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**SENATE BILL 5054**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Padden, Frockt, Conway, McCune, and Short

Prefiled 12/31/20. Read first time 01/11/21. Referred to Committee on Law & Justice.

1 AN ACT Relating to impaired driving; amending RCW 46.61.502,  
2 46.61.5055, 46.61.5055, 46.61.504, and 9.94A.525; prescribing  
3 penalties; providing and effective date; and providing an expiration  
4 date.

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

6 **Sec. 1.** RCW 46.61.502 and 2017 c 335 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.

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

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

15 (b) It is an affirmative defense to a violation of subsection  
16 (1)(b) of this section, which the defendant must prove by a  
17 preponderance of the evidence, that the defendant consumed a  
18 sufficient quantity of marijuana after the time of driving and before  
19 the administration of an analysis of the person's blood to cause the  
20 defendant's THC concentration to be 5.00 or more within two hours  
21 after driving. The court shall not admit evidence of this defense  
22 unless the defendant notifies the prosecution prior to the omnibus or  
23 pretrial hearing in the case of the defendant's intent to assert the  
24 affirmative defense.

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

33 (b) Analyses of blood samples obtained more than two hours after  
34 the alleged driving may be used as evidence that within two hours of  
35 the alleged driving, a person had a THC concentration of 5.00 or more  
36 in violation of subsection (1)(b) of this section, and in any case in  
37 which the analysis shows a THC concentration above 0.00 may be used  
38 as evidence that a person was under the influence of or affected by  
39 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

5 (a) The person has three or more prior offenses within (~~ten~~) 15  
6 years as defined in RCW 46.61.5055; or

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

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

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

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

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

15 **Sec. 2.** RCW 46.61.5055 and 2018 c 201 s 9009 are each amended to  
16 read as follows:

17 (1) **No prior offenses in seven years.** Except as provided in RCW  
18 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
19 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense  
20 within seven years shall be punished as follows:

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

26 (i) By imprisonment for not less than one day nor more than three  
27 hundred sixty-four days. Twenty-four consecutive hours of the  
28 imprisonment may not be suspended unless the court finds that the  
29 imposition of this mandatory minimum sentence would impose a  
30 substantial risk to the offender's physical or mental well-being.  
31 Whenever the mandatory minimum sentence is suspended, the court shall  
32 state in writing the reason for granting the suspension and the facts  
33 upon which the suspension is based. In lieu of the mandatory minimum  
34 term of imprisonment required under this subsection (1)(a)(i), the  
35 court may order not less than fifteen days of electronic home  
36 monitoring or a ninety-day period of 24/7 sobriety program  
37 monitoring. The court may consider the offender's pretrial 24/7  
38 sobriety program monitoring as fulfilling a portion of posttrial  
39 sentencing. The offender shall pay the cost of electronic home

1 monitoring. The county or municipality in which the penalty is being  
2 imposed shall determine the cost. The court may also require the  
3 offender's electronic home monitoring device or other separate  
4 alcohol monitoring device to include an alcohol detection  
5 breathalyzer, and the court may restrict the amount of alcohol the  
6 offender may consume during the time the offender is on electronic  
7 home monitoring; and

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

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

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

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

1           (2) **One prior offense 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 one 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 thirty days nor more than  
11 three hundred sixty-four days and sixty days of electronic home  
12 monitoring. In lieu of the mandatory term of imprisonment and  
13 electronic home monitoring under this subsection (2)(a)(i), the court  
14 may order a minimum of four days in jail and either one hundred  
15 eighty days of electronic home monitoring or a one hundred twenty-day  
16 period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300  
17 through 36.28A.390. The court may consider the offender's pretrial  
18 24/7 sobriety program monitoring as fulfilling a portion of posttrial  
19 sentencing. The court shall order an expanded alcohol assessment and  
20 treatment, if deemed appropriate by the assessment. The offender  
21 shall pay for the cost of the electronic monitoring. The county or  
22 municipality where the penalty is being imposed shall determine the  
23 cost. The court may also require the offender's electronic home  
24 monitoring device include an alcohol detection breathalyzer or other  
25 separate alcohol monitoring device, and may restrict the amount of  
26 alcohol the offender may consume during the time the offender is on  
27 electronic home monitoring. Thirty days of imprisonment and sixty  
28 days of electronic home monitoring may not be suspended unless the  
29 court finds that the imposition of this mandatory minimum sentence  
30 would impose a substantial risk to the offender's physical or mental  
31 well-being. Whenever the mandatory minimum sentence is suspended, the  
32 court shall state in writing the reason for granting the suspension  
33 and the facts upon which the suspension is based; and

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

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

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

3 (i) By imprisonment for not less than forty-five days nor more  
4 than three hundred sixty-four days and ninety days of electronic home  
5 monitoring. In lieu of the mandatory minimum term of imprisonment and  
6 electronic home monitoring under this subsection (2)(b)(i), the court  
7 may order a minimum of six days in jail and either six months of  
8 electronic home monitoring or a one hundred twenty-day period of 24/7  
9 sobriety program monitoring pursuant to RCW 36.28A.300 through  
10 36.28A.390. The court may consider the offender's pretrial 24/7  
11 sobriety program monitoring as fulfilling a portion of posttrial  
12 sentencing. The court shall order an expanded alcohol assessment and  
13 treatment, if deemed appropriate by the assessment. The offender  
14 shall pay for the cost of the electronic monitoring. The county or  
15 municipality where the penalty is being imposed shall determine the  
16 cost. The court may also require the offender's electronic home  
17 monitoring device include an alcohol detection breathalyzer or other  
18 separate alcohol monitoring device, and may restrict the amount of  
19 alcohol the offender may consume during the time the offender is on  
20 electronic home monitoring. Forty-five days of imprisonment and  
21 ninety days of electronic home monitoring may not be suspended unless  
22 the court finds that the imposition of this mandatory minimum  
23 sentence would impose a substantial risk to the offender's physical  
24 or mental well-being. Whenever the mandatory minimum sentence is  
25 suspended, the court shall state in writing the reason for granting  
26 the suspension and the facts upon which the suspension is based; and

27 (ii) By a fine of not less than seven hundred fifty dollars nor  
28 more than five thousand dollars. Seven hundred fifty dollars of the  
29 fine may not be suspended unless the court finds the offender to be  
30 indigent.

31 (3) **Two prior offenses in seven years.** Except as provided in RCW  
32 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
33 violation of RCW 46.61.502 or 46.61.504 and who has two prior  
34 offenses within seven years shall be punished as follows:

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

1 (i) By imprisonment for not less than ninety days nor more than  
2 three hundred sixty-four days, if available in that county or city, a  
3 six-month period of 24/7 sobriety program monitoring pursuant to RCW  
4 36.28A.300 through 36.28A.390, and one hundred twenty days of  
5 electronic home monitoring. In lieu of the mandatory minimum term of  
6 one hundred twenty days of electronic home monitoring, the court may  
7 order at least an additional eight days in jail. The court shall  
8 order an expanded alcohol assessment and treatment, if deemed  
9 appropriate by the assessment. The offender shall pay for the cost of  
10 the electronic monitoring. The county or municipality where the  
11 penalty is being imposed shall determine the cost. The court may also  
12 require the offender's electronic home monitoring device include an  
13 alcohol detection breathalyzer or other separate alcohol monitoring  
14 device, and may restrict the amount of alcohol the offender may  
15 consume during the time the offender is on electronic home  
16 monitoring. Ninety days of imprisonment and one hundred twenty days  
17 of electronic home monitoring may not be suspended unless the court  
18 finds that the imposition of this mandatory minimum sentence would  
19 impose a substantial risk to the offender's physical or mental well-  
20 being. Whenever the mandatory minimum sentence is suspended, the  
21 court shall state in writing the reason for granting the suspension  
22 and the facts upon which the suspension is based; and

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

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

31 (i) By imprisonment for not less than one hundred twenty days nor  
32 more than three hundred sixty-four days, if available in that county  
33 or city, a six-month period of 24/7 sobriety program monitoring  
34 pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty  
35 days of electronic home monitoring. In lieu of the mandatory minimum  
36 term of one hundred fifty days of electronic home monitoring, the  
37 court may order at least an additional ten days in jail. The offender  
38 shall pay for the cost of the electronic monitoring. The court shall  
39 order an expanded alcohol assessment and treatment, if deemed  
40 appropriate by the assessment. The county or municipality where the

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

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

17 (4) **Three or more prior offenses in (~~ten~~) 15 years.** A person  
18 who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall  
19 be punished under chapter 9.94A RCW if:

20 (a) The person has three or more prior offenses within (~~ten~~) 15  
21 years; or

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

23 (i) A violation of RCW 46.61.520 committed while under the  
24 influence of intoxicating liquor or any drug;

25 (ii) A violation of RCW 46.61.522 committed while under the  
26 influence of intoxicating liquor or any drug;

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

29 (iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

30 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall  
31 require any person convicted of a violation of RCW 46.61.502 or  
32 46.61.504 or an equivalent local ordinance to comply with the rules  
33 and requirements of the department regarding the installation and use  
34 of a functioning ignition interlock device installed on all motor  
35 vehicles operated by the person.

36 (b) **Monitoring devices.** If the court orders that a person refrain  
37 from consuming any alcohol, the court may order the person to submit  
38 to alcohol monitoring through an alcohol detection breathalyzer  
39 device, transdermal sensor device, or other technology designed to  
40 detect alcohol in a person's system. The person shall pay for the



1 cost of the monitoring, unless the court specifies that the cost of  
2 monitoring will be paid with funds that are available from an  
3 alternative source identified by the court. The county or  
4 municipality where the penalty is being imposed shall determine the  
5 cost.

6 (c) **24/7 sobriety program monitoring.** In any county or city where  
7 a 24/7 sobriety program is available and verified by the Washington  
8 association of sheriffs and police chiefs, the court shall:

9 (i) Order the person to install and use a functioning ignition  
10 interlock or other device in lieu of such period of 24/7 sobriety  
11 program monitoring;

12 (ii) Order the person to a period of 24/7 sobriety program  
13 monitoring pursuant to subsections (1) through (3) of this section;  
14 or

15 (iii) Order the person to install and use a functioning ignition  
16 interlock or other device in addition to a period of 24/7 sobriety  
17 program monitoring pursuant to subsections (1) through (3) of this  
18 section.

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

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

25 (b) In any case in which the person has no prior offenses within  
26 seven years, and except as provided in RCW 46.61.502(6) or  
27 46.61.504(6), order an additional twenty-four hours of imprisonment  
28 and a fine of not less than one thousand dollars and not more than  
29 five thousand dollars. One thousand dollars of the fine may not be  
30 suspended unless the court finds the offender to be indigent;

31 (c) In any case in which the person has one prior offense within  
32 seven years, and except as provided in RCW 46.61.502(6) or  
33 46.61.504(6), order an additional five days of imprisonment and a  
34 fine of not less than two thousand dollars and not more than five  
35 thousand dollars. One thousand dollars of the fine may not be  
36 suspended unless the court finds the offender to be indigent;

37 (d) In any case in which the person has two prior offenses within  
38 seven years, and except as provided in RCW 46.61.502(6) or  
39 46.61.504(6), order an additional ten days of imprisonment and a fine  
40 of not less than three thousand dollars and not more than ten

1 thousand dollars. One thousand dollars of the fine may not be  
2 suspended unless the court finds the offender to be indigent.

3 (7) **Other items courts must consider while setting penalties.** In  
4 exercising its discretion in setting penalties within the limits  
5 allowed by this section, the court shall particularly consider the  
6 following:

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

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

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

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

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

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

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

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

36 (ii) Where there has been one prior offense within seven years,  
37 be revoked or denied by the department for two years or until the  
38 person is evaluated by an alcoholism agency or probation department  
39 pursuant to RCW 46.20.311 and the person completes or is enrolled in  
40 a six-month period of 24/7 sobriety program monitoring. In no

1 circumstances shall the license suspension be for less than one year;  
2 or

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

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

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

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

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

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

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

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

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

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

32 Upon receipt of a notice from the court under RCW 36.28A.390 that  
33 a participant has been removed from a 24/7 sobriety program, the  
34 department must resume any suspension, revocation, or denial that had  
35 been terminated early under this subsection due to participation in  
36 the program, granting credit on a day-for-day basis for any portion  
37 of a suspension, revocation, or denial already served under RCW  
38 46.20.3101 or this section arising out of the same incident.

39 Upon its own motion or upon motion by a person, a court may find,  
40 on the record, that notice to the department under RCW 46.20.270 has

1 been delayed for three years or more as a result of a clerical or  
2 court error. If so, the court may order that the person's license,  
3 permit, or nonresident privilege shall not be revoked, suspended, or  
4 denied for that offense. The court shall send notice of the finding  
5 and order to the department and to the person. Upon receipt of the  
6 notice from the court, the department shall not revoke, suspend, or  
7 deny the license, permit, or nonresident privilege of the person for  
8 that offense.

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

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

17 (11) **Conditions of probation.** (a) In addition to any  
18 nonsuspendable and nondeferrable jail sentence required by this  
19 section, whenever the court imposes up to three hundred sixty-four  
20 days in jail, the court shall also suspend but shall not defer a  
21 period of confinement for a period not exceeding five years. The  
22 court shall impose conditions of probation that include: (i) Not  
23 driving a motor vehicle within this state without a valid license to  
24 drive; (ii) not driving a motor vehicle within this state without  
25 proof of liability insurance or other financial responsibility for  
26 the future pursuant to RCW 46.30.020; (iii) not driving or being in  
27 physical control of a motor vehicle within this state while having an  
28 alcohol concentration of 0.08 or more or a THC concentration of 5.00  
29 nanograms per milliliter of whole blood or higher, within two hours  
30 after driving; (iv) not refusing to submit to a test of his or her  
31 breath or blood to determine alcohol or drug concentration upon  
32 request of a law enforcement officer who has reasonable grounds to  
33 believe the person was driving or was in actual physical control of a  
34 motor vehicle within this state while under the influence of  
35 intoxicating liquor or drug; and (v) not driving a motor vehicle in  
36 this state without a functioning ignition interlock device as  
37 required by the department under RCW 46.20.720. The court may impose  
38 conditions of probation that include nonrepetition, installation of  
39 an ignition interlock device on the probationer's motor vehicle,  
40 alcohol or drug treatment, supervised probation, or other conditions

1 that may be appropriate. The sentence may be imposed in whole or in  
2 part upon violation of a condition of probation during the suspension  
3 period.

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

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

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

20 (a) The offender does not have a dwelling, telephone service, or  
21 any other necessity to operate an electronic home monitoring system.  
22 However, if a court determines that an alcohol monitoring device  
23 utilizing wireless reporting technology is reasonably available, the  
24 court may require the person to obtain such a device during the  
25 period of required electronic home monitoring;

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

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

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

37 Whenever the combination of jail time and electronic home  
38 monitoring or alternative sentence would exceed three hundred sixty-  
39 four days, the offender shall serve the jail portion of the sentence  
40 first, and the electronic home monitoring or alternative portion of

1 the sentence shall be reduced so that the combination does not exceed  
2 three hundred sixty-four days.

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

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

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

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

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

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

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

19 (v) A conviction for a violation of RCW 79A.60.040(1) or an  
20 equivalent local ordinance committed in a reckless manner if the  
21 conviction is the result of a charge that was originally filed as a  
22 violation of RCW 79A.60.040(2) or an equivalent local ordinance;

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

26 (vii) A conviction for a violation of RCW 47.68.220 or an  
27 equivalent local ordinance committed in a careless or reckless manner  
28 if the conviction is the result of a charge that was originally filed  
29 as a violation of RCW 47.68.220 or an equivalent local ordinance  
30 while under the influence of intoxicating liquor or any drug;

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

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

35 (x) A conviction for a violation of RCW 46.61.520 committed while  
36 under the influence of intoxicating liquor or any drug, or a  
37 conviction for a violation of RCW 46.61.520 committed in a reckless  
38 manner or with the disregard for the safety of others if the  
39 conviction is the result of a charge that was originally filed as a

1 violation of RCW 46.61.520 committed while under the influence of  
2 intoxicating liquor or any drug;

3 (xi) A conviction for a violation of RCW 46.61.522 committed  
4 while under the influence of intoxicating liquor or any drug, or a  
5 conviction for a violation of RCW 46.61.522 committed in a reckless  
6 manner or with the disregard for the safety of others if the  
7 conviction is the result of a charge that was originally filed as a  
8 violation of RCW 46.61.522 committed while under the influence of  
9 intoxicating liquor or any drug;

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

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

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

21 (xv) A deferred prosecution under chapter 10.05 RCW granted in a  
22 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
23 ordinance, if the charge under which the deferred prosecution was  
24 granted was originally filed as a violation of RCW 46.61.502 or  
25 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
26 46.61.522;

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

33 (xvii) A deferred sentence imposed in a prosecution for a  
34 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an  
35 equivalent local ordinance, if the charge under which the deferred  
36 sentence was imposed was originally filed as a violation of RCW  
37 46.61.502 or 46.61.504, or an equivalent local ordinance, or a  
38 violation of RCW 46.61.520 or 46.61.522;

39 If a deferred prosecution is revoked based on a subsequent  
40 conviction for an offense listed in this subsection (14)(a), the

1 subsequent conviction shall not be treated as a prior offense of the  
2 revoked deferred prosecution for the purposes of sentencing;

3 (b) "Treatment" means substance use disorder treatment licensed  
4 or certified by the department of health;

5 (c) "Within seven years" means that the arrest for a prior  
6 offense occurred within seven years before or after the arrest for  
7 the current offense; and

8 (d) "Within (~~ten~~) 15 years" means that the arrest for a prior  
9 offense occurred within (~~ten~~) 15 years before or after the arrest  
10 for the current offense.

11 (15) All fines imposed by this section apply to adult offenders  
12 only.

13 **Sec. 3.** RCW 46.61.5055 and 2020 c 330 s 15 are each amended to  
14 read as follows:

15 (1) **No prior offenses in seven years.** Except as provided in RCW  
16 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
17 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense  
18 within seven years shall be punished as follows:

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

24 (i) By imprisonment for not less than twenty-four consecutive  
25 hours nor more than three hundred sixty-four days. In lieu of the  
26 mandatory minimum term of imprisonment required under this subsection  
27 (1)(a)(i), the court, in its discretion, may order not less than  
28 fifteen days of electronic home monitoring or a ninety-day period of  
29 24/7 sobriety program monitoring. The court may consider the  
30 offender's pretrial 24/7 sobriety program monitoring as fulfilling a  
31 portion of posttrial sentencing. The offender shall pay the cost of  
32 electronic home monitoring. The county or municipality in which the  
33 penalty is being imposed shall determine the cost. The court may also  
34 require the offender's electronic home monitoring device or other  
35 separate alcohol monitoring device to include an alcohol detection  
36 breathalyzer, and the court may restrict the amount of alcohol the  
37 offender may consume during the time the offender is on electronic  
38 home monitoring; and



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

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

10 (i) By imprisonment for not less than forty-eight consecutive  
11 hours nor more than three hundred sixty-four days. In lieu of the  
12 mandatory minimum term of imprisonment required under this subsection  
13 (1)(b)(i), the court, in its discretion, may order not less than  
14 thirty days of electronic home monitoring or a one hundred twenty day  
15 period of 24/7 sobriety program monitoring. The court may consider  
16 the offender's pretrial 24/7 sobriety program testing as fulfilling a  
17 portion of posttrial sentencing. The offender shall pay the cost of  
18 electronic home monitoring. The county or municipality in which the  
19 penalty is being imposed shall determine the cost. The court may also  
20 require the offender's electronic home monitoring device to include  
21 an alcohol detection breathalyzer or other separate alcohol  
22 monitoring device, and the court may restrict the amount of alcohol  
23 the offender may consume during the time the offender is on  
24 electronic home monitoring; and

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

28 (2) **One prior offense in seven years.** Except as provided in RCW  
29 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
30 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense  
31 within seven years shall be punished as follows:

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

37 (i) By imprisonment for not less than thirty days nor more than  
38 three hundred sixty-four days and sixty days of electronic home  
39 monitoring. Thirty days of imprisonment and sixty days of electronic  
40 home monitoring may not be suspended or converted unless the court

1 finds that the imposition of this mandatory minimum sentence would  
2 impose a substantial risk to the offender's physical or mental well-  
3 being. If the offender shows that the imposition of this mandatory  
4 minimum sentence would impose a substantial risk to the offender's  
5 physical or mental well-being, in lieu of the mandatory term of  
6 imprisonment and electronic home monitoring under this subsection  
7 (2)(a)(i), the court may order a minimum of either one hundred eighty  
8 days of electronic home monitoring or a one hundred twenty-day period  
9 of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300  
10 through 36.28A.390. Whenever the mandatory minimum sentence is  
11 suspended or converted, the court shall state in writing the reason  
12 for granting the suspension or conversion and the facts upon which  
13 the suspension or conversion is based. The court may consider the  
14 offender's pretrial 24/7 sobriety program monitoring as fulfilling a  
15 portion of posttrial sentencing. The court shall order an expanded  
16 substance use disorder assessment and treatment, if deemed  
17 appropriate by the assessment. The offender shall pay for the cost of  
18 the electronic monitoring. The county or municipality where the  
19 penalty is being imposed shall determine the cost. The court may also  
20 require the offender's electronic home monitoring device include an  
21 alcohol detection breathalyzer or other separate alcohol monitoring  
22 device, and may restrict the amount of alcohol the offender may  
23 consume during the time the offender is on electronic home  
24 monitoring; and

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

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

33 (i) By imprisonment for not less than forty-five days nor more  
34 than three hundred sixty-four days and ninety days of electronic home  
35 monitoring. Forty-five days of imprisonment and ninety days of  
36 electronic home monitoring may not be suspended or converted unless  
37 the court finds that the imposition of this mandatory minimum  
38 sentence would impose a substantial risk to the offender's physical  
39 or mental well-being. If the offender shows that the imposition of  
40 this mandatory minimum sentence would impose a substantial risk to

1 the offender's physical or mental well-being, in lieu of the  
2 mandatory minimum term of imprisonment and electronic home monitoring  
3 under this subsection (2)(b)(i), the court may order a minimum of  
4 either six months of electronic home monitoring or a one hundred  
5 twenty-day period of 24/7 sobriety program monitoring pursuant to RCW  
6 36.28A.300 through 36.28A.390. Whenever the mandatory minimum  
7 sentence is suspended or converted, the court shall state in writing  
8 the reason for granting the suspension or conversion and the facts  
9 upon which the suspension or conversion is based. The court may  
10 consider the offender's pretrial 24/7 sobriety program monitoring as  
11 fulfilling a portion of posttrial sentencing. The court shall order  
12 an expanded substance use disorder assessment and treatment, if  
13 deemed appropriate by the assessment. The offender shall pay for the  
14 cost of the electronic monitoring. The county or municipality where  
15 the penalty is being imposed shall determine the cost. The court may  
16 also require the offender's electronic home monitoring device include  
17 an alcohol detection breathalyzer or other separate alcohol  
18 monitoring device, and may restrict the amount of alcohol the  
19 offender may consume during the time the offender is on electronic  
20 home monitoring; and

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

25 (3) **Two prior offenses 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 two prior  
28 offenses 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 ninety days nor more than  
35 three hundred sixty-four days, if available in that county or city, a  
36 six-month period of 24/7 sobriety program monitoring pursuant to RCW  
37 36.28A.300 through 36.28A.390, and one hundred twenty days of  
38 electronic home monitoring. Ninety days of imprisonment and one  
39 hundred twenty days of electronic home monitoring may not be  
40 suspended or converted unless the court finds that the imposition of

1 this mandatory minimum sentence would impose a substantial risk to  
2 the offender's physical or mental well-being. If the offender shows  
3 that the imposition of this mandatory minimum sentence would impose a  
4 substantial risk to the offender's physical or mental well-being, in  
5 lieu of the mandatory minimum term of ninety days of imprisonment and  
6 one hundred twenty days of electronic home monitoring, the court may  
7 order three hundred sixty days of electronic home monitoring or a  
8 three hundred sixty-day period of 24/7 sobriety monitoring pursuant  
9 to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory minimum  
10 sentence is suspended or converted, the court shall state in writing  
11 the reason for granting the suspension or conversion and the facts  
12 upon which the suspension or conversion is based. The court shall  
13 order an expanded substance use disorder assessment and treatment, if  
14 deemed appropriate by the assessment. The offender shall pay for the  
15 cost of the electronic monitoring. The county or municipality where  
16 the penalty is being imposed shall determine the cost. The court may  
17 also require the offender's electronic home monitoring device include  
18 an alcohol detection breathalyzer or other separate alcohol  
19 monitoring device, and may restrict the amount of alcohol the  
20 offender may consume during the time the offender is on electronic  
21 home monitoring; and

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

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

30 (i) By imprisonment for not less than one hundred twenty days nor  
31 more than three hundred sixty-four days, if available in that county  
32 or city, a six-month period of 24/7 sobriety program monitoring  
33 pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty  
34 days of electronic home monitoring. One hundred twenty days of  
35 imprisonment and one hundred fifty days of electronic home monitoring  
36 may not be suspended or converted unless the court finds that the  
37 imposition of this mandatory minimum sentence would impose a  
38 substantial risk to the offender's physical or mental well-being. If  
39 the offender shows that the imposition of this mandatory minimum  
40 sentence would impose a substantial risk to the offender's physical

1 or mental well-being, in lieu of the mandatory minimum term of one  
2 hundred twenty days of imprisonment and one hundred fifty days of  
3 electronic home monitoring, the court may order three hundred sixty  
4 days of electronic home monitoring or a three hundred sixty-day  
5 period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through  
6 36.28A.390. Whenever the mandatory minimum sentence is suspended or  
7 converted, the court shall state in writing the reason for granting  
8 the suspension or conversion and the facts upon which the suspension  
9 or conversion is based. The offender shall pay for the cost of the  
10 electronic monitoring. The court shall order an expanded substance  
11 use disorder assessment and treatment, if deemed appropriate by the  
12 assessment. The county or municipality where the penalty is being  
13 imposed shall determine the cost. The court may also require the  
14 offender's electronic home monitoring device include an alcohol  
15 detection breathalyzer or other separate alcohol monitoring device,  
16 and may restrict the amount of alcohol the offender may consume  
17 during the time the offender is on electronic home monitoring; and

18 (ii) By a fine of not less than one thousand five hundred dollars  
19 nor more than five thousand dollars. One thousand five hundred  
20 dollars of the fine may not be suspended unless the court finds the  
21 offender to be indigent.

22 (4) **Three or more prior offenses in ((ten)) 15 years.** A person  
23 who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall  
24 be punished under chapter 9.94A RCW if:

25 (a) The person has three or more prior offenses within ((ten)) 15  
26 years; or

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

28 (i) A violation of RCW 46.61.520 committed while under the  
29 influence of intoxicating liquor or any drug;

30 (ii) A violation of RCW 46.61.522 committed while under the  
31 influence of intoxicating liquor or any drug;

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

34 (iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

35 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall  
36 require any person convicted of a violation of RCW 46.61.502 or  
37 46.61.504 or an equivalent local ordinance to comply with the rules  
38 and requirements of the department regarding the installation and use  
39 of a functioning ignition interlock device installed on all motor  
40 vehicles operated by the person.

1 (b) **Monitoring devices.** If the court orders that a person refrain  
2 from consuming any alcohol, the court may order the person to submit  
3 to alcohol monitoring through an alcohol detection breathalyzer  
4 device, transdermal sensor device, or other technology designed to  
5 detect alcohol in a person's system. The person shall pay for the  
6 cost of the monitoring, unless the court specifies that the cost of  
7 monitoring will be paid with funds that are available from an  
8 alternative source identified by the court. The county or  
9 municipality where the penalty is being imposed shall determine the  
10 cost.

11 (c) **24/7 sobriety program monitoring.** In any county or city where  
12 a 24/7 sobriety program is available and verified by the Washington  
13 association of sheriffs and police chiefs, the court shall:

14 (i) Order the person to install and use a functioning ignition  
15 interlock or other device in lieu of such period of 24/7 sobriety  
16 program monitoring;

17 (ii) Order the person to a period of 24/7 sobriety program  
18 monitoring pursuant to subsections (1) through (3) of this section;  
19 or

20 (iii) Order the person to install and use a functioning ignition  
21 interlock or other device in addition to a period of 24/7 sobriety  
22 program monitoring pursuant to subsections (1) through (3) of this  
23 section.

24 (6) **Penalty for having a minor passenger in vehicle.** If a person  
25 who is convicted of a violation of RCW 46.61.502 or 46.61.504  
26 committed the offense while one or more passengers under the age of  
27 sixteen were in the vehicle, the court shall:

28 (a) Order the use of an ignition interlock or other device for an  
29 additional twelve months for each passenger under the age of sixteen  
30 when the person is subject to the penalties under subsection (1)(a),  
31 (2)(a), or (3)(a) of this section; and order the use of an ignition  
32 interlock device for an additional eighteen months for each passenger  
33 under the age of sixteen when the person is subject to the penalties  
34 under subsection (1)(b), (2)(b), (3)(b), or (4) of this section;

35 (b) In any case in which the person has no prior offenses within  
36 seven years, and except as provided in RCW 46.61.502(6) or  
37 46.61.504(6), order an additional twenty-four hours of imprisonment  
38 to be served consecutively for each passenger under the age of  
39 sixteen, and a fine of not less than one thousand dollars and not  
40 more than five thousand dollars for each passenger under the age of

1 sixteen. One thousand dollars of the fine for each passenger under  
2 the age of sixteen may not be suspended unless the court finds the  
3 offender to be indigent;

4 (c) In any case in which the person has one prior offense within  
5 seven years, and except as provided in RCW 46.61.502(6) or  
6 46.61.504(6), order an additional five days of imprisonment to be  
7 served consecutively for each passenger under the age of sixteen, and  
8 a fine of not less than two thousand dollars and not more than five  
9 thousand dollars for each passenger under the age of sixteen. One  
10 thousand dollars of the fine for each passenger under the age of  
11 sixteen may not be suspended unless the court finds the offender to  
12 be indigent;

13 (d) In any case in which the person has two prior offenses within  
14 seven years, and except as provided in RCW 46.61.502(6) or  
15 46.61.504(6), order an additional ten days of imprisonment to be  
16 served consecutively for each passenger under the age of sixteen, and  
17 a fine of not less than three thousand dollars and not more than ten  
18 thousand dollars for each passenger under the age of sixteen. One  
19 thousand dollars of the fine for each passenger under the age of  
20 sixteen may not be suspended unless the court finds the offender to  
21 be indigent.

22 (7) **Other items courts must consider while setting penalties.** In  
23 exercising its discretion in setting penalties within the limits  
24 allowed by this section, the court shall particularly consider the  
25 following:

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

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

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

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

36 (8) **Treatment and information school.** An offender punishable  
37 under this section is subject to the substance use disorder  
38 assessment and treatment provisions of RCW 46.61.5056.

39 (9) **Driver's license privileges of the defendant.** (a) The  
40 license, permit, or nonresident privilege of a person convicted of

1 driving or being in physical control of a motor vehicle while under  
2 the influence of intoxicating liquor or drugs must:

3 (i) **Penalty for alcohol concentration less than 0.15.** If the  
4 person's alcohol concentration was less than 0.15, or if for reasons  
5 other than the person's refusal to take a test offered under RCW  
6 46.20.308 there is no test result indicating the person's alcohol  
7 concentration:

8 (A) Where there has been no prior offense within seven years, be  
9 suspended or denied by the department for ninety days or until the  
10 person is evaluated by a substance use disorder agency or probation  
11 department pursuant to RCW 46.20.311 and the person completes or is  
12 enrolled in a ninety-day period of 24/7 sobriety program monitoring.  
13 In no circumstances shall the license suspension be for fewer than  
14 two days;

15 (B) Where there has been one prior offense within seven years, be  
16 revoked or denied by the department for two years or until the person  
17 is evaluated by a substance use disorder agency or probation  
18 department pursuant to RCW 46.20.311 and the person completes or is  
19 enrolled in a six-month period of 24/7 sobriety program monitoring.  
20 In no circumstances shall the license suspension be for less than one  
21 year; or

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

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

26 (A) 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 a substance use disorder agency or probation  
29 department pursuant to RCW 46.20.311 and the person completes or is  
30 enrolled in a one hundred twenty day period of 24/7 sobriety program  
31 monitoring. In no circumstances shall the license revocation be for  
32 fewer than four days;

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

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

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



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

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

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

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

11 (ii) If a person has already served a suspension, revocation, or  
12 denial under RCW 46.20.3101 for a period equal to or greater than the  
13 period imposed under this subsection (9), the department shall  
14 provide notice of full credit, shall provide for no further  
15 suspension or revocation under this subsection provided the person  
16 has completed the requirements under RCW 46.20.311 and paid the  
17 probationary license fee under RCW 46.20.355 by the date specified in  
18 the notice under RCW 46.20.245, and shall impose no additional  
19 reissue fees for this credit.

20 (c) Upon receipt of a notice from the court under RCW 36.28A.390  
21 that a participant has been removed from a 24/7 sobriety program, the  
22 department must resume any suspension, revocation, or denial that had  
23 been terminated early under this subsection due to participation in  
24 the program, granting credit on a day-for-day basis for any portion  
25 of a suspension, revocation, or denial already served under RCW  
26 46.20.3101 or this section arising out of the same incident.

27 (d) Upon its own motion or upon motion by a person, a court may  
28 find, on the record, that notice to the department under RCW  
29 46.20.270 has been delayed for three years or more as a result of a  
30 clerical or court error. If so, the court may order that the person's  
31 license, permit, or nonresident privilege shall not be revoked,  
32 suspended, or denied for that offense. The court shall send notice of  
33 the finding and order to the department and to the person. Upon  
34 receipt of the notice from the court, the department shall not  
35 revoke, suspend, or deny the license, permit, or nonresident  
36 privilege of the person for that offense.

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

1           (10) **Probation of driving privilege.** After expiration of any  
2 period of suspension, revocation, or denial of the offender's  
3 license, permit, or privilege to drive required by this section, the  
4 department shall place the offender's driving privilege in  
5 probationary status pursuant to RCW 46.20.355.

6           (11) **Conditions of probation.** (a) In addition to any  
7 nonsuspendable and nondeferrable jail sentence required by this  
8 section, whenever the court imposes up to three hundred sixty-four  
9 days in jail, the court shall also suspend but shall not defer a  
10 period of confinement for a period not exceeding five years. The  
11 court shall impose conditions of probation that include: (i) Not  
12 driving a motor vehicle within this state without a valid license to  
13 drive; (ii) not driving a motor vehicle within this state without  
14 proof of liability insurance or other financial responsibility for  
15 the future pursuant to RCW 46.30.020; (iii) not driving or being in  
16 physical control of a motor vehicle within this state while having an  
17 alcohol concentration of 0.08 or more or a THC concentration of 5.00  
18 nanograms per milliliter of whole blood or higher, within two hours  
19 after driving; (iv) not refusing to submit to a test of his or her  
20 breath or blood to determine alcohol or drug concentration upon  
21 request of a law enforcement officer who has reasonable grounds to  
22 believe the person was driving or was in actual physical control of a  
23 motor vehicle within this state while under the influence of  
24 intoxicating liquor or drug; and (v) not driving a motor vehicle in  
25 this state without a functioning ignition interlock device as  
26 required by the department under RCW 46.20.720. The court may impose  
27 conditions of probation that include nonrepetition, installation of  
28 an ignition interlock device on the probationer's motor vehicle,  
29 substance use disorder treatment, supervised probation, or other  
30 conditions that may be appropriate. The sentence may be imposed in  
31 whole or in part upon violation of a condition of probation during  
32 the suspension period.

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

37           (c) For each incident involving a violation of a mandatory  
38 condition of probation imposed under this subsection, the license,  
39 permit, or privilege to drive of the person shall be suspended by the  
40 court for thirty days or, if such license, permit, or privilege to

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

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

9 (a) The offender does not have a dwelling, telephone service, or  
10 any other necessity to operate an electronic home monitoring system.  
11 However, if a court determines that an alcohol monitoring device  
12 utilizing wireless reporting technology is reasonably available, the  
13 court may require the person to obtain such a device during the  
14 period of required electronic home monitoring;

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

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

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

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

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

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

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

- 1 (i) A conviction for a violation of RCW 46.61.502 or an  
2 equivalent local ordinance;
- 3 (ii) A conviction for a violation of RCW 46.61.504 or an  
4 equivalent local ordinance;
- 5 (iii) A conviction for a violation of RCW 46.25.110 or an  
6 equivalent local ordinance;
- 7 (iv) A conviction for a violation of RCW 79A.60.040(2) or an  
8 equivalent local ordinance;
- 9 (v) A conviction for a violation of RCW 79A.60.040(1) or an  
10 equivalent local ordinance committed in a reckless manner if the  
11 conviction is the result of a charge that was originally filed as a  
12 violation of RCW 79A.60.040(2) or an equivalent local ordinance;
- 13 (vi) A conviction for a violation of RCW 47.68.220 or an  
14 equivalent local ordinance committed while under the influence of  
15 intoxicating liquor or any drug;
- 16 (vii) A conviction for a violation of RCW 47.68.220 or an  
17 equivalent local ordinance committed in a careless or reckless manner  
18 if the conviction is the result of a charge that was originally filed  
19 as a violation of RCW 47.68.220 or an equivalent local ordinance  
20 while under the influence of intoxicating liquor or any drug;
- 21 (viii) A conviction for a violation of RCW 46.09.470(2) or an  
22 equivalent local ordinance;
- 23 (ix) A conviction for a violation of RCW 46.10.490(2) or an  
24 equivalent local ordinance;
- 25 (x) A conviction for a violation of RCW 46.61.520 committed while  
26 under the influence of intoxicating liquor or any drug, or a  
27 conviction for a violation of RCW 46.61.520 committed in a reckless  
28 manner or with the disregard for the safety of others if the  
29 conviction is the result of a charge that was originally filed as a  
30 violation of RCW 46.61.520 committed while under the influence of  
31 intoxicating liquor or any drug;
- 32 (xi) A conviction for a violation of RCW 46.61.522 committed  
33 while under the influence of intoxicating liquor or any drug, or a  
34 conviction for a violation of RCW 46.61.522 committed in a reckless  
35 manner or with the disregard for the safety of others if the  
36 conviction is the result of a charge that was originally filed as a  
37 violation of RCW 46.61.522 committed while under the influence of  
38 intoxicating liquor or any drug;
- 39 (xii) A conviction for a violation of RCW 46.61.5249, 46.61.500,  
40 or 9A.36.050 or an equivalent local ordinance, if the conviction is

1 the result of a charge that was originally filed as a violation of  
2 RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of  
3 RCW 46.61.520 or 46.61.522;

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

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

10 (xv) A deferred prosecution under chapter 10.05 RCW granted in a  
11 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
12 ordinance, if the charge under which the deferred prosecution was  
13 granted was originally filed as a violation of RCW 46.61.502 or  
14 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
15 46.61.522;

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

22 (xvii) A deferred sentence imposed in a prosecution for a  
23 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an  
24 equivalent local ordinance, if the charge under which the deferred  
25 sentence was imposed was originally filed as a violation of RCW  
26 46.61.502 or 46.61.504, or an equivalent local ordinance, or a  
27 violation of RCW 46.61.520 or 46.61.522;

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

32 (b) "Treatment" means substance use disorder treatment licensed  
33 or certified by the department of health;

34 (c) "Within seven years" means that the arrest for a prior  
35 offense occurred within seven years before or after the arrest for  
36 the current offense; and

37 (d) "Within (~~ten~~) 15 years" means that the arrest for a prior  
38 offense occurred within (~~ten~~) 15 years before or after the arrest  
39 for the current offense.

1 (15) All fines imposed by this section apply to adult offenders  
2 only.

3 **Sec. 4.** RCW 46.61.504 and 2017 c 335 s 2 are each amended to  
4 read as follows:

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

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

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

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

19 (d) While the person is under the combined influence of or  
20 affected by intoxicating liquor 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 does not constitute a defense against any charge of violating  
24 this section. No person may be convicted under this section and it is  
25 an affirmative defense to any action pursuant to RCW 46.20.308 to  
26 suspend, revoke, or deny the privilege to drive if, prior to being  
27 pursued by a law enforcement officer, the person has moved the  
28 vehicle safely off the roadway.

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

1 (b) It is an affirmative defense to a violation of subsection  
2 (1)(b) of this section, which the defendant must prove by a  
3 preponderance of the evidence, that the defendant consumed a  
4 sufficient quantity of marijuana after the time of being in actual  
5 physical control of the vehicle and before the administration of an  
6 analysis of the person's blood to cause the defendant's THC  
7 concentration to be 5.00 or more within two hours after being in  
8 control of the vehicle. The court shall not admit evidence of this  
9 defense unless the defendant notifies the prosecution prior to the  
10 omnibus or pretrial hearing in the case of the defendant's intent to  
11 assert the affirmative defense.

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

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

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

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

33 (a) The person has three or more prior offenses within (~~ten~~) 15  
34 years as defined in RCW 46.61.5055; or

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

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

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

- 1 (iii) An out-of-state offense comparable to the offense specified  
2 in (b) (i) or (ii) of this subsection; or  
3 (iv) A violation of this subsection (6) or RCW 46.61.502(6).

4 **Sec. 5.** RCW 9.94A.525 and 2017 c 272 s 3 are each amended to  
5 read as follows:

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

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

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

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

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

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

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



1 (e) If the present conviction is felony driving while under the  
2 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or  
3 felony physical control of a vehicle while under the influence of  
4 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate  
5 crimes for the offense as defined by RCW 46.61.5055(14) shall be  
6 included in the offender score, and prior convictions for felony  
7 driving while under the influence of intoxicating liquor or any drug  
8 (RCW 46.61.502(6)) or felony physical control of a vehicle while  
9 under the influence of intoxicating liquor or any drug (RCW  
10 46.61.504(6)) shall always be included in the offender score. All  
11 other convictions of the defendant shall be scored according to this  
12 section.

13 (f) Prior convictions for a repetitive domestic violence offense,  
14 as defined in RCW 9.94A.030, shall not be included in the offender  
15 score if, since the last date of release from confinement or entry of  
16 judgment and sentence, the offender had spent ten consecutive years  
17 in the community without committing any crime that subsequently  
18 results in a conviction.

19 (g) This subsection applies to both adult and juvenile prior  
20 convictions.

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

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

33 (5)(a) In the case of multiple prior convictions, for the purpose  
34 of computing the offender score, count all convictions separately,  
35 except:

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

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

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

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

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

28 (7) If the present conviction is for a nonviolent offense and not  
29 covered by subsection (11), (12), or (13) of this section, count one  
30 point for each adult prior felony conviction and one point for each  
31 juvenile prior violent felony conviction and 1/2 point for each  
32 juvenile prior nonviolent felony conviction.

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

39 (9) If the present conviction is for a serious violent offense,  
40 count three points for prior adult and juvenile convictions for

1 crimes in this category, two points for each prior adult and juvenile  
2 violent conviction (not already counted), one point for each prior  
3 adult nonviolent felony conviction, and 1/2 point for each prior  
4 juvenile nonviolent felony conviction.

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

10 (11) If the present conviction is for a felony traffic offense  
11 count two points for each adult or juvenile prior conviction for  
12 Vehicular Homicide or Vehicular Assault; for each felony offense  
13 count one point for each adult and 1/2 point for each juvenile prior  
14 conviction; for each serious traffic offense, other than those used  
15 for an enhancement pursuant to RCW 46.61.520(2), count one point for  
16 each adult and 1/2 point for each juvenile prior conviction; count  
17 one point for each adult and 1/2 point for each juvenile prior  
18 conviction for operation of a vessel while under the influence of  
19 intoxicating liquor or any drug.

20 (12) If the present conviction is for homicide by watercraft or  
21 assault by watercraft count two points for each adult or juvenile  
22 prior conviction for homicide by watercraft or assault by watercraft;  
23 for each felony offense count one point for each adult and 1/2 point  
24 for each juvenile prior conviction; count one point for each adult  
25 and 1/2 point for each juvenile prior conviction for driving under  
26 the influence of intoxicating liquor or any drug, actual physical  
27 control of a motor vehicle while under the influence of intoxicating  
28 liquor or any drug, or operation of a vessel while under the  
29 influence of intoxicating liquor or any drug.

30 (13) If the present conviction is for manufacture of  
31 methamphetamine count three points for each adult prior manufacture  
32 of methamphetamine conviction and two points for each juvenile  
33 manufacture of methamphetamine offense. If the present conviction is  
34 for a drug offense and the offender has a criminal history that  
35 includes a sex offense or serious violent offense, count three points  
36 for each adult prior felony drug offense conviction and two points  
37 for each juvenile drug offense. All other adult and juvenile felonies  
38 are scored as in subsection (8) of this section if the current drug  
39 offense is violent, or as in subsection (7) of this section if the  
40 current drug offense is nonviolent.

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

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

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

14 (17) If the present conviction is for a sex offense, count priors  
15 as in subsections (7) through (11) and (13) through (16) of this  
16 section; however count three points for each adult and juvenile prior  
17 sex offense conviction.

18 (18) If the present conviction is for failure to register as a  
19 sex offender under RCW (~~9A.44.130 or~~) 9A.44.132, count priors as in  
20 subsections (7) through (11) and (13) through (16) of this section;  
21 however count three points for each adult and juvenile prior sex  
22 offense conviction, excluding prior convictions for failure to  
23 register as a sex offender under RCW (~~9A.44.130 or~~) 9A.44.132,  
24 which shall count as one point.

25 (19) If the present conviction is for an offense committed while  
26 the offender was under community custody, add one point. For purposes  
27 of this subsection, community custody includes community placement or  
28 postrelease supervision, as defined in chapter 9.94B RCW.

29 (20) If the present conviction is for Theft of a Motor Vehicle,  
30 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without  
31 Permission 1, or Taking a Motor Vehicle Without Permission 2, count  
32 priors as in subsections (7) through (18) of this section; however  
33 count one point for prior convictions of Vehicle Prowling 2, and  
34 three points for each adult and juvenile prior Theft 1 (of a motor  
35 vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property  
36 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor  
37 vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle,  
38 Taking a Motor Vehicle Without Permission 1, or Taking a Motor  
39 Vehicle Without Permission 2 conviction.

1 (21) If the present conviction is for a felony domestic violence  
2 offense where domestic violence as defined in RCW 9.94A.030 was  
3 pleaded and proven, count priors as in subsections (7) through (20)  
4 of this section; however, count points as follows:

5 (a) Count two points for each adult prior conviction where  
6 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
7 after August 1, 2011, for any of the following offenses: A felony  
8 violation of a no-contact or protection order RCW 26.50.110, felony  
9 Harassment (RCW 9A.46.020(2)(b)), felony Stalking (RCW  
10 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020), Kidnapping 1 (RCW  
11 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful imprisonment (RCW  
12 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2 (RCW 9A.56.210),  
13 Assault 1 (RCW 9A.36.011), Assault 2 (RCW 9A.36.021), Assault 3 (RCW  
14 9A.36.031), Arson 1 (RCW 9A.48.020), or Arson 2 (RCW 9A.48.030);

15 (b) Count two points for each adult prior conviction where  
16 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
17 after July 23, 2017, for any of the following offenses: Assault of a  
18 child in the first degree, RCW 9A.36.120; Assault of a child in the  
19 second degree, RCW 9A.36.130; Assault of a child in the third degree,  
20 RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW  
21 9A.42.020; or Criminal Mistreatment in the second degree, RCW  
22 9A.42.030;

23 (c) Count one point for each second and subsequent juvenile  
24 conviction where domestic violence as defined in RCW 9.94A.030 was  
25 pleaded and proven after August 1, 2011, for the offenses listed in  
26 (a) of this subsection; and

27 (d) Count one point for each adult prior conviction for a  
28 repetitive domestic violence offense as defined in RCW 9.94A.030,  
29 where domestic violence as defined in RCW 9.94A.030, was pleaded and  
30 proven after August 1, 2011.

31 (22) The fact that a prior conviction was not included in an  
32 offender's offender score or criminal history at a previous  
33 sentencing shall have no bearing on whether it is included in the  
34 criminal history or offender score for the current offense. Prior  
35 convictions that were not counted in the offender score or included  
36 in criminal history under repealed or previous versions of the  
37 sentencing reform act shall be included in criminal history and shall  
38 count in the offender score if the current version of the sentencing  
39 reform act requires including or counting those convictions. Prior  
40 convictions that were not included in criminal history or in the

1 offender score shall be included upon any resentencing to ensure  
2 imposition of an accurate sentence.

3 NEW SECTION. **Sec. 6.** Section 2 of this act expires January 1,  
4 2022.

5 NEW SECTION. **Sec. 7.** Section 3 of this act takes effect January  
6 1, 2022.

--- END ---