,
2 regardless of which underlying offense is subject to a sexual
3 motivation enhancement. If the offender committed the offense with
4 sexual motivation and the offender is being sentenced for an
5 anticipatory offense under chapter 9A.28 RCW, the following
6 additional times shall be added to the standard sentence range
7 determined under subsection (2) of this section based on the felony
8 crime of conviction as classified under RCW 9A.28.020:

9 (i) Two years for any felony defined under the law as a class A
10 felony or with a statutory maximum sentence of at least twenty years,
11 or both;

12 (ii) Eighteen months for any felony defined under any law as a
13 class B felony or with a statutory maximum sentence of ten years, or
14 both;

15 (iii) One year for any felony defined under any law as a class C
16 felony or with a statutory maximum sentence of five years, or both;

17 (iv) If the offender is being sentenced for any sexual motivation
18 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
19 the offender has previously been sentenced for any sexual motivation
20 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
21 (iii) of this subsection, all sexual motivation enhancements under
22 this subsection shall be twice the amount of the enhancement listed;

23 (b) Notwithstanding any other provision of law, all sexual
24 motivation enhancements under this subsection are mandatory, shall be
25 served in total confinement, and shall run consecutively to all other
26 sentencing provisions, including other sexual motivation
27 enhancements, for all offenses sentenced under this chapter. However,
28 whether or not a mandatory minimum term has expired, an offender
29 serving a sentence under this subsection may be:

30 (i) Granted an extraordinary medical placement when authorized
31 under RCW 9.94A.728(1)(c); or

32 (ii) Released under the provisions of RCW 9.94A.730;

33 (c) The sexual motivation enhancements in this subsection apply
34 to all felony crimes;

35 (d) If the standard sentence range under this subsection exceeds
36 the statutory maximum sentence for the offense, the statutory maximum
37 sentence shall be the presumptive sentence unless the offender is a
38 persistent offender. If the addition of a sexual motivation
39 enhancement increases the sentence so that it would exceed the

1 statutory maximum for the offense, the portion of the sentence
2 representing the enhancement may not be reduced;

3 (e) The portion of the total confinement sentence which the
4 offender must serve under this subsection shall be calculated before
5 any earned early release time is credited to the offender;

6 (f) Nothing in this subsection prevents a sentencing court from
7 imposing a sentence outside the standard sentence range pursuant to
8 RCW 9.94A.535.

9 (9) An additional one-year enhancement shall be added to the
10 standard sentence range for the felony crimes of RCW 9A.44.073,
11 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
12 or after July 22, 2007, if the offender engaged, agreed, or offered
13 to engage the victim in the sexual conduct in return for a fee. If
14 the offender is being sentenced for more than one offense, the
15 one-year enhancement must be added to the total period of total
16 confinement for all offenses, regardless of which underlying offense
17 is subject to the enhancement. If the offender is being sentenced for
18 an anticipatory offense for the felony crimes of RCW 9A.44.073,
19 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
20 offender attempted, solicited another, or conspired to engage, agree,
21 or offer to engage the victim in the sexual conduct in return for a
22 fee, an additional one-year enhancement shall be added to the
23 standard sentence range determined under subsection (2) of this
24 section. For purposes of this subsection, "sexual conduct" means
25 sexual intercourse or sexual contact, both as defined in chapter
26 9A.44 RCW.

27 (10)(a) For a person age eighteen or older convicted of any
28 criminal street gang-related felony offense for which the person
29 compensated, threatened, or solicited a minor in order to involve the
30 minor in the commission of the felony offense, the standard sentence
31 range is determined by locating the sentencing grid sentence range
32 defined by the appropriate offender score and the seriousness level
33 of the completed crime, and multiplying the range by one hundred
34 twenty-five percent. If the standard sentence range under this
35 subsection exceeds the statutory maximum sentence for the offense,
36 the statutory maximum sentence is the presumptive sentence unless the
37 offender is a persistent offender.

38 (b) This subsection does not apply to any criminal street gang-
39 related felony offense for which involving a minor in the commission
40 of the felony offense is an element of the offense.

1 (c) The increased penalty specified in (a) of this subsection is
2 unavailable in the event that the prosecution gives notice that it
3 will seek an exceptional sentence based on an aggravating factor
4 under RCW 9.94A.535.

5 (11) An additional twelve months and one day shall be added to
6 the standard sentence range for a conviction of attempting to elude a
7 police vehicle as defined by RCW 46.61.024, if the conviction
8 included a finding by special allegation of endangering one or more
9 persons under RCW 9.94A.834.

10 (12) An additional twelve months shall be added to the standard
11 sentence range for an offense that is also a violation of RCW
12 9.94A.831.

13 (13) An additional twelve months shall be added to the standard
14 sentence range for vehicular homicide committed while under the
15 influence of intoxicating liquor or any drug as defined by RCW
16 46.61.520 or for vehicular assault committed while under the
17 influence of intoxicating liquor or any drug as defined by RCW
18 46.61.522, or for any felony driving under the influence (RCW
19 46.61.502(6)) or felony physical control under the influence (RCW
20 46.61.504(6)) for each child passenger under the age of sixteen who
21 is an occupant in the defendant's vehicle. These enhancements shall
22 be mandatory, shall be served in total confinement, and shall run
23 consecutively to all other sentencing provisions. If the addition of
24 a minor child enhancement increases the sentence so that it would
25 exceed the statutory maximum for the offense, the portion of the
26 sentence representing the enhancement may not be reduced.

27 (14) An additional twelve months shall be added to the standard
28 sentence range for an offense that is also a violation of RCW
29 9.94A.832.

30 (15)(a) The following additional times shall be added to the
31 standard sentence range if the court finds that the offender is a
32 habitual property offender pursuant to section 802 of this act:

33 (i) Twenty-four months if the offender is being sentenced for a
34 felony defined as a class B felony;

35 (ii) Twelve months if the offender is being sentenced for a
36 felony defined as a class C felony.

37 (b) A sentence imposed pursuant to this subsection is not to
38 exceed the statutory maximum for the crime as established in RCW
39 9A.20.021.

1 a person's immigration status prior to issuance of an identicard in a
2 manner consistent with RCW 10.70.140;

3 (d) Is expected to be released to a location within Washington
4 state; and

5 (e) Pays a fee of eighteen dollars for the cost of the
6 identicard.

7 (3) A state law enforcement agency, court, or the department may
8 not be prohibited from investigating the legal presence of a person
9 or identifying a defendant's legal presence on a judgment and
10 sentence form or any other investigatory or arrest materials provided
11 to the department after conviction for the purposes of this act.

12 **Sec. 903.** RCW 46.20.117 and 2012 c 80 s 6 are each amended to
13 read as follows:

14 (1) **Issuance.** The department shall issue an identicard,
15 containing a picture, if the applicant:

16 (a)(i) Does not hold a valid Washington driver's license;

17 ~~((b))~~ (ii) Proves his or her identity as required by RCW
18 46.20.035; and

19 ~~((c))~~ (iii) Pays the required fee. Except as provided in (b) of
20 this subsection or subsection (5) of this section, the fee is
21 ~~((forty five dollars from October 1, 2012, to June 30, 2013, and))~~
22 fifty-four dollars ~~((after June 30, 2013))~~, unless an applicant is a
23 recipient of continuing public assistance grants under Title 74 RCW,
24 who is referred in writing by the secretary of social and health
25 services. For those persons the fee must be the actual cost of
26 production of the identicard; or

27 (b) Is eligible for issuance of an identicard under section 902
28 of this act.

29 (i) A valid identification card issued by the department of
30 corrections may serve as sufficient proof of identity and residency
31 for an applicant under this subsection (1)(b);

32 (ii) An identicard issued under this subsection (1)(b) must
33 expire two years from the first anniversary of the offender's
34 birthdate after issuance; and

35 (iii) The department shall charge a fee of eighteen dollars for
36 an identicard issued under this subsection (1)(b).

37 (2) **Design and term.** The identicard must:

38 (a) Be distinctly designed so that it will not be confused with
39 the official driver's license; and

1 (b) Except as provided in subsection (1)(b) or (5) of this
2 section, expire on the sixth anniversary of the applicant's birthdate
3 after issuance.

4 (3) **Renewal.** An application for identicard renewal may be
5 submitted by means of:

6 (a) Personal appearance before the department; or

7 (b) Mail or electronic commerce, if permitted by rule of the
8 department and if the applicant did not renew his or her identicard
9 by mail or by electronic commerce when it last expired.

10 An identicard may not be renewed by mail or by electronic
11 commerce unless the renewal issued by the department includes a
12 photograph of the identicard holder.

13 (4) **Cancellation.** The department may cancel an identicard if the
14 holder of the identicard used the card or allowed others to use the
15 card in violation of RCW 46.20.0921.

16 (5) **Alternative issuance/renewal/extension.** The department may
17 issue or renew an identicard for a period other than five years from
18 October 1, 2012, to June 30, 2013, or six years after June 30, 2013,
19 or may extend by mail or electronic commerce an identicard that has
20 already been issued, in order to evenly distribute, as nearly as
21 possible, the yearly renewal rate of identicard holders. The fee for
22 an identicard issued or renewed for a period other than five years
23 from October 1, 2012, to June 30, 2013, or six years after June 30,
24 2013, or that has been extended by mail or electronic commerce, is
25 nine dollars for each year that the identicard is issued, renewed, or
26 extended. The department may adopt any rules as are necessary to
27 carry out this subsection.

28 **Sec. 904.** RCW 46.20.117 and 2014 c 185 s 2 are each amended to
29 read as follows:

30 (1) **Issuance.** The department shall issue an identicard,
31 containing a picture, if the applicant:

32 (a)(i) Does not hold a valid Washington driver's license;

33 ~~((b))~~ (ii) Proves his or her identity as required by RCW
34 46.20.035; and

35 ~~((c))~~ (iii) Pays the required fee. Except as provided in (b) of
36 this subsection or subsection (5) of this section, the fee is
37 ~~((forty five dollars from October 1, 2012, to June 30, 2013, and))~~
38 fifty-four dollars ~~((after June 30, 2013))~~, unless an applicant is a
39 recipient of continuing public assistance grants under Title 74 RCW,

1 who is referred in writing by the secretary of social and health
2 services. For those persons the fee must be the actual cost of
3 production of the identicard; or

4 (b) Is eligible for issuance of an identicard under section 902
5 of this act.

6 (i) A valid identification card issued by the department of
7 corrections may serve as sufficient proof of identity and residency
8 for an applicant under this subsection (1)(b);

9 (ii) An identicard issued under this subsection (1)(b) must
10 expire two years from the first anniversary of the offender's
11 birthdate after issuance; and

12 (iii) The department shall charge a fee of eighteen dollars for
13 an identicard issued under this subsection (1)(b).

14 (2)(a) **Design and term.** The identicard must:

15 (i) Be distinctly designed so that it will not be confused with
16 the official driver's license; and

17 (ii) Except as provided in subsection (1)(b) or (5) of this
18 section, expire on the sixth anniversary of the applicant's birthdate
19 after issuance.

20 (b) The identicard may include the person's status as a veteran,
21 consistent with RCW 46.20.161(2).

22 (3) **Renewal.** An application for identicard renewal may be
23 submitted by means of:

24 (a) Personal appearance before the department; or

25 (b) Mail or electronic commerce, if permitted by rule of the
26 department and if the applicant did not renew his or her identicard
27 by mail or by electronic commerce when it last expired.

28 An identicard may not be renewed by mail or by electronic
29 commerce unless the renewal issued by the department includes a
30 photograph of the identicard holder.

31 (4) **Cancellation.** The department may cancel an identicard if the
32 holder of the identicard used the card or allowed others to use the
33 card in violation of RCW 46.20.0921.

34 (5) **Alternative issuance/renewal/extension.** The department may
35 issue or renew an identicard for a period other than five years from
36 October 1, 2012, to June 30, 2013, or six years after June 30, 2013,
37 or may extend by mail or electronic commerce an identicard that has
38 already been issued, in order to evenly distribute, as nearly as
39 possible, the yearly renewal rate of identicard holders. The fee for
40 an identicard issued or renewed for a period other than five years

1 from October 1, 2012, to June 30, 2013, or six years after June 30,
2 2013, or that has been extended by mail or electronic commerce, is
3 nine dollars for each year that the identicard is issued, renewed, or
4 extended. The department may adopt any rules as are necessary to
5 carry out this subsection.

6 NEW SECTION. **Sec. 905.** The department of corrections and the
7 department of licensing may enter into a memorandum of understanding
8 to meet the requirements of sections 902 through 904 of this act, and
9 have discretion to implement sections 902 through 904 of this act
10 over a period of time not to exceed twelve months from the effective
11 date of this section.

12 **PART X**

13 **DRIVING WHILE LICENSE SUSPENDED**

14 **Sec. 1001.** RCW 46.20.342 and 2015 c 149 s 1 are each amended to
15 read as follows:

16 (1) It is unlawful for any person to drive a motor vehicle in
17 this state while that person is in a suspended or revoked status or
18 when his or her privilege to drive is suspended or revoked in this or
19 any other state. Any person who has a valid Washington driver's
20 license is not guilty of a violation of this section.

21 (a) A person found to be a habitual offender under chapter 46.65
22 RCW, who violates this section while an order of revocation issued
23 under chapter 46.65 RCW prohibiting such operation is in effect, is
24 guilty of driving while license suspended or revoked in the first
25 degree, a gross misdemeanor. Upon the first such conviction, the
26 person shall be punished by imprisonment for not less than ten days.
27 Upon the second conviction, the person shall be punished by
28 imprisonment for not less than ninety days. Upon the third or
29 subsequent conviction, the person shall be punished by imprisonment
30 for not less than one hundred eighty days. If the person is also
31 convicted of the offense defined in RCW 46.61.502 or 46.61.504, when
32 both convictions arise from the same event, the minimum sentence of
33 confinement shall be not less than ninety days. The minimum sentence
34 of confinement required shall not be suspended or deferred. A
35 conviction under this subsection does not prevent a person from
36 petitioning for reinstatement as provided by RCW 46.65.080.

1 (b) A person who violates this section while an order of
2 suspension or revocation prohibiting such operation is in effect and
3 while the person is not eligible to reinstate his or her driver's
4 license or driving privilege, other than for a suspension for the
5 reasons described in (c) of this subsection, is guilty of driving
6 while license suspended or revoked in the second degree, a gross
7 misdemeanor. For the purposes of this subsection, a person is not
8 considered to be eligible to reinstate his or her driver's license or
9 driving privilege if the person is eligible to obtain an ignition
10 interlock driver's license but did not obtain such a license. This
11 subsection applies when a person's driver's license or driving
12 privilege has been suspended or revoked by reason of:

13 (i) A conviction of a felony in the commission of which a motor
14 vehicle was used;

15 (ii) A previous conviction under this section;

16 (iii) A notice received by the department from a court or
17 diversion unit as provided by RCW 46.20.265, relating to a minor who
18 has committed, or who has entered a diversion unit concerning an
19 offense relating to alcohol, legend drugs, controlled substances, or
20 imitation controlled substances;

21 (iv) A conviction of RCW 46.20.410, relating to the violation of
22 restrictions of an occupational driver's license, a temporary
23 restricted driver's license, or an ignition interlock driver's
24 license;

25 (v) A conviction of RCW 46.20.345, relating to the operation of a
26 motor vehicle with a suspended or revoked license;

27 (vi) A conviction of RCW 46.52.020, relating to duty in case of
28 injury to or death of a person or damage to an attended vehicle;

29 (vii) A conviction of RCW 46.61.024, relating to attempting to
30 elude pursuing police vehicles;

31 (viii) A conviction of RCW 46.61.212(4), relating to reckless
32 endangerment of emergency zone workers;

33 (ix) A conviction of RCW 46.61.500, relating to reckless driving;

34 (x) A conviction of RCW 46.61.502 or 46.61.504, relating to a
35 person under the influence of intoxicating liquor or drugs;

36 (xi) A conviction of RCW 46.61.520, relating to vehicular
37 homicide;

38 (xii) A conviction of RCW 46.61.522, relating to vehicular
39 assault;

1 (xiii) A conviction of RCW 46.61.527(4), relating to reckless
2 endangerment of roadway workers;

3 (xiv) A conviction of RCW 46.61.530, relating to racing of
4 vehicles on highways;

5 (xv) A conviction of RCW 46.61.685, relating to leaving children
6 in an unattended vehicle with motor running;

7 (xvi) A conviction of RCW 46.61.740, relating to theft of motor
8 vehicle fuel;

9 (xvii) A conviction of RCW 46.64.048, relating to attempting,
10 aiding, abetting, coercing, and committing crimes;

11 (xviii) An administrative action taken by the department under
12 chapter 46.20 RCW;

13 (xix) A conviction of a local law, ordinance, regulation, or
14 resolution of a political subdivision of this state, the federal
15 government, or any other state, of an offense substantially similar
16 to a violation included in this subsection; or

17 (xx) A finding that a person has committed a traffic infraction
18 under RCW 46.61.526 and suspension of driving privileges pursuant to
19 RCW 46.61.526 (4)(b) or (7)(a)(ii).

20 (c) A person who violates this section when his or her driver's
21 license or driving privilege is, at the time of the violation,
22 suspended or revoked solely because (i) the person must furnish proof
23 of satisfactory progress in a required alcoholism or drug treatment
24 program, (ii) the person must furnish proof of financial
25 responsibility for the future as provided by chapter 46.29 RCW, (iii)
26 the person has failed to comply with the provisions of chapter 46.29
27 RCW relating to uninsured accidents, (iv) the person has failed to
28 respond to a notice of traffic infraction, failed to appear at a
29 requested hearing, violated a written promise to appear in court, or
30 has failed to comply with the terms of a notice of traffic infraction
31 or citation, as provided in RCW 46.20.289, (v) the person has
32 committed an offense in another state that, if committed in this
33 state, would not be grounds for the suspension or revocation of the
34 person's driver's license, (vi) the person has been suspended or
35 revoked by reason of one or more of the items listed in (b) of this
36 subsection, but was eligible to reinstate his or her driver's license
37 or driving privilege at the time of the violation, (vii) the person
38 has received traffic citations or notices of traffic infraction that
39 have resulted in a suspension under RCW 46.20.267 relating to
40 intermediate drivers' licenses, or (viii) the person has been

1 certified by the department of social and health services as a person
2 who is not in compliance with a child support order as provided in
3 RCW 74.20A.320, or any combination of (c)(i) through (viii) of this
4 subsection, is guilty of driving while license suspended or revoked
5 in the third degree, a ~~((misdemeanor))~~ traffic infraction under RCW
6 46.20.015. For the purposes of this subsection, a person is not
7 considered to be eligible to reinstate his or her driver's license or
8 driving privilege if the person is eligible to obtain an ignition
9 interlock driver's license but did not obtain such a license.

10 (2) Upon receiving a record of conviction of any person or upon
11 receiving an order by any juvenile court or any duly authorized court
12 officer of the conviction of any juvenile under this section, the
13 department shall:

14 (a) For a conviction of driving while suspended or revoked in the
15 first degree, as provided by subsection (1)(a) of this section,
16 extend the period of administrative revocation imposed under chapter
17 46.65 RCW for an additional period of one year from and after the
18 date the person would otherwise have been entitled to apply for a new
19 license or have his or her driving privilege restored; or

20 (b) For a conviction of driving while suspended or revoked in the
21 second degree, as provided by subsection (1)(b) of this section, not
22 issue a new license or restore the driving privilege for an
23 additional period of one year from and after the date the person
24 would otherwise have been entitled to apply for a new license or have
25 his or her driving privilege restored; or

26 (c) Not extend the period of suspension or revocation if the
27 conviction was under subsection (1)(c) of this section. If the
28 conviction was under subsection (1)(a) or (b) of this section and the
29 court recommends against the extension and the convicted person has
30 obtained a valid driver's license, the period of suspension or
31 revocation shall not be extended.

32 **Sec. 1002.** RCW 46.63.020 and 2016 c 213 s 4 are each amended to
33 read as follows:

34 Failure to perform any act required or the performance of any act
35 prohibited by this title or an equivalent administrative regulation
36 or local law, ordinance, regulation, or resolution relating to
37 traffic including parking, standing, stopping, and pedestrian
38 offenses, is designated as a traffic infraction and may not be
39 classified as a criminal offense, except for an offense contained in

1 the following provisions of this title or a violation of an
2 equivalent administrative regulation or local law, ordinance,
3 regulation, or resolution:

4 (1) RCW 46.09.457(1)(b)(i) relating to a false statement
5 regarding the inspection of and installation of equipment on wheeled
6 all-terrain vehicles;

7 (2) RCW 46.09.470(2) relating to the operation of a nonhighway
8 vehicle while under the influence of intoxicating liquor or a
9 controlled substance;

10 (3) RCW 46.09.480 relating to operation of nonhighway vehicles;

11 (4) RCW 46.10.490(2) relating to the operation of a snowmobile
12 while under the influence of intoxicating liquor or narcotics or
13 habit-forming drugs or in a manner endangering the person of another;

14 (5) RCW 46.10.495 relating to the operation of snowmobiles;

15 (6) Chapter 46.12 RCW relating to certificates of title,
16 registration certificates, and markings indicating that a vehicle has
17 been destroyed or declared a total loss;

18 (7) RCW 46.16A.030 and 46.16A.050(3) relating to the nonpayment
19 of taxes and fees by failure to register a vehicle and falsifying
20 residency when registering a motor vehicle;

21 (8) RCW 46.16A.520 relating to permitting unauthorized persons to
22 drive;

23 (9) RCW 46.16A.320 relating to vehicle trip permits;

24 (10) RCW 46.19.050(1) relating to knowingly providing false
25 information in conjunction with an application for a special placard
26 or license plate for disabled persons' parking;

27 (11) RCW 46.19.050(8) relating to illegally obtaining a parking
28 placard, special license plate, special year tab, or identification
29 card;

30 (12) RCW 46.19.050(9) relating to sale of a parking placard,
31 special license plate, special year tab, or identification card;

32 (13) RCW 46.20.005 relating to driving without a valid driver's
33 license;

34 (14) RCW 46.20.091 relating to false statements regarding a
35 driver's license or instruction permit;

36 (15) RCW 46.20.0921 relating to the unlawful possession and use
37 of a driver's license;

38 (16) RCW 46.20.342(1) (a) or (b) relating to driving with a
39 suspended or revoked license or status;

- 1 (17) RCW 46.20.345 relating to the operation of a motor vehicle
2 with a suspended or revoked license;
- 3 (18) RCW 46.20.410 relating to the violation of restrictions of
4 an occupational driver's license, temporary restricted driver's
5 license, or ignition interlock driver's license;
- 6 (19) RCW 46.20.740 relating to operation of a motor vehicle
7 without an ignition interlock device in violation of a license
8 notation that the device is required;
- 9 (20) RCW 46.20.750 relating to circumventing an ignition
10 interlock device;
- 11 (21) RCW 46.25.170 relating to commercial driver's licenses;
- 12 (22) Chapter 46.29 RCW relating to financial responsibility;
- 13 (23) RCW 46.30.040 relating to providing false evidence of
14 financial responsibility;
- 15 (24) RCW 46.35.030 relating to recording device information;
- 16 (25) RCW 46.37.435 relating to wrongful installation of
17 sunscreening material;
- 18 (26) RCW 46.37.650 relating to the manufacture, importation,
19 sale, distribution, or installation of a counterfeit air bag,
20 nonfunctional air bag, or previously deployed or damaged air bag;
- 21 (27) RCW 46.37.660 relating to the sale or installation of a
22 device that causes a vehicle's diagnostic system to inaccurately
23 indicate that the vehicle has a functional air bag when a counterfeit
24 air bag, nonfunctional air bag, or no air bag is installed;
- 25 (28) RCW 46.37.671 through 46.37.675 relating to signal
26 preemption devices;
- 27 (29) RCW 46.37.685 relating to switching or flipping license
28 plates, utilizing technology to flip or change the appearance of a
29 license plate, selling a license plate flipping device or technology
30 used to change the appearance of a license plate, or falsifying a
31 vehicle registration;
- 32 (30) RCW 46.44.180 relating to operation of mobile home pilot
33 vehicles;
- 34 (31) RCW 46.48.175 relating to the transportation of dangerous
35 articles;
- 36 (32) RCW 46.52.010 relating to duty on striking an unattended car
37 or other property;
- 38 (33) RCW 46.52.020 relating to duty in case of injury to or death
39 of a person or damage to an attended vehicle;

1 (34) RCW 46.52.090 relating to reports by repairers, storage
2 persons, and appraisers;

3 (35) RCW 46.52.130 relating to confidentiality of the driving
4 record to be furnished to an insurance company, an employer, and an
5 alcohol/drug assessment or treatment agency;

6 (36) RCW 46.55.020 relating to engaging in the activities of a
7 registered tow truck operator without a registration certificate;

8 (37) RCW 46.55.035 relating to prohibited practices by tow truck
9 operators;

10 (38) RCW 46.55.300 relating to vehicle immobilization;

11 (39) RCW 46.61.015 relating to obedience to police officers,
12 flaggers, or firefighters;

13 (40) RCW 46.61.020 relating to refusal to give information to or
14 cooperate with an officer;

15 (41) RCW 46.61.022 relating to failure to stop and give
16 identification to an officer;

17 (42) RCW 46.61.024 relating to attempting to elude pursuing
18 police vehicles;

19 (43) RCW 46.61.212(4) relating to reckless endangerment of
20 emergency zone workers;

21 (44) RCW 46.61.500 relating to reckless driving;

22 (45) RCW 46.61.502 and 46.61.504 relating to persons under the
23 influence of intoxicating liquor or drugs;

24 (46) RCW 46.61.503 relating to a person under age twenty-one
25 driving a motor vehicle after consuming alcohol;

26 (47) RCW 46.61.520 relating to vehicular homicide by motor
27 vehicle;

28 (48) RCW 46.61.522 relating to vehicular assault;

29 (49) RCW 46.61.5249 relating to first degree negligent driving;

30 (50) RCW 46.61.527(4) relating to reckless endangerment of
31 roadway workers;

32 (51) RCW 46.61.530 relating to racing of vehicles on highways;

33 (52) RCW 46.61.655(7) (a) and (b) relating to failure to secure a
34 load;

35 (53) RCW 46.61.685 relating to leaving children in an unattended
36 vehicle with the motor running;

37 (54) RCW 46.61.740 relating to theft of motor vehicle fuel;

38 (55) RCW 46.64.010 relating to unlawful cancellation of or
39 attempt to cancel a traffic citation;

- 1 (56) RCW 46.64.048 relating to attempting, aiding, abetting,
2 coercing, and committing crimes;
- 3 (57) Chapter 46.65 RCW relating to habitual traffic offenders;
- 4 (58) RCW 46.68.010 relating to false statements made to obtain a
5 refund;
- 6 (59) Chapter 46.70 RCW relating to unfair motor vehicle business
7 practices, except where that chapter provides for the assessment of
8 monetary penalties of a civil nature;
- 9 (60) Chapter 46.72 RCW relating to the transportation of
10 passengers in for hire vehicles;
- 11 (61) RCW 46.72A.060 relating to limousine carrier insurance;
- 12 (62) RCW 46.72A.070 relating to operation of a limousine without
13 a vehicle certificate;
- 14 (63) RCW 46.72A.080 relating to false advertising by a limousine
15 carrier;
- 16 (64) Chapter 46.80 RCW relating to motor vehicle wreckers;
- 17 (65) Chapter 46.82 RCW relating to driver's training schools;
- 18 (66) RCW 46.87.260 relating to alteration or forgery of a cab
19 card, letter of authority, or other temporary authority issued under
20 chapter 46.87 RCW;
- 21 (67) RCW 46.87.290 relating to operation of an unregistered or
22 unlicensed vehicle under chapter 46.87 RCW.

23 **Sec. 1003.** RCW 10.31.100 and 2016 c 203 s 9 and 2016 c 113 s 1
24 are each reenacted and amended to read as follows:

25 A police officer having probable cause to believe that a person
26 has committed or is committing a felony shall have the authority to
27 arrest the person without a warrant. A police officer may arrest a
28 person without a warrant for committing a misdemeanor or gross
29 misdemeanor only when the offense is committed in the presence of an
30 officer, except as provided in subsections (1) through (12) of this
31 section.

32 (1) Any police officer having probable cause to believe that a
33 person has committed or is committing a misdemeanor or gross
34 misdemeanor, involving physical harm or threats of harm to any person
35 or property or the unlawful taking of property or involving the use
36 or possession of cannabis, or involving the acquisition, possession,
37 or consumption of alcohol by a person under the age of twenty-one
38 years under RCW 66.44.270, or involving criminal trespass under RCW

1 9A.52.070 or 9A.52.080, shall have the authority to arrest the
2 person.

3 (2) A police officer shall arrest and take into custody, pending
4 release on bail, personal recognizance, or court order, a person
5 without a warrant when the officer has probable cause to believe
6 that:

7 (a) An order has been issued of which the person has knowledge
8 under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09,
9 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the
10 person has violated the terms of the order restraining the person
11 from acts or threats of violence, or restraining the person from
12 going onto the grounds of or entering a residence, workplace, school,
13 or day care, or prohibiting the person from knowingly coming within,
14 or knowingly remaining within, a specified distance of a location or,
15 in the case of an order issued under RCW 26.44.063, imposing any
16 other restrictions or conditions upon the person; or

17 (b) A foreign protection order, as defined in RCW 26.52.010, has
18 been issued of which the person under restraint has knowledge and the
19 person under restraint has violated a provision of the foreign
20 protection order prohibiting the person under restraint from
21 contacting or communicating with another person, or excluding the
22 person under restraint from a residence, workplace, school, or day
23 care, or prohibiting the person from knowingly coming within, or
24 knowingly remaining within, a specified distance of a location, or a
25 violation of any provision for which the foreign protection order
26 specifically indicates that a violation will be a crime; or

27 (c) The person is eighteen years or older and within the
28 preceding four hours has assaulted a family or household member as
29 defined in RCW 10.99.020 and the officer believes: (i) A felonious
30 assault has occurred; (ii) an assault has occurred which has resulted
31 in bodily injury to the victim, whether the injury is observable by
32 the responding officer or not; or (iii) that any physical action has
33 occurred which was intended to cause another person reasonably to
34 fear imminent serious bodily injury or death. Bodily injury means
35 physical pain, illness, or an impairment of physical condition. When
36 the officer has probable cause to believe that family or household
37 members have assaulted each other, the officer is not required to
38 arrest both persons. The officer shall arrest the person whom the
39 officer believes to be the primary physical aggressor. In making this
40 determination, the officer shall make every reasonable effort to

1 consider: (A) The intent to protect victims of domestic violence
2 under RCW 10.99.010; (B) the comparative extent of injuries inflicted
3 or serious threats creating fear of physical injury; and (C) the
4 history of domestic violence of each person involved, including
5 whether the conduct was part of an ongoing pattern of abuse.

6 (3) A police officer shall, at the request of a parent or
7 guardian, arrest the sixteen or seventeen year old child of that
8 parent or guardian if the officer has probable cause to believe that
9 the child has assaulted a family or household member as defined in
10 RCW 10.99.020 in the preceding four hours. Nothing in this subsection
11 removes a police officer's existing authority provided in this
12 section to make an arrest.

13 (4) Any police officer having probable cause to believe that a
14 person has committed or is committing a violation of any of the
15 following traffic laws shall have the authority to arrest the person:

16 (a) RCW 46.52.010, relating to duty on striking an unattended car
17 or other property;

18 (b) RCW 46.52.020, relating to duty in case of injury to or death
19 of a person or damage to an attended vehicle;

20 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or
21 racing of vehicles;

22 (d) RCW 46.61.502 or 46.61.504, relating to persons under the
23 influence of intoxicating liquor or drugs;

24 (e) RCW 46.61.503 or 46.25.110, relating to persons having
25 alcohol or THC in their system;

26 (f) RCW 46.20.342(1) (a) or (b), relating to driving a motor
27 vehicle while operator's license is suspended or revoked;

28 (g) RCW 46.61.5249, relating to operating a motor vehicle in a
29 negligent manner.

30 (5) A law enforcement officer investigating at the scene of a
31 motor vehicle accident may arrest the driver of a motor vehicle
32 involved in the accident if the officer has probable cause to believe
33 that the driver has committed in connection with the accident a
34 violation of any traffic law or regulation.

35 (6)(a) A law enforcement officer investigating at the scene of a
36 motor vessel accident may arrest the operator of a motor vessel
37 involved in the accident if the officer has probable cause to believe
38 that the operator has committed, in connection with the accident, a
39 criminal violation of chapter 79A.60 RCW.

1 (b) A law enforcement officer investigating at the scene of a
2 motor vessel accident may issue a citation for an infraction to the
3 operator of a motor vessel involved in the accident if the officer
4 has probable cause to believe that the operator has committed, in
5 connection with the accident, a violation of any boating safety law
6 of chapter 79A.60 RCW.

7 (7) Any police officer having probable cause to believe that a
8 person has committed or is committing a violation of RCW 79A.60.040
9 shall have the authority to arrest the person.

10 (8) An officer may act upon the request of a law enforcement
11 officer in whose presence a traffic infraction was committed, to
12 stop, detain, arrest, or issue a notice of traffic infraction to the
13 driver who is believed to have committed the infraction. The request
14 by the witnessing officer shall give an officer the authority to take
15 appropriate action under the laws of the state of Washington.

16 (9) Any police officer having probable cause to believe that a
17 person has committed or is committing any act of indecent exposure,
18 as defined in RCW 9A.88.010, may arrest the person.

19 (10) A police officer may arrest and take into custody, pending
20 release on bail, personal recognizance, or court order, a person
21 without a warrant when the officer has probable cause to believe that
22 an order has been issued of which the person has knowledge under
23 chapter 10.14 RCW and the person has violated the terms of that
24 order.

25 (11) Any police officer having probable cause to believe that a
26 person has, within twenty-four hours of the alleged violation,
27 committed a violation of RCW 9A.50.020 may arrest such person.

28 (12) A police officer having probable cause to believe that a
29 person illegally possesses or illegally has possessed a firearm or
30 other dangerous weapon on private or public elementary or secondary
31 school premises shall have the authority to arrest the person.

32 For purposes of this subsection, the term "firearm" has the
33 meaning defined in RCW 9.41.010 and the term "dangerous weapon" has
34 the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

35 (13) A law enforcement officer having probable cause to believe
36 that a person has committed a violation under RCW 77.15.160(4) may
37 issue a citation for an infraction to the person in connection with
38 the violation.

1 (14) A law enforcement officer having probable cause to believe
2 that a person has committed a criminal violation under RCW 77.15.809
3 or 77.15.811 may arrest the person in connection with the violation.

4 (15) Except as specifically provided in subsections (2), (4),
5 (5), and (8) of this section, nothing in this section extends or
6 otherwise affects the powers of arrest prescribed in Title 46 RCW.

7 (16) No police officer may be held criminally or civilly liable
8 for making an arrest pursuant to subsection (2) or (10) of this
9 section if the police officer acts in good faith and without malice.

10 (17)(a) Except as provided in (b) of this subsection, a police
11 officer shall arrest and keep in custody, until release by a judicial
12 officer on bail, personal recognizance, or court order, a person
13 without a warrant when the officer has probable cause to believe that
14 the person has violated RCW 46.61.502 or 46.61.504 or an equivalent
15 local ordinance and the police officer has knowledge that the person
16 has a prior offense as defined in RCW 46.61.5055 within ten years.

17 (b) A police officer is not required to keep in custody a person
18 under (a) of this subsection if the person requires immediate medical
19 attention and is admitted to a hospital.

20 (18) A juvenile detention facility shall book into detention any
21 person under age eighteen brought to that detention facility pursuant
22 to an arrest for assaulting a family or household member as defined
23 in RCW 10.99.020.

24 **Sec. 1004.** RCW 46.20.015 and 1999 c 6 s 4 are each amended to
25 read as follows:

26 (1) Except as expressly exempted by this chapter, it is a traffic
27 infraction and not a misdemeanor under RCW 46.20.005 if a person:

28 (a) Drives any motor vehicle upon a highway in this state without
29 a valid driver's license issued to Washington residents under this
30 chapter in his or her possession;

31 (b) Provides the citing officer with an expired driver's license
32 or other valid identifying documentation under RCW 46.20.035 at the
33 time of the stop; and

34 (c) Is not driving while suspended or revoked in violation of RCW
35 46.20.342(1) (a) or (b) or (~~46.20.420~~) 46.20.345.

36 (2) A person who violates this section is subject to a penalty of
37 two hundred fifty dollars. If the person appears in person before the
38 court or submits by mail written proof that he or she obtained a

1 valid license after being cited, the court shall reduce the penalty
2 to fifty dollars.

3 **PART XI**
4 **DRUG GRID CHANGES**

5 **Sec. 1101.** RCW 9.94A.518 and 2003 c 53 s 57 are each amended to
6 read as follows:

7 TABLE 4

8 DRUG OFFENSES
9 INCLUDED WITHIN EACH
10 SERIOUSNESS LEVEL

- 11 III Any felony offense under chapter
12 69.50 RCW with a deadly weapon
13 special verdict under RCW
14 ((9.94A.602)) 9.94A.825
15 Controlled Substance Homicide (RCW
16 69.50.415)
17 Delivery of imitation controlled
18 substance by person eighteen or
19 over to person under eighteen
20 (RCW 69.52.030(2))
21 Involving a minor in drug dealing
22 (RCW 69.50.4015)
23 Manufacture of methamphetamine
24 (RCW 69.50.401(2)(b))
25 Over 18 and deliver heroin,
26 methamphetamine, a narcotic from
27 Schedule I or II, or flunitrazepam
28 from Schedule IV to someone
29 under 18 (RCW 69.50.406)

1 Over 18 and deliver narcotic from
2 Schedule III, IV, or V or a
3 nonnarcotic, except flunitrazepam
4 or methamphetamine, from
5 Schedule I-V to someone under 18
6 and 3 years junior (RCW
7 69.50.406)

8 Possession of Ephedrine,
9 Pseudoephedrine, or Anhydrous
10 Ammonia with intent to
11 manufacture
12 methamphetamine (RCW
13 69.50.440)

14 Selling for profit (controlled or
15 counterfeit) any controlled
16 substance (RCW 69.50.410)

17 II Create, deliver, or possess a counterfeit
18 controlled substance (RCW
19 69.50.4011)

20 Deliver or possess with intent to
21 deliver methamphetamine (RCW
22 69.50.401(2)(b))

23 Delivery of a material in lieu of a
24 controlled substance (RCW
25 69.50.4012)

26 Maintaining a Dwelling or Place for
27 Controlled Substances (RCW
28 69.50.402(1)(f))

29 Manufacture, deliver, or possess with
30 intent to deliver amphetamine
31 (RCW 69.50.401(2)(b))

32 Manufacture, deliver, or possess with
33 intent to deliver narcotics from
34 Schedule I or II or flunitrazepam
35 from Schedule IV (RCW
36 69.50.401(2)(a))

1 Manufacture, deliver, or possess with
2 intent to deliver narcotics from
3 Schedule III, IV, or V or
4 nonnarcotics from Schedule I-V
5 (except marijuana, amphetamine,
6 methamphetamines, or
7 flunitrazepam) (RCW
8 69.50.401(2) (c) through (e))

9 Manufacture, distribute, or possess
10 with intent to distribute an
11 imitation controlled substance
12 (RCW 69.52.030(1))

13 I Forged Prescription (RCW 69.41.020)
14 Forged Prescription for a Controlled
15 Substance (RCW 69.50.403)

16 Manufacture, deliver, or possess with
17 intent to deliver marijuana (RCW
18 69.50.401(2)(c))

19 ~~((Possess Controlled Substance that is
20 a Narcotic from Schedule III, IV,
21 or V or Nonnarcotic from
22 Schedule I-V (RCW 69.50.4013)~~

23 ~~Possession of Controlled Substance
24 that is either heroin or narcotics
25 from Schedule I or II (RCW
26 69.50.4013))~~

27 Unlawful Use of Building for Drug
28 Purposes (RCW 69.53.010)

29 **PART XII**

30 **FIRST-TIME OFFENDER WAIVER**

31 **Sec. 1201.** RCW 9.94A.650 and 2011 1st sp.s. c 40 s 9 are each
32 amended to read as follows:

33 (1) ~~((This section applies to offenders who have never been))~~ An
34 offender is eligible for a first-time offender waiver if the offender
35 has not previously been convicted of a felony in this state, federal
36 court, or another state(, and who have)); has never participated in

1 a program of deferred prosecution for a felony(~~(τ)~~); and (~~who are~~
2 ~~convicted of~~) is not being sentenced for a felony that is (~~not~~):

3 (a) Classified as a violent offense or a sex offense under this
4 chapter;

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

9 (c) Manufacture, delivery, or possession with intent to deliver a
10 methamphetamine, its salts, isomers, and salts of its isomers as
11 defined in RCW 69.50.206(d)(2);

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

15 (e) Felony driving while under the influence of intoxicating
16 liquor or any drug or felony physical control of a vehicle while
17 under the influence of intoxicating liquor or any drug.

18 (2) (~~In sentencing a first-time offender~~) If an offender is
19 eligible for a first-time offender waiver as provided in subsection
20 (1) of this section, the court (~~may~~) shall waive the imposition of
21 a sentence within the standard sentence range and impose a sentence
22 which may include up to ninety days of confinement in a facility
23 operated or utilized under contract by the county and a requirement
24 that the offender refrain from committing new offenses.

25 (3) The court may impose up to six months of community custody
26 unless treatment is ordered, in which case the period of community
27 custody may include up to the period of treatment, but shall not
28 exceed one year.

29 (4) As a condition of community custody, in addition to any
30 conditions authorized in RCW 9.94A.703, the court may order the
31 offender to pay all court-ordered legal financial obligations and/or
32 perform community restitution work.

33 **PART XIII**
34 **DOMESTIC VIOLENCE**

35 **Sec. 1301.** RCW 9A.36.041 and 1987 c 188 s 2 are each amended to
36 read as follows:

1 (1) A person is guilty of assault in the fourth degree if, under
2 circumstances not amounting to assault in the first, second, or third
3 degree, or custodial assault, he or she assaults another.

4 (2) Assault in the fourth degree is a gross misdemeanor, except
5 as provided in subsection (3) of this section.

6 (3) Assault in the fourth degree, where domestic violence was
7 pleaded and proven after the effective date of this section, is a
8 class C felony if the person has two or more prior adult convictions
9 within ten years for any of the following offenses where domestic
10 violence as defined in RCW 9.94A.030 was pleaded and proven after the
11 effective date of this section:

12 (a) Repetitive domestic violence offense as defined in RCW
13 9.94A.030;

14 (b) Crime of harassment as defined by RCW 9A.46.060;

15 (c) Assault in the third degree;

16 (d) Assault in the second degree;

17 (e) Assault in the first degree; or

18 (f) An out-of-state comparable offense.

19 (4) For purposes of subsection (3) of this section, family or
20 household members means spouses, domestic partners, former spouses,
21 former domestic partners, persons who have a child in common
22 regardless of whether they have been married or have lived together
23 at any time, persons sixteen years of age or older who are presently
24 residing together or who have resided together in the past and who
25 have or have had a dating relationship, and persons sixteen years of
26 age or older with whom a person sixteen years of age or older has or
27 has had a dating relationship.

28 **Sec. 1302.** RCW 9.94A.525 and 2013 2nd sp.s. c 35 s 8 are each
29 amended to read as follows:

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

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

34 (1) A prior conviction is a conviction which exists before the
35 date of sentencing for the offense for which the offender score is
36 being computed. Convictions entered or sentenced on the same date as
37 the conviction for which the offender score is being computed shall
38 be deemed "other current offenses" within the meaning of RCW
39 9.94A.589.

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

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

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

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

24 (e) If the present conviction is felony driving while under the
25 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
26 felony physical control of a vehicle while under the influence of
27 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate
28 crimes for the offense as defined by RCW 46.61.5055(14) shall be
29 included in the offender score, and prior convictions for felony
30 driving while under the influence of intoxicating liquor or any drug
31 (RCW 46.61.502(6)) or felony physical control of a vehicle while
32 under the influence of intoxicating liquor or any drug (RCW
33 46.61.504(6)) shall always be included in the offender score. All
34 other convictions of the defendant shall be scored according to this
35 section.

36 (f) Prior convictions for a repetitive domestic violence offense,
37 as defined in RCW 9.94A.030, shall not be included in the offender
38 score if, since the last date of release from confinement or entry of
39 judgment and sentence, the offender had spent ten consecutive years

1 in the community without committing any crime that subsequently
2 results in a conviction.

3 (g) This subsection applies to both adult and juvenile prior
4 convictions.

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

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

17 (5)(a) In the case of multiple prior convictions, for the purpose
18 of computing the offender score, count all convictions separately,
19 except:

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

35 (ii) In the case of multiple prior convictions for offenses
36 committed before July 1, 1986, for the purpose of computing the
37 offender score, count all adult convictions served concurrently as
38 one offense, and count all juvenile convictions entered on the same
39 date as one offense. Use the conviction for the offense that yields
40 the highest offender score.

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

7 (6) If the present conviction is one of the anticipatory offenses
8 of criminal attempt, solicitation, or conspiracy, count each prior
9 conviction as if the present conviction were for a completed offense.
10 When these convictions are used as criminal history, score them the
11 same as a completed crime.

12 (7) If the present conviction is for a nonviolent offense and not
13 covered by subsection (11), (12), or (13) of this section, count one
14 point for each adult prior felony conviction and one point for each
15 juvenile prior violent felony conviction and 1/2 point for each
16 juvenile prior nonviolent felony conviction.

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

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

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

34 (11) If the present conviction is for a felony traffic offense
35 count two points for each adult or juvenile prior conviction for
36 Vehicular Homicide or Vehicular Assault; for each felony offense
37 count one point for each adult and 1/2 point for each juvenile prior
38 conviction; for each serious traffic offense, other than those used
39 for an enhancement pursuant to RCW 46.61.520(2), count one point for
40 each adult and 1/2 point for each juvenile prior conviction; count

1 one point for each adult and 1/2 point for each juvenile prior
2 conviction for operation of a vessel while under the influence of
3 intoxicating liquor or any drug.

4 (12) If the present conviction is for homicide by watercraft or
5 assault by watercraft count two points for each adult or juvenile
6 prior conviction for homicide by watercraft or assault by watercraft;
7 for each felony offense count one point for each adult and 1/2 point
8 for each juvenile prior conviction; count one point for each adult
9 and 1/2 point for each juvenile prior conviction for driving under
10 the influence of intoxicating liquor or any drug, actual physical
11 control of a motor vehicle while under the influence of intoxicating
12 liquor or any drug, or operation of a vessel while under the
13 influence of intoxicating liquor or any drug.

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

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

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

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

38 (17) If the present conviction is for a sex offense, count priors
39 as in subsections (7) through (11) and (13) through (16) of this

1 section; however count three points for each adult and juvenile prior
2 sex offense conviction.

3 (18) If the present conviction is for failure to register as a
4 sex offender under RCW 9A.44.130 or 9A.44.132, count priors as in
5 subsections (7) through (11) and (13) through (16) of this section;
6 however count three points for each adult and juvenile prior sex
7 offense conviction, excluding prior convictions for failure to
8 register as a sex offender under RCW 9A.44.130 or 9A.44.132, which
9 shall count as one point.

10 (19) If the present conviction is for an offense committed while
11 the offender was under community custody, add one point. For purposes
12 of this subsection, community custody includes community placement or
13 postrelease supervision, as defined in chapter 9.94B RCW.

14 (20) If the present conviction is for Theft of a Motor Vehicle,
15 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
16 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
17 priors as in subsections (7) through (18) of this section; however
18 count one point for prior convictions of Vehicle Prowling 2, and
19 three points for each adult and juvenile prior Theft 1 (of a motor
20 vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property
21 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor
22 vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle,
23 Taking a Motor Vehicle Without Permission 1, or Taking a Motor
24 Vehicle Without Permission 2 conviction.

25 (21) If the present conviction is for a felony domestic violence
26 offense where domestic violence as defined in RCW 9.94A.030 was
27 (~~plead~~~~[pleaded]~~) pleaded and proven, count priors as in
28 subsections (7) through (20) of this section; however, count points
29 as follows:

30 (a) Count two points for each adult prior conviction where
31 domestic violence as defined in RCW 9.94A.030 was (~~plead~~~~[pleaded]~~)
32 pleaded and proven after August 1, 2011, for any of the following
33 offenses: A felony violation of a no-contact or protection order
34 (~~that is a felony offense, a violation of a protection order that is~~
35 ~~a felony offense~~) RCW 26.50.110, ((a)) felony (~~domestic violence~~)
36 Harassment ((~~offense~~)) (RCW 9A.46.020(2)(b)), ((a)) felony (~~domestic~~
37 ~~violence~~) Stalking ((~~offense, a domestic violence~~)) (RCW
38 9A.46.110(5)(b)), Burglary 1 ((~~offense~~)) (RCW 9A.52.020), ((a
39 ~~domestic violence~~) Kidnapping 1 ((~~offense~~)) (RCW 9A.40.020), ((a
40 ~~domestic violence~~) Kidnapping 2 ((~~offense~~)) (RCW 9A.40.030), ((a

1 ~~domestic violence~~) Unlawful imprisonment ((~~offense~~)) (RCW
2 9A.40.040), ((~~a domestic violence~~)) Robbery 1 ((~~offense~~)) (RCW
3 9A.56.200), ((~~a domestic violence~~)) Robbery 2 ((~~offense~~)) (RCW
4 9A.56.210), ((~~a domestic violence~~)) Assault 1 ((~~offense~~)) (RCW
5 9A.36.011), ((~~a domestic violence~~)) Assault 2 ((~~offense~~)) (RCW
6 9A.36.021), ((~~a domestic violence~~)) Assault 3 ((~~offense~~)) (RCW
7 9A.36.031), ((~~a domestic violence~~)) Arson 1 ((~~offense~~)) (RCW
8 9A.48.020), or ((~~a domestic violence~~)) Arson 2 ((~~offense~~)) (RCW
9 9A.48.030);

10 (b) Count two points for each adult prior conviction where
11 domestic violence as defined in RCW 9.94A.030 was pleaded and proven
12 after the effective date of this section, for any of the following
13 offenses: Assault of a child in the first degree, RCW 9A.36.120;
14 Assault of a child in the second degree, RCW 9A.36.130; Assault of a
15 child in the third degree, RCW 9A.36.140; Criminal Mistreatment in
16 the first degree, RCW 9A.42.020; or Criminal Mistreatment in the
17 second degree, RCW 9A.42.030;

18 (c) Count one point for each second and subsequent juvenile
19 conviction where domestic violence as defined in RCW 9.94A.030 was
20 ((~~plead~~ ~~pleaded~~)) pleaded and proven after August 1, 2011, for the
21 offenses listed in (a) of this subsection; and

22 ((~~e~~)) (d) Count one point for each adult prior conviction for a
23 repetitive domestic violence offense as defined in RCW 9.94A.030,
24 where domestic violence as defined in RCW 9.94A.030, was ((~~plead~~
25 ~~pleaded~~)) pleaded and proven after August 1, 2011.

26 (22) The fact that a prior conviction was not included in an
27 offender's offender score or criminal history at a previous
28 sentencing shall have no bearing on whether it is included in the
29 criminal history or offender score for the current offense. Prior
30 convictions that were not counted in the offender score or included
31 in criminal history under repealed or previous versions of the
32 sentencing reform act shall be included in criminal history and shall
33 count in the offender score if the current version of the sentencing
34 reform act requires including or counting those convictions. Prior
35 convictions that were not included in criminal history or in the
36 offender score shall be included upon any resentencing to ensure
37 imposition of an accurate sentence.

38 **Sec. 1303.** RCW 43.43.754 and 2015 c 261 s 10 are each amended to
39 read as follows:

1 (1) A biological sample must be collected for purposes of DNA
2 identification analysis from:

3 (a) Every adult or juvenile individual convicted of a felony, or
4 any of the following crimes (or equivalent juvenile offenses):

5 (i) Assault in the fourth degree where domestic violence as
6 defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041,
7 9.94A.030);

8 (ii) Assault in the fourth degree with sexual motivation (RCW
9 9A.36.041, 9.94A.835);

10 (iii) Communication with a minor for immoral purposes (RCW
11 9.68A.090);

12 (iv) Custodial sexual misconduct in the second degree (RCW
13 9A.44.170);

14 (v) Failure to register (RCW 9A.44.130 for persons convicted on
15 or before June 10, 2010, and RCW 9A.44.132 for persons convicted
16 after June 10, 2010);

17 (vi) Harassment (RCW 9A.46.020);

18 (vii) Patronizing a prostitute (RCW 9A.88.110);

19 (viii) Sexual misconduct with a minor in the second degree (RCW
20 9A.44.096);

21 (ix) Stalking (RCW 9A.46.110);

22 (x) Violation of a sexual assault protection order granted under
23 chapter 7.90 RCW; and

24 (b) Every adult or juvenile individual who is required to
25 register under RCW 9A.44.130.

26 (2) If the Washington state patrol crime laboratory already has a
27 DNA sample from an individual for a qualifying offense, a subsequent
28 submission is not required to be submitted.

29 (3) Biological samples shall be collected in the following
30 manner:

31 (a) For persons convicted of any offense listed in subsection
32 (1)(a) of this section or adjudicated guilty of an equivalent
33 juvenile offense who do not serve a term of confinement in a
34 department of corrections facility, and do serve a term of
35 confinement in a city or county jail facility, the city or county
36 shall be responsible for obtaining the biological samples.

37 (b) The local police department or sheriff's office shall be
38 responsible for obtaining the biological samples for:

39 (i) Persons convicted of any offense listed in subsection (1)(a)
40 of this section or adjudicated guilty of an equivalent juvenile

1 offense who do not serve a term of confinement in a department of
2 corrections facility, and do not serve a term of confinement in a
3 city or county jail facility; and

4 (ii) Persons who are required to register under RCW 9A.44.130.

5 (c) For persons convicted of any offense listed in subsection
6 (1)(a) of this section or adjudicated guilty of an equivalent
7 juvenile offense, who are serving or who are to serve a term of
8 confinement in a department of corrections facility or a department
9 of social and health services facility, the facility holding the
10 person shall be responsible for obtaining the biological samples. For
11 those persons incarcerated before June 12, 2008, who have not yet had
12 a biological sample collected, priority shall be given to those
13 persons who will be released the soonest.

14 (4) Any biological sample taken pursuant to RCW 43.43.752 through
15 43.43.758 may be retained by the forensic laboratory services bureau,
16 and shall be used solely for the purpose of providing DNA or other
17 tests for identification analysis and prosecution of a criminal
18 offense or for the identification of human remains or missing
19 persons. Nothing in this section prohibits the submission of results
20 derived from the biological samples to the federal bureau of
21 investigation combined DNA index system.

22 (5) The forensic laboratory services bureau of the Washington
23 state patrol is responsible for testing performed on all biological
24 samples that are collected under subsection (1) of this section, to
25 the extent allowed by funding available for this purpose. The
26 director shall give priority to testing on samples collected from
27 those adults or juveniles convicted of a felony or adjudicated guilty
28 of an equivalent juvenile offense that is defined as a sex offense or
29 a violent offense in RCW 9.94A.030. Known duplicate samples may be
30 excluded from testing unless testing is deemed necessary or advisable
31 by the director.

32 (6) This section applies to:

33 (a) All adults and juveniles to whom this section applied prior
34 to June 12, 2008;

35 (b) All adults and juveniles to whom this section did not apply
36 prior to June 12, 2008, who:

37 (i) Are convicted on or after June 12, 2008, of an offense listed
38 in subsection (1)(a) of this section; or

1 (ii) Were convicted prior to June 12, 2008, of an offense listed
2 in subsection (1)(a) of this section and are still incarcerated on or
3 after June 12, 2008; and

4 (c) All adults and juveniles who are required to register under
5 RCW 9A.44.130 on or after June 12, 2008, whether convicted before,
6 on, or after June 12, 2008.

7 (7) This section creates no rights in a third person. No cause of
8 action may be brought based upon the noncollection or nonanalysis or
9 the delayed collection or analysis of a biological sample authorized
10 to be taken under RCW 43.43.752 through 43.43.758.

11 (8) The detention, arrest, or conviction of a person based upon a
12 database match or database information is not invalidated if it is
13 determined that the sample was obtained or placed in the database by
14 mistake, or if the conviction or juvenile adjudication that resulted
15 in the collection of the biological sample was subsequently vacated
16 or otherwise altered in any future proceeding including but not
17 limited to posttrial or postfact-finding motions, appeals, or
18 collateral attacks.

19 (9) A person commits the crime of refusal to provide DNA if the
20 person has a duty to register under RCW 9A.44.130 and the person
21 willfully refuses to comply with a legal request for a DNA sample as
22 required under this section. The refusal to provide DNA is a gross
23 misdemeanor.

24 **Sec. 1304.** RCW 43.43.830 and 2012 c 44 s 1 are each amended to
25 read as follows:

26 Unless the context clearly requires otherwise, the definitions in
27 this section apply throughout RCW 43.43.830 through 43.43.845.

28 (1) "Agency" means any person, firm, partnership, association,
29 corporation, or facility which receives, provides services to, houses
30 or otherwise cares for vulnerable adults, juveniles, or children, or
31 which provides child day care, early learning, or early childhood
32 education services.

33 (2) "Applicant" means:

34 (a) Any prospective employee who will or may have unsupervised
35 access to children under sixteen years of age or developmentally
36 disabled persons or vulnerable adults during the course of his or her
37 employment or involvement with the business or organization;

38 (b) Any prospective volunteer who will have regularly scheduled
39 unsupervised access to children under sixteen years of age,

1 developmentally disabled persons, or vulnerable adults during the
2 course of his or her employment or involvement with the business or
3 organization under circumstances where such access will or may
4 involve groups of (i) five or fewer children under twelve years of
5 age, (ii) three or fewer children between twelve and sixteen years of
6 age, (iii) developmentally disabled persons, or (iv) vulnerable
7 adults;

8 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
9 or

10 (d) Any prospective custodian in a nonparental custody proceeding
11 under chapter 26.10 RCW.

12 (3) "Business or organization" means a person, business, or
13 organization licensed in this state, any agency of the state, or
14 other governmental entity, that educates, trains, treats, supervises,
15 houses, or provides recreation to developmentally disabled persons,
16 vulnerable adults, or children under sixteen years of age, or that
17 provides child day care, early learning, or early learning childhood
18 education services, including but not limited to public housing
19 authorities, school districts, and educational service districts.

20 (4) "Civil adjudication proceeding" is a judicial or
21 administrative adjudicative proceeding that results in a finding of,
22 or upholds an agency finding of, domestic violence, abuse, sexual
23 abuse, neglect, abandonment, violation of a professional licensing
24 standard regarding a child or vulnerable adult, or exploitation or
25 financial exploitation of a child or vulnerable adult under any
26 provision of law, including but not limited to chapter 13.34, 26.44,
27 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW.
28 "Civil adjudication proceeding" also includes judicial or
29 administrative findings that become final due to the failure of the
30 alleged perpetrator to timely exercise a legal right to
31 administratively challenge such findings.

32 (5) "Client" or "resident" means a child, person with
33 developmental disabilities, or vulnerable adult applying for housing
34 assistance from a business or organization.

35 (6) "Conviction record" means "conviction record" information as
36 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed
37 by either an adult or a juvenile. It does not include a conviction
38 for an offense that has been the subject of an expungement, pardon,
39 annulment, certificate of rehabilitation, or other equivalent
40 procedure based on a finding of the rehabilitation of the person

1 convicted, or a conviction that has been the subject of a pardon,
2 annulment, or other equivalent procedure based on a finding of
3 innocence. It does include convictions for offenses for which the
4 defendant received a deferred or suspended sentence, unless the
5 record has been expunged according to law.

6 (7) "Crime against children or other persons" means a conviction
7 of any of the following offenses: Aggravated murder; first or second
8 degree murder; first or second degree kidnapping; first, second, or
9 third degree assault; fourth degree assault (if a violation of RCW
10 9A.36.041(3)); first, second, or third degree assault of a child;
11 first, second, or third degree rape; first, second, or third degree
12 rape of a child; first or second degree robbery; first degree arson;
13 first degree burglary; first or second degree manslaughter; first or
14 second degree extortion; indecent liberties; incest; vehicular
15 homicide; first degree promoting prostitution; communication with a
16 minor; unlawful imprisonment; simple assault; sexual exploitation of
17 minors; first or second degree criminal mistreatment; endangerment
18 with a controlled substance; child abuse or neglect as defined in RCW
19 26.44.020; first or second degree custodial interference; first or
20 second degree custodial sexual misconduct; malicious harassment;
21 first, second, or third degree child molestation; first or second
22 degree sexual misconduct with a minor; commercial sexual abuse of a
23 minor; child abandonment; promoting pornography; selling or
24 distributing erotic material to a minor; custodial assault; violation
25 of child abuse restraining order; child buying or selling;
26 prostitution; felony indecent exposure; criminal abandonment; or any
27 of these crimes as they may be renamed in the future.

28 (8) "Crimes relating to drugs" means a conviction of a crime to
29 manufacture, delivery, or possession with intent to manufacture or
30 deliver a controlled substance.

31 (9) "Crimes relating to financial exploitation" means a
32 conviction for first, second, or third degree extortion; first,
33 second, or third degree theft; first or second degree robbery;
34 forgery; or any of these crimes as they may be renamed in the future.

35 (10) "Financial exploitation" means "financial exploitation" as
36 defined in RCW 74.34.020.

37 (11) "Health care facility" means a nursing home licensed under
38 chapter 18.51 RCW, a (~~boarding home~~) assisted living facility
39 licensed under chapter 18.20 RCW, or an adult family home licensed
40 under chapter 70.128 RCW.

1 (12) "Peer counselor" means a nonprofessional person who has
2 equal standing with another person, providing advice on a topic about
3 which the nonprofessional person is more experienced or
4 knowledgeable, and who is a counselor for a peer counseling program
5 that contracts with or is otherwise approved by the department,
6 another state or local agency, or the court.

7 (13) "Unsupervised" means not in the presence of:

8 (a) Another employee or volunteer from the same business or
9 organization as the applicant; or

10 (b) Any relative or guardian of any of the children or
11 developmentally disabled persons or vulnerable adults to which the
12 applicant has access during the course of his or her employment or
13 involvement with the business or organization.

14 With regard to peer counselors, "unsupervised" does not include
15 incidental contact with children under age sixteen at the location at
16 which the peer counseling is taking place. "Incidental contact" means
17 minor or casual contact with a child in an area accessible to and
18 within visual or auditory range of others. It could include passing a
19 child while walking down a hallway but would not include being alone
20 with a child for any period of time in a closed room or office.

21 (14) "Vulnerable adult" means "vulnerable adult" as defined in
22 chapter 74.34 RCW, except that for the purposes of requesting and
23 receiving background checks pursuant to RCW 43.43.832, it shall also
24 include adults of any age who lack the functional, mental, or
25 physical ability to care for themselves.

26 NEW SECTION. **Sec. 1305.** A new section is added to chapter 7.36
27 RCW to read as follows:

28 Notwithstanding RCW 36.18.040, the sheriff may waive fees
29 associated with service of a writ of habeas corpus that was issued
30 for the return of a child when the person who was granted the writ
31 is, by reason of poverty, unable to pay the cost of service.

32 NEW SECTION. **Sec. 1306.** (1) The administrative office of the
33 courts shall, through the Washington state gender and justice
34 commission of the supreme court, convene a work group to address the
35 issue of domestic violence perpetrator treatment and the role of
36 certified perpetrator treatment programs in holding domestic violence
37 perpetrators accountable.

1 (2) The work group must include a representative for each of the
2 following organizations or interests: Superior court judges, district
3 court judges, municipal court judges, court probation officers,
4 prosecuting attorneys, defense attorneys, civil legal aid attorneys,
5 domestic violence victim advocates, domestic violence perpetrator
6 treatment providers, the department of social and health services,
7 the department of corrections, the Washington state institute for
8 public policy, and the University of Washington evidence based
9 practice institute. At least two domestic violence perpetrator
10 treatment providers must be represented as members of the work group.

11 (3) The work group shall: (a) Review laws, regulations, and court
12 and agency practices pertaining to domestic violence perpetrator
13 treatment used in civil and criminal contexts, including criminal
14 domestic violence felony and misdemeanor offenses, family law, child
15 welfare, and protection orders; (b) consider the development of a
16 universal diagnostic evaluation tool to be used by treatment
17 providers and the department of corrections to assess the treatment
18 needs of domestic violence perpetrators; and (c) develop
19 recommendations on changes to existing laws, regulations, and court
20 and agency practices to improve victim safety, decrease recidivism,
21 advance treatment outcomes, and increase the courts' confidence in
22 domestic violence perpetrator treatment.

23 (4) The work group shall report its recommendations to the
24 affected entities and the appropriate committees of the legislature
25 no later than June 30, 2018.

26 (5) The work group must operate within existing funds.

27 (6) This section expires June 30, 2019.

28 NEW SECTION. **Sec. 1307.** (1) The legislature finds that
29 Washington state has a serious problem with domestic violence
30 offender recidivism and lethality. The Washington state institute for
31 public policy studied domestic violence offenders finding not just
32 high rates of domestic violence recidivism but among the highest
33 rates of general criminal and violent recidivism. The Washington
34 state coalition against domestic violence has issued fatality reviews
35 of domestic violence homicides in Washington under chapter 43.235 RCW
36 for over fifteen years. These fatality reviews demonstrate the
37 significant impact of domestic violence on our communities as well as
38 the barriers and high rates of lethality faced by victims. The
39 legislature further notes there have been several high profile

1 domestic violence homicides with multiple prior domestic violence
2 incidents not accounted for in the legal response. Many jurisdictions
3 nationally have encountered the same challenges as Washington and now
4 utilize risk assessment as a best practice to assist in the response
5 to domestic violence.

6 The Washington domestic violence risk assessment work group is
7 established to study how and when risk assessment can best be used to
8 improve the response to domestic violence offenders and victims and
9 find effective strategies to reduce domestic violence homicides,
10 serious injuries, and recidivism that are a result of domestic
11 violence incidents in Washington state.

12 (2)(a) The Washington state gender and justice commission, in
13 collaboration with the Washington state coalition against domestic
14 violence and the Washington State University criminal justice
15 program, shall coordinate the work group and provide staff support.

16 (b) The work group must include a representative from each of the
17 following organizations:

- 18 (i) The Washington state gender and justice commission;
- 19 (ii) The department of corrections;
- 20 (iii) The department of social and health services;
- 21 (iv) The Washington association of sheriffs and police chiefs;
- 22 (v) The superior court judges' association;
- 23 (vi) The district and municipal court judges' association;
- 24 (vii) The Washington state association of counties;
- 25 (viii) The Washington association of prosecuting attorneys;
- 26 (ix) The Washington defender association;
- 27 (x) The Washington association of criminal defense lawyers;
- 28 (xi) The Washington state association of cities;
- 29 (xii) The Washington state coalition against domestic violence;
- 30 (xiii) The Washington state office of civil legal aid; and
- 31 (xiv) The family law section of the Washington state bar
32 association.

33 (c) The work group must additionally include representation from:

- 34 (i) Treatment providers;
- 35 (ii) City law enforcement;
- 36 (iii) County law enforcement;
- 37 (iv) Court administrators; and
- 38 (v) Domestic violence victims or family members of a victim.

39 (3) At a minimum, the work group shall research, review, and make
40 recommendations on the following:

1 (a) How to best develop and use risk assessment in domestic
2 violence response utilizing available research and Washington state
3 data;

4 (b) Providing effective strategies for incorporating risk
5 assessment in domestic violence response to reduce deaths, serious
6 injuries, and recidivism due to domestic violence;

7 (c) Promoting access to domestic violence risk assessment for
8 advocates, police, prosecutors, corrections, and courts to improve
9 domestic violence response;

10 (d) Whether or how risk assessment could be used as an
11 alternative to mandatory arrest in domestic violence;

12 (e) Whether or how risk assessment could be used in bail
13 determinations in domestic violence cases, and in civil protection
14 order hearings;

15 (f) Whether or how offender risk, needs, and responsivity could
16 be used in determining eligibility for diversion, sentencing
17 alternatives, and treatment options;

18 (g) Whether or how victim risk, needs, and responsivity could be
19 used in improving domestic violence response;

20 (h) Whether or how risk assessment can improve prosecution and
21 encourage prosecutors to aggressively enforce domestic violence laws;
22 and

23 (i) Encouraging private sector collaboration.

24 (4) The work group shall compile its findings and recommendations
25 into a final report and provide its report to the appropriate
26 committees of the legislature and governor by June 30, 2018.

27 (5) The work group must operate within existing funds.

28 (6) This section expires June 30, 2019.

29 **Sec. 1308.** RCW 9.96.060 and 2014 c 176 s 1 and 2014 c 109 s 1
30 are each reenacted and amended to read as follows:

31 (1) Every person convicted of a misdemeanor or gross misdemeanor
32 offense who has completed all of the terms of the sentence for the
33 misdemeanor or gross misdemeanor offense may apply to the sentencing
34 court for a vacation of the applicant's record of conviction for the
35 offense. If the court finds the applicant meets the tests prescribed
36 in subsection (2) of this section, the court may in its discretion
37 vacate the record of conviction by: (a)(i) Permitting the applicant
38 to withdraw the applicant's plea of guilty and to enter a plea of not
39 guilty; or (ii) if the applicant has been convicted after a plea of

1 not guilty, the court setting aside the verdict of guilty; and (b)
2 the court dismissing the information, indictment, complaint, or
3 citation against the applicant and vacating the judgment and
4 sentence.

5 (2) An applicant may not have the record of conviction for a
6 misdemeanor or gross misdemeanor offense vacated if any one of the
7 following is present:

8 (a) There are any criminal charges against the applicant pending
9 in any court of this state or another state, or in any federal court;

10 (b) The offense was a violent offense as defined in RCW 9.94A.030
11 or an attempt to commit a violent offense;

12 (c) The offense was a violation of RCW 46.61.502 (driving while
13 under the influence), 46.61.504 (actual physical control while under
14 the influence), 9.91.020 (operating a railroad, etc. while
15 intoxicated), or the offense is considered a "prior offense" under
16 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
17 violation within ten years of the date of arrest for the prior
18 offense;

19 (d) The offense was any misdemeanor or gross misdemeanor
20 violation, including attempt, of chapter 9.68 RCW (obscenity and
21 pornography), chapter 9.68A RCW (sexual exploitation of children), or
22 chapter 9A.44 RCW (sex offenses);

23 (e) The applicant was convicted of a misdemeanor or gross
24 misdemeanor offense as defined in RCW 10.99.020, or the court
25 determines after a review of the court file that the offense was
26 committed by one family member or household member against another,
27 or the court, after considering the damage to person or property that
28 resulted in the conviction, any prior convictions for crimes defined
29 in RCW 10.99.020, or for comparable offenses in another state or in
30 federal court, and the totality of the records under review by the
31 court regarding the conviction being considered for vacation,
32 determines that the offense involved domestic violence, and any one
33 of the following factors exist:

34 (i) The applicant has not provided written notification of the
35 vacation petition to the prosecuting attorney's office that
36 prosecuted the offense for which vacation is sought, or has not
37 provided that notification to the court;

38 (ii) The applicant has previously had a conviction for domestic
39 violence. For purposes of this subsection, however, if the current
40 application is for more than one conviction that arose out of a

1 single incident, none of those convictions counts as a previous
2 conviction;

3 (iii) The applicant has signed an affidavit under penalty of
4 perjury affirming that the applicant has not previously had a
5 conviction for a domestic violence offense, and a criminal history
6 check reveals that the applicant has had such a conviction; or

7 (iv) Less than five years have elapsed since the person completed
8 the terms of the original conditions of the sentence, including any
9 financial obligations and successful completion of any treatment
10 ordered as a condition of sentencing;

11 (f) For any offense other than those described in (e) of this
12 subsection, less than three years have passed since the person
13 completed the terms of the sentence, including any financial
14 obligations;

15 (g) The offender has been convicted of a new crime in this state,
16 another state, or federal court since the date of conviction;

17 (h) The applicant has ever had the record of another conviction
18 vacated; or

19 (i) The applicant is currently restrained, or has been restrained
20 within five years prior to the vacation application, by a domestic
21 violence protection order, a no-contact order, an antiharassment
22 order, or a civil restraining order which restrains one party from
23 contacting the other party.

24 (3) Subject to RCW 9.96.070, every person convicted of
25 prostitution under RCW 9A.88.030 who committed the offense as a
26 result of being a victim of trafficking, RCW 9A.40.100, promoting
27 prostitution in the first degree, RCW 9A.88.070, promoting commercial
28 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons
29 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.
30 7101 et seq. may apply to the sentencing court for vacation of the
31 applicant's record of conviction for the prostitution offense. An
32 applicant may not have the record of conviction for prostitution
33 vacated if any one of the following is present:

34 (a) There are any criminal charges against the applicant pending
35 in any court of this state or another state, or in any federal court,
36 for any crime other than prostitution; or

37 (b) The offender has been convicted of another crime, except
38 prostitution, in this state, another state, or federal court since
39 the date of conviction.

1 (4) Every person convicted prior to January 1, 1975, of violating
2 any statute or rule regarding the regulation of fishing activities,
3 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
4 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
5 who claimed to be exercising a treaty Indian fishing right, may apply
6 to the sentencing court for vacation of the applicant's record of the
7 misdemeanor, gross misdemeanor, or felony conviction for the offense.
8 If the person is deceased, a member of the person's family or an
9 official representative of the tribe of which the person was a member
10 may apply to the court on behalf of the deceased person.
11 Notwithstanding the requirements of RCW 9.94A.640, the court shall
12 vacate the record of conviction if:

13 (a) The applicant is a member of a tribe that may exercise treaty
14 Indian fishing rights at the location where the offense occurred; and

15 (b) The state has been enjoined from taking enforcement action of
16 the statute or rule to the extent that it interferes with a treaty
17 Indian fishing right as determined under *United States v. Washington*,
18 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
19 899 (D. Oregon 1969), and any posttrial orders of those courts, or
20 any other state supreme court or federal court decision.

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

33 (b) When a court vacates a record of domestic violence as defined
34 in RCW 10.99.020 under this section, the state may not use the
35 vacated conviction in a later criminal prosecution unless the
36 conviction was for: (i) Violating the provisions of a restraining
37 order, no-contact order, or protection order restraining or enjoining
38 the person or restraining the person from going on to the grounds of
39 or entering a residence, workplace, school, or day care, or
40 prohibiting the person from knowingly coming within, or knowingly

1 remaining within, a specified distance of a location (RCW 10.99.040,
2 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.44.063, 26.44.150,
3 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145); or (ii)
4 stalking (RCW 9A.46.110). A vacated conviction under this section is
5 not considered a conviction of such an offense for the purposes of 27
6 C.F.R. 478.11.

7 (6) All costs incurred by the court and probation services shall
8 be paid by the person making the motion to vacate the record unless a
9 determination is made pursuant to chapter 10.101 RCW that the person
10 making the motion is indigent, at the time the motion is brought.

11 (7) The clerk of the court in which the vacation order is entered
12 shall immediately transmit the order vacating the conviction to the
13 Washington state patrol identification section and to the local
14 police agency, if any, which holds criminal history information for
15 the person who is the subject of the conviction. The Washington state
16 patrol and any such local police agency shall immediately update
17 their records to reflect the vacation of the conviction, and shall
18 transmit the order vacating the conviction to the federal bureau of
19 investigation. A conviction that has been vacated under this section
20 may not be disseminated or disclosed by the state patrol or local law
21 enforcement agency to any person, except other criminal justice
22 enforcement agencies.

23 **PART XIV**

24 **APPLICABILITY AND EXPIRATION**

25 NEW SECTION. **Sec. 1401.** The following acts or parts of acts are
26 each repealed:

27 (1) RCW 69.50.4014 (Possession of forty grams or less of
28 marijuana—Penalty) and 2015 2nd sp.s. c 4 s 505 & 2003 c 53 s 335;

29 (2) 2015 c 291 s 8;

30 (3) 2015 c 291 s 9;

31 (4) 2013 2nd sp.s. c 14 s 1; and

32 (5) 2013 2nd sp.s. c 14 s 10 (uncodified).

33 NEW SECTION. **Sec. 1402.** Sections 401 through 404 of this act
34 apply retroactively and prospectively regardless of the date of an
35 offender's underlying offense.

1 NEW SECTION. **Sec. 1403.** Section 1101 of this act applies to
2 offenses sentenced on or after the effective date of this section
3 regardless of the date of the offender's underlying offense.

4 NEW SECTION. **Sec. 1404.** Section 903 of this act expires August
5 30, 2017.

6 NEW SECTION. **Sec. 1405.** Section 904 of this act takes effect
7 August 30, 2017.

8 NEW SECTION. **Sec. 1406.** Sections 401 through 406 and 601
9 through 603 of this act are necessary for the immediate preservation
10 of the public peace, health, or safety, or support of the state
11 government and its existing public institutions, and take effect
12 immediately.

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