

SHB 1493 - S COMM AMD

By Committee on Law & Justice

ADOPTED 04/11/2023

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

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

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

8 (a) Does not have a prior conviction under RCW 46.61.520,
9 46.61.522, 46.61.502(6), or 46.61.504(6); and either

10 (b) Is convicted of felony driving while under the influence of
11 intoxicating liquor, cannabis, or any drug under RCW 46.61.502(6)(a);
12 or

13 (c) Is convicted of felony physical control of a vehicle while
14 under the influence of intoxicating liquor or any drug under RCW
15 46.61.504(6)(a).

16 (2) A motion for a special drug offender sentencing alternative
17 for driving under the influence may be made by the court, the
18 offender, or the state if the midpoint of the standard sentence range
19 is 26 months or less. If an offender has a higher midpoint, a motion
20 for a special drug offender sentencing alternative for driving under
21 the influence can only be made by joint agreement of the state and
22 offender.

23 (3) If the sentencing court determines that the offender is
24 eligible for an alternative sentence under this section and that the
25 alternative sentence is appropriate, the court shall waive imposition
26 of a sentence within the standard sentence range and:

27 (a) Impose a sentence equivalent to a prison-based alternative
28 under RCW 9.94A.662, and subject to the same requirements and
29 restrictions as are established in that section, if the low end of
30 the standard sentence range is greater than 24 months; or

1 (b) Impose a sentence consisting of a residential treatment-based
2 alternative consistent with this section if the low end of the
3 standard sentence range is 24 months or less.

4 (4) (a) To assist the court in making its determination, the court
5 may order the department to complete either a risk assessment report
6 or a substance use disorder screening report as provided in RCW
7 9.94A.500, or both.

8 (b) If the court is considering imposing a sentence under the
9 residential substance use disorder treatment-based alternative, the
10 court may order an examination of the offender by the department. The
11 examination shall, at a minimum, address the following issues:

12 (i) Whether the offender suffers from a substance use disorder;

13 (ii) Whether effective treatment for the offender's substance use
14 disorder is available from a provider that has been licensed or
15 certified by the department of health; and

16 (iii) Whether the offender and the community will benefit from
17 the use of the alternative.

18 (5) An offender who is eligible for a residential treatment-based
19 alternative under this section shall be sentenced as follows:

20 (a) If necessary, an indeterminate term of confinement of no more
21 than 30 days in a facility operated, licensed, or utilized under
22 contract, by the county in order to facilitate direct transfer to a
23 residential substance use disorder treatment facility;

24 (b) Treatment in a residential substance use disorder treatment
25 program licensed or certified by the department of health for a
26 period set by the court up to six months with treatment completion
27 and continued care delivered in accordance with rules established by
28 the department of health. In establishing rules pursuant to this
29 subsection, the department of health must consider criteria
30 established by the American society of addiction medicine;

31 (c) Twenty-four months of partial confinement to consist of 12
32 months work release followed by 12 months of home detention with
33 electronic monitoring; and

34 (d) Twelve months of community custody.

35 (6) (a) During any period of partial confinement or community
36 custody, the court shall impose treatment and other conditions as
37 provided in RCW 9.94A.703 or as the court considers appropriate.

38 (b) The department may impose conditions and sanctions as
39 authorized in RCW 9.94A.704 and 9.94A.737.

1 (c) The department shall, within available resources, make
2 substance use disorder assessment and treatment services available to
3 the offender.

4 (d) An offender sentenced to community custody under subsection
5 (3)(a) of this section as part of the prison-based alternative or
6 under subsection (3)(b) of this section as part of the residential
7 treatment-based alternative may be required to pay \$30 per month
8 while on community custody to offset the cost of monitoring for
9 alcohol or controlled substances.

10 (7)(a) If the court imposes a sentence under subsection (3)(b) of
11 this section, the treatment provider must send the treatment plan to
12 the court within 30 days of the offender's arrival to the residential
13 substance use disorder treatment program.

14 (b) Upon receipt of the plan, the court shall schedule a progress
15 hearing during the period of treatment and schedule a treatment
16 termination hearing for three months before the expiration of the
17 term of community custody.

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

23 (8) At a progress hearing or treatment termination hearing, the
24 court may:

25 (a) Authorize the department to terminate the offender's
26 community custody status on the expiration date determined under
27 subsection (7) of this section;

28 (b) Continue the hearing to a date before the expiration date of
29 community custody, with or without modifying the conditions of
30 partial confinement or community custody; or

31 (c) Impose a term of total confinement equal to one-half the
32 midpoint of the standard sentence range, followed by a term of
33 community custody under RCW 9.94A.701.

34 (9)(a) The court may bring any offender sentenced under
35 subsection (3)(a) or (b) of this section back into court at any time
36 on its own initiative to evaluate the offender's progress in
37 treatment or to determine if any violations of the conditions of the
38 sentence have occurred.

39 (b) If the offender is brought back to court, the court may
40 modify the conditions of partial confinement or community custody or

1 order the offender to serve a term of total confinement within the
2 standard sentence range of the offender's current offense at any time
3 during the period of partial confinement or community custody if the
4 offender violates the conditions or requirements of the sentence or
5 if the offender is failing to make satisfactory progress in
6 treatment.

7 (c) An offender ordered to serve a term of total confinement
8 under (b) of this subsection shall receive credit for any time
9 previously served in total confinement or residential treatment under
10 this section and shall receive 50 percent credit for any time
11 previously served in partial confinement or community custody under
12 this section.

13 (10) In serving a term of community custody imposed upon failure
14 to complete, or administrative termination from, the special drug
15 offender sentencing alternative program for driving under the
16 influence under this section, the offender shall receive no credit
17 for time served in community custody prior to termination of the
18 offender's participation in the program.

19 (11) An offender sentenced under this section shall be subject to
20 all rules relating to earned release time with respect to any period
21 served in total or partial confinement.

22 (12) Costs of examinations and preparing the recommended service
23 delivery plans under a special drug offender sentencing alternative
24 for driving under the influence may be paid, at the option of the
25 county, from funds provided to the county from the criminal justice
26 treatment account under RCW 71.24.580.

27 **Sec. 2.** RCW 9.94A.030 and 2022 c 231 s 11 are each amended to
28 read as follows:

29 Unless the context clearly requires otherwise, the definitions in
30 this section apply throughout this chapter.

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

33 (2) "Collect," or any derivative thereof, "collect and remit," or
34 "collect and deliver," when used with reference to the department,
35 means that the department, either directly or through a collection
36 agreement authorized by RCW 9.94A.760, is responsible for monitoring
37 and enforcing the offender's sentence with regard to the legal
38 financial obligation, receiving payment thereof from the offender,
39 and, consistent with current law, delivering daily the entire payment

1 to the superior court clerk without depositing it in a departmental
2 account.

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

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

8 (5) "Community custody" means that portion of an offender's
9 sentence of confinement in lieu of earned release time or imposed as
10 part of a sentence under this chapter and served in the community
11 subject to controls placed on the offender's movement and activities
12 by the department.

13 (6) "Community protection zone" means the area within 880 feet of
14 the facilities and grounds of a public or private school.

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

18 (8) "Confinement" means total or partial confinement.

19 (9) "Conviction" means an adjudication of guilt pursuant to Title
20 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,
21 and acceptance of a plea of guilty.

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

30 (11) "Criminal history" means the list of a defendant's prior
31 convictions and juvenile adjudications, whether in this state, in
32 federal court, or elsewhere, and any issued certificates of
33 restoration of opportunity pursuant to RCW 9.97.020.

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

38 (b) A conviction may be removed from a defendant's criminal
39 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,
40 9.95.240, or a similar out-of-state statute, or if the conviction has

1 been vacated pursuant to a governor's pardon. However, when a
2 defendant is charged with a recidivist offense, "criminal history"
3 includes a vacated prior conviction for the sole purpose of
4 establishing that such vacated prior conviction constitutes an
5 element of the present recidivist offense as provided in RCW
6 9.94A.640(4)(b) and 9.96.060(7)(c).

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

12 (12) "Criminal street gang" means any ongoing organization,
13 association, or group of three or more persons, whether formal or
14 informal, having a common name or common identifying sign or symbol,
15 having as one of its primary activities the commission of criminal
16 acts, and whose members or associates individually or collectively
17 engage in or have engaged in a pattern of criminal street gang
18 activity. This definition does not apply to employees engaged in
19 concerted activities for their mutual aid and protection, or to the
20 activities of labor and bona fide nonprofit organizations or their
21 members or agents.

22 (13) "Criminal street gang associate or member" means any person
23 who actively participates in any criminal street gang and who
24 intentionally promotes, furthers, or assists in any criminal act by
25 the criminal street gang.

26 (14) "Criminal street gang-related offense" means any felony or
27 misdemeanor offense, whether in this state or elsewhere, that is
28 committed for the benefit of, at the direction of, or in association
29 with any criminal street gang, or is committed with the intent to
30 promote, further, or assist in any criminal conduct by the gang, or
31 is committed for one or more of the following reasons:

32 (a) To gain admission, prestige, or promotion within the gang;

33 (b) To increase or maintain the gang's size, membership,
34 prestige, dominance, or control in any geographical area;

35 (c) To exact revenge or retribution for the gang or any member of
36 the gang;

37 (d) To obstruct justice, or intimidate or eliminate any witness
38 against the gang or any member of the gang;

1 (e) To directly or indirectly cause any benefit, aggrandizement,
2 gain, profit, or other advantage for the gang, its reputation,
3 influence, or membership; or

4 (f) To provide the gang with any advantage in, or any control or
5 dominance over any criminal market sector, including, but not limited
6 to, manufacturing, delivering, or selling any controlled substance
7 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
8 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
9 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
10 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
11 9.68 RCW).

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

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

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

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

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

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

3 (20) (a) "Domestic violence" has the same meaning as defined in
4 RCW 10.99.020.

5 (b) "Domestic violence" also means: (i) Physical harm, bodily
6 injury, assault, or the infliction of fear of imminent physical harm,
7 bodily injury, or assault, sexual assault, or stalking, as defined in
8 RCW 9A.46.110, of one intimate partner by another intimate partner as
9 defined in RCW 10.99.020; or (ii) physical harm, bodily injury,
10 assault, or the infliction of fear of imminent physical harm, bodily
11 injury, or assault, sexual assault, or stalking, as defined in RCW
12 9A.46.110, of one family or household member by another family or
13 household member as defined in RCW 10.99.020.

14 (21) "Drug offender sentencing alternative" is a sentencing
15 option available to persons convicted of a felony offense who are
16 eligible for the option under RCW 9.94A.660.

17 (22) "Drug offender sentencing alternative for driving under the
18 influence" is a sentencing option available to persons convicted of
19 felony driving while under the influence of intoxicating liquor or
20 any drug under RCW 46.61.502(6), or felony physical control of a
21 vehicle while under the influence of intoxicating liquor or any drug
22 under RCW 46.61.504(6) who are eligible under section 1 of this act.

23 (23) "Drug offense" means:

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

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

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

33 ~~((23))~~ (24) "Earned release" means earned release from
34 confinement as provided in RCW 9.94A.728.

35 ~~((24))~~ (25) "Electronic monitoring" means tracking the location
36 of an individual through the use of technology that is capable of
37 determining or identifying the monitored individual's presence or
38 absence at a particular location including, but not limited to:

39 (a) Radio frequency signaling technology, which detects if the
40 monitored individual is or is not at an approved location and

1 notifies the monitoring agency of the time that the monitored
2 individual either leaves the approved location or tampers with or
3 removes the monitoring device; or

4 (b) Active or passive global positioning system technology, which
5 detects the location of the monitored individual and notifies the
6 monitoring agency of the monitored individual's location and which
7 may also include electronic monitoring with victim notification
8 technology that is capable of notifying a victim or protected party,
9 either directly or through a monitoring agency, if the monitored
10 individual enters within the restricted distance of a victim or
11 protected party, or within the restricted distance of a designated
12 location.

13 ~~((25))~~ (26) "Escape" means:

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

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

23 ~~((26))~~ (27) "Felony traffic offense" means:

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

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

33 ~~((27))~~ (28) "Fine" means a specific sum of money ordered by the
34 sentencing court to be paid by the offender to the court over a
35 specific period of time.

36 ~~((28))~~ (29) "First-time offender" means any person who has no
37 prior convictions for a felony and is eligible for the first-time
38 offender waiver under RCW 9.94A.650.

39 ~~((29))~~ (30) "Home detention" is a subset of electronic
40 monitoring and means a program of partial confinement available to

1 offenders wherein the offender is confined in a private residence 24
2 hours a day, unless an absence from the residence is approved,
3 authorized, or otherwise permitted in the order by the court or other
4 supervising agency that ordered home detention, and the offender is
5 subject to electronic monitoring.

6 ~~((30))~~ (31) "Homelessness" or "homeless" means a condition
7 where an individual lacks a fixed, regular, and adequate nighttime
8 residence and who has a primary nighttime residence that is:

9 (a) A supervised, publicly or privately operated shelter designed
10 to provide temporary living accommodations;

11 (b) A public or private place not designed for, or ordinarily
12 used as, a regular sleeping accommodation for human beings; or

13 (c) A private residence where the individual stays as a transient
14 invitee.

15 ~~((31))~~ (32) "Legal financial obligation" means a sum of money
16 that is ordered by a superior court of the state of Washington for
17 legal financial obligations which may include restitution to the
18 victim, statutorily imposed crime victims' compensation fees as
19 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
20 drug funds, court-appointed attorneys' fees, and costs of defense,
21 fines, and any other financial obligation that is assessed to the
22 offender as a result of a felony conviction. Upon conviction for
23 vehicular assault while under the influence of intoxicating liquor or
24 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
25 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
26 legal financial obligations may also include payment to a public
27 agency of the expense of an emergency response to the incident
28 resulting in the conviction, subject to RCW 38.52.430.

29 ~~((32))~~ (33) "Most serious offense" means any of the following
30 felonies or a felony attempt to commit any of the following felonies:

31 (a) Any felony defined under any law as a class A felony or
32 criminal solicitation of or criminal conspiracy to commit a class A
33 felony;

34 (b) Assault in the second degree;

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

36 (d) Child molestation in the second degree;

37 (e) Controlled substance homicide;

38 (f) Extortion in the first degree;

39 (g) Incest when committed against a child under age 14;

40 (h) Indecent liberties;

- 1 (i) Kidnapping in the second degree;
- 2 (j) Leading organized crime;
- 3 (k) Manslaughter in the first degree;
- 4 (l) Manslaughter in the second degree;
- 5 (m) Promoting prostitution in the first degree;
- 6 (n) Rape in the third degree;
- 7 (o) Sexual exploitation;
- 8 (p) Vehicular assault, when caused by the operation or driving of
- 9 a vehicle by a person while under the influence of intoxicating
- 10 liquor or any drug or by the operation or driving of a vehicle in a
- 11 reckless manner;
- 12 (q) Vehicular homicide, when proximately caused by the driving of
- 13 any vehicle by any person while under the influence of intoxicating
- 14 liquor or any drug as defined by RCW 46.61.502, or by the operation
- 15 of any vehicle in a reckless manner;
- 16 (r) Any other class B felony offense with a finding of sexual
- 17 motivation;
- 18 (s) Any other felony with a deadly weapon verdict under RCW
- 19 9.94A.825;
- 20 (t) Any felony offense in effect at any time prior to December 2,
- 21 1993, that is comparable to a most serious offense under this
- 22 subsection, or any federal or out-of-state conviction for an offense
- 23 that under the laws of this state would be a felony classified as a
- 24 most serious offense under this subsection;
- 25 (u) (i) A prior conviction for indecent liberties under RCW
- 26 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
- 27 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
- 28 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW
- 29 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
- 30 until July 1, 1988;
- 31 (ii) A prior conviction for indecent liberties under RCW
- 32 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
- 33 if: (A) The crime was committed against a child under the age of 14;
- 34 or (B) the relationship between the victim and perpetrator is
- 35 included in the definition of indecent liberties under RCW
- 36 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
- 37 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
- 38 1993, through July 27, 1997;
- 39 (v) Any out-of-state conviction for a felony offense with a
- 40 finding of sexual motivation if the minimum sentence imposed was 10

1 years or more; provided that the out-of-state felony offense must be
2 comparable to a felony offense under this title and Title 9A RCW and
3 the out-of-state definition of sexual motivation must be comparable
4 to the definition of sexual motivation contained in this section.

5 ~~((33))~~ (34) "Nonviolent offense" means an offense which is not
6 a violent offense.

7 ~~((34))~~ (35) "Offender" means a person who has committed a
8 felony established by state law and is 18 years of age or older or is
9 less than 18 years of age but whose case is under superior court
10 jurisdiction under RCW 13.04.030 or has been transferred by the
11 appropriate juvenile court to a criminal court pursuant to RCW
12 13.40.110. In addition, for the purpose of community custody
13 requirements under this chapter, "offender" also means a misdemeanor
14 or gross misdemeanor probationer ordered by a superior court to
15 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and
16 supervised by the department pursuant to RCW 9.94A.501 and
17 9.94A.5011. Throughout this chapter, the terms "offender" and
18 "defendant" are used interchangeably.

19 ~~((35))~~ (36) "Partial confinement" means confinement for no more
20 than one year in a facility or institution operated or utilized under
21 contract by the state or any other unit of government, or, if home
22 detention, electronic monitoring, or work crew has been ordered by
23 the court or home detention has been ordered by the department as
24 part of the parenting program or the graduated reentry program, in an
25 approved residence, for a substantial portion of each day with the
26 balance of the day spent in the community. Partial confinement
27 includes work release, home detention, work crew, electronic
28 monitoring, and a combination of work crew, electronic monitoring,
29 and home detention.

30 ~~((36))~~ (37) "Pattern of criminal street gang activity" means:

31 (a) The commission, attempt, conspiracy, or solicitation of, or
32 any prior juvenile adjudication of or adult conviction of, two or
33 more of the following criminal street gang-related offenses:

34 (i) Any "serious violent" felony offense as defined in this
35 section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a
36 Child 1 (RCW 9A.36.120);

37 (ii) Any "violent" offense as defined by this section, excluding
38 Assault of a Child 2 (RCW 9A.36.130);

39 (iii) Deliver or Possession with Intent to Deliver a Controlled
40 Substance (chapter 69.50 RCW);

1 (iv) Any violation of the firearms and dangerous weapon act
2 (chapter 9.41 RCW);
3 (v) Theft of a Firearm (RCW 9A.56.300);
4 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);
5 (vii) Hate Crime (RCW 9A.36.080);
6 (viii) Harassment where a subsequent violation or deadly threat
7 is made (RCW 9A.46.020(2)(b));
8 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
9 (x) Any felony conviction by a person 18 years of age or older
10 with a special finding of involving a juvenile in a felony offense
11 under RCW 9.94A.833;
12 (xi) Residential Burglary (RCW 9A.52.025);
13 (xii) Burglary 2 (RCW 9A.52.030);
14 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
15 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
16 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
17 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
18 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
19 9A.56.070);
20 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
21 9A.56.075);
22 (xix) Extortion 1 (RCW 9A.56.120);
23 (xx) Extortion 2 (RCW 9A.56.130);
24 (xxi) Intimidating a Witness (RCW 9A.72.110);
25 (xxii) Tampering with a Witness (RCW 9A.72.120);
26 (xxiii) Reckless Endangerment (RCW 9A.36.050);
27 (xxiv) Coercion (RCW 9A.36.070);
28 (xxv) Harassment (RCW 9A.46.020); or
29 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
30 (b) That at least one of the offenses listed in (a) of this
31 subsection shall have occurred after July 1, 2008;
32 (c) That the most recent committed offense listed in (a) of this
33 subsection occurred within three years of a prior offense listed in
34 (a) of this subsection; and
35 (d) Of the offenses that were committed in (a) of this
36 subsection, the offenses occurred on separate occasions or were
37 committed by two or more persons.
38 ((~~(37)~~)) (38) "Persistent offender" is an offender who:
39 (a) (i) Has been convicted in this state of any felony considered
40 a most serious offense; and

1 (ii) Has, before the commission of the offense under (a) of this
2 subsection, been convicted as an offender on at least two separate
3 occasions, whether in this state or elsewhere, of felonies that under
4 the laws of this state would be considered most serious offenses and
5 would be included in the offender score under RCW 9.94A.525; provided
6 that of the two or more previous convictions, at least one conviction
7 must have occurred before the commission of any of the other most
8 serious offenses for which the offender was previously convicted; or

9 (b) (i) Has been convicted of: (A) Rape in the first degree, rape
10 of a child in the first degree, child molestation in the first
11 degree, rape in the second degree, rape of a child in the second
12 degree, or indecent liberties by forcible compulsion; (B) any of the
13 following offenses with a finding of sexual motivation: Murder in the
14 first degree, murder in the second degree, homicide by abuse,
15 kidnapping in the first degree, kidnapping in the second degree,
16 assault in the first degree, assault in the second degree, assault of
17 a child in the first degree, assault of a child in the second degree,
18 or burglary in the first degree; or (C) an attempt to commit any
19 crime listed in this subsection (~~((+37+))~~) (38) (b) (i); and

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

32 (~~((+38+))~~) (39) "Predatory" means: (a) The perpetrator of the crime
33 was a stranger to the victim, as defined in this section; (b) the
34 perpetrator established or promoted a relationship with the victim
35 prior to the offense and the victimization of the victim was a
36 significant reason the perpetrator established or promoted the
37 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
38 volunteer, or other person in authority in any public or private
39 school and the victim was a student of the school under his or her
40 authority or supervision. For purposes of this subsection, "school"

1 does not include home-based instruction as defined in RCW
2 28A.225.010; (ii) a coach, trainer, volunteer, or other person in
3 authority in any recreational activity and the victim was a
4 participant in the activity under his or her authority or
5 supervision; (iii) a pastor, elder, volunteer, or other person in
6 authority in any church or religious organization, and the victim was
7 a member or participant of the organization under his or her
8 authority; or (iv) a teacher, counselor, volunteer, or other person
9 in authority providing home-based instruction and the victim was a
10 student receiving home-based instruction while under his or her
11 authority or supervision. For purposes of this subsection: (A) "Home-
12 based instruction" has the same meaning as defined in RCW
13 28A.225.010; and (B) "teacher, counselor, volunteer, or other person
14 in authority" does not include the parent or legal guardian of the
15 victim.

16 ~~((39))~~ (40) "Private school" means a school regulated under
17 chapter 28A.195 or 28A.205 RCW.

18 ~~((40))~~ (41) "Public school" has the same meaning as in RCW
19 28A.150.010.

20 ~~((41))~~ (42) "Recidivist offense" means a felony offense where a
21 prior conviction of the same offense or other specified offense is an
22 element of the crime including, but not limited to:

23 (a) Assault in the fourth degree where domestic violence is
24 pleaded and proven, RCW 9A.36.041(3);

25 (b) Cyber harassment, RCW 9A.90.120(2)(b)(i);

26 (c) Harassment, RCW 9A.46.020(2)(b)(i);

27 (d) Indecent exposure, RCW 9A.88.010(2)(c);

28 (e) Stalking, RCW 9A.46.110(5)(b)(i) and (iii);

29 (f) Telephone harassment, RCW 9.61.230(2)(a); and

30 (g) Violation of a no-contact or protection order, RCW 7.105.450
31 or former RCW 26.50.110(5).

32 ~~((42))~~ (43) "Repetitive domestic violence offense" means any:

33 (a)(i) Domestic violence assault that is not a felony offense
34 under RCW 9A.36.041;

35 (ii) Domestic violence violation of a no-contact order under
36 chapter 10.99 RCW that is not a felony offense;

37 (iii) Domestic violence violation of a protection order under
38 chapter 26.09, 26.26A, or 26.26B RCW or former chapter 26.50 RCW, or
39 violation of a domestic violence protection order under chapter 7.105
40 RCW, that is not a felony offense;

1 (iv) Domestic violence harassment offense under RCW 9A.46.020
2 that is not a felony offense; or

3 (v) Domestic violence stalking offense under RCW 9A.46.110 that
4 is not a felony offense; or

5 (b) Any federal, out-of-state, tribal court, military, county, or
6 municipal conviction for an offense that under the laws of this state
7 would be classified as a repetitive domestic violence offense under
8 (a) of this subsection.

9 ~~((43))~~ (44) "Restitution" means a specific sum of money ordered
10 by the sentencing court to be paid by the offender to the court over
11 a specified period of time as payment of damages. The sum may include
12 both public and private costs.

13 ~~((44))~~ (45) "Risk assessment" means the application of the risk
14 instrument recommended to the department by the Washington state
15 institute for public policy as having the highest degree of
16 predictive accuracy for assessing an offender's risk of reoffense.

17 ~~((45))~~ (46) "Serious traffic offense" means:

18 (a) (i) Nonfelony driving while under the influence of
19 intoxicating liquor or any drug (RCW 46.61.502) (~~(, nonfelony)~~);

20 (ii) Nonfelony actual physical control while under the influence
21 of intoxicating liquor or any drug (RCW 46.61.504) (~~(, reckless)~~);

22 (iii) Reckless driving (RCW 46.61.500) (~~(, or hit-and-run)~~);

23 (iv) Negligent driving if the conviction is the result of a
24 charge that 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 while under the influence of intoxicating liquor or any
27 drug (RCW 46.61.5249);

28 (v) Reckless endangerment if the conviction is the result of a
29 charge that was originally filed as a violation of RCW 46.61.502 or
30 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
31 46.61.522 while under the influence of intoxicating liquor or any
32 drug (RCW 9A.36.050); or

33 (vi) Hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

37 ~~((46))~~ (47) "Serious violent offense" is a subcategory of
38 violent offense and means:

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

40 (ii) Homicide by abuse;

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

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

12 (~~(47)~~) (48) "Sex offense" means:

13 (a) (i) A felony that is a violation of chapter 9A.44 RCW other
14 than RCW 9A.44.132;

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

16 (iii) A felony that is a violation of chapter 9.68A RCW other
17 than RCW 9.68A.080;

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

21 (v) A felony violation of RCW 9A.44.132(1) (failure to register
22 as a sex offender) if the person has been convicted of violating RCW
23 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
24 prior to June 10, 2010, on at least one prior occasion;

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

28 (c) A felony with a finding of sexual motivation under RCW
29 9.94A.835 or 13.40.135; or

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

33 (~~(48)~~) (49) "Sexual motivation" means that one of the purposes
34 for which the defendant committed the crime was for the purpose of
35 his or her sexual gratification.

36 (~~(49)~~) (50) "Standard sentence range" means the sentencing
37 court's discretionary range in imposing a nonappealable sentence.

38 (~~(50)~~) (51) "Statutory maximum sentence" means the maximum
39 length of time for which an offender may be confined as punishment
40 for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the

1 statute defining the crime, or other statute defining the maximum
2 penalty for a crime.

3 ~~((51))~~ (52) "Stranger" means that the victim did not know the
4 offender 24 hours before the offense.

5 ~~((52))~~ (53) "Total confinement" means confinement inside the
6 physical boundaries of a facility or institution operated or utilized
7 under contract by the state or any other unit of government for 24
8 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

9 ~~((53))~~ (54) "Transition training" means written and verbal
10 instructions and assistance provided by the department to the
11 offender during the two weeks prior to the offender's successful
12 completion of the work ethic camp program. The transition training
13 shall include instructions in the offender's requirements and
14 obligations during the offender's period of community custody.

15 ~~((54))~~ (55) "Victim" means any person who has sustained
16 emotional, psychological, physical, or financial injury to person or
17 property as a direct result of the crime charged.

18 ~~((55))~~ (56) "Victim of domestic violence" means an intimate
19 partner or household member who has been subjected to the infliction
20 of physical harm or sexual and psychological abuse by an intimate
21 partner or household member as part of a pattern of assaultive,
22 coercive, and controlling behaviors directed at achieving compliance
23 from or control over that intimate partner or household member.
24 Domestic violence includes, but is not limited to, the offenses
25 listed in RCW 10.99.020 and 26.50.010 committed by an intimate
26 partner or household member against a victim who is an intimate
27 partner or household member.

28 ~~((56))~~ (57) "Victim of sex trafficking, prostitution, or
29 commercial sexual abuse of a minor" means a person who has been
30 forced or coerced to perform a commercial sex act including, but not
31 limited to, being a victim of offenses defined in RCW 9A.40.100,
32 9A.88.070, 9.68A.101, and the trafficking victims protection act of
33 2000, 22 U.S.C. Sec. 7101 et seq.; or a person who was induced to
34 perform a commercial sex act when they were less than 18 years of age
35 including but not limited to the offenses defined in chapter 9.68A
36 RCW.

37 ~~((57))~~ (58) "Victim of sexual assault" means any person who is
38 a victim of a sexual assault offense, nonconsensual sexual conduct,
39 or nonconsensual sexual penetration and as a result suffers physical,
40 emotional, financial, or psychological impacts. Sexual assault

1 offenses include, but are not limited to, the offenses defined in
2 chapter 9A.44 RCW.

3 ~~((58))~~ (59) "Violent offense" means:

4 (a) Any of the following felonies:

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

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

9 (iii) Manslaughter in the first degree;

10 (iv) Manslaughter in the second degree;

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

12 (vi) Kidnapping in the second degree;

13 (vii) Arson in the second degree;

14 (viii) Assault in the second degree;

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

16 (x) Extortion in the first degree;

17 (xi) Robbery in the second degree;

18 (xii) Drive-by shooting;

19 (xiii) Vehicular assault, when caused by the operation or driving
20 of a vehicle by a person while under the influence of intoxicating
21 liquor or any drug or by the operation or driving of a vehicle in a
22 reckless manner; and

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

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

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

33 ~~((59))~~ (60) "Work crew" means a program of partial confinement
34 consisting of civic improvement tasks for the benefit of the
35 community that complies with RCW 9.94A.725.

36 ~~((60))~~ (61) "Work ethic camp" means an alternative
37 incarceration program as provided in RCW 9.94A.690 designed to reduce
38 recidivism and lower the cost of corrections by requiring offenders
39 to complete a comprehensive array of real-world job and vocational
40 experiences, character-building work ethics training, life management

1 skills development, substance abuse rehabilitation, counseling,
2 literacy training, and basic adult education.

3 ~~((+61))~~ (62) "Work release" means a program of partial
4 confinement available to offenders who are employed or engaged as a
5 student in a regular course of study at school.

6 **Sec. 3.** RCW 9.94A.190 and 2018 c 166 s 5 are each amended to
7 read as follows:

8 (1) A sentence that includes a term or terms of confinement
9 totaling more than one year shall be served in a facility or
10 institution operated, or utilized under contract, by the state, or in
11 home detention pursuant to RCW 9.94A.6551 or the graduated reentry
12 program under RCW 9.94A.733. Except as provided in subsection (3) or
13 (5) of this section, a sentence of not more than one year of
14 confinement shall be served in a facility operated, licensed, or
15 utilized under contract, by the county, or if home detention or work
16 crew has been ordered by the court, in the residence of either the
17 offender or a member of the offender's immediate family.

18 (2) If a county uses a state partial confinement facility for the
19 partial confinement of a person sentenced to confinement for not more
20 than one year, the county shall reimburse the state for the use of
21 the facility as provided in this subsection. The office of financial
22 management shall set the rate of reimbursement based upon the average
23 per diem cost per offender in the facility. The office of financial
24 management shall determine to what extent, if any, reimbursement
25 shall be reduced or eliminated because of funds provided by the
26 legislature to the department for the purpose of covering the cost of
27 county use of state partial confinement facilities. The office of
28 financial management shall reestablish reimbursement rates each even-
29 numbered year.

30 (3) A person who is sentenced for a felony to a term of not more
31 than one year, and who is committed or returned to incarceration in a
32 state facility on another felony conviction, either under the
33 indeterminate sentencing laws, chapter 9.95 RCW, or under this
34 chapter shall serve all terms of confinement, including a sentence of
35 not more than one year, in a facility or institution operated, or
36 utilized under contract, by the state, consistent with the provisions
37 of RCW 9.94A.589.

38 (4) Notwithstanding any other provision of this section, a
39 sentence imposed pursuant to RCW 9.94A.660 or section 1 of this act

1 which has a standard sentence range of over one year, regardless of
2 length, shall be served in a facility or institution operated, or
3 utilized under contract, by the state.

4 (5) Sentences imposed pursuant to RCW 9.94A.507 shall be served
5 in a facility or institution operated, or utilized under contract, by
6 the state.

7 **Sec. 4.** RCW 9.94A.501 and 2021 c 242 s 2 are each amended to
8 read as follows:

9 (1) The department shall supervise the following offenders who
10 are sentenced to probation in superior court, pursuant to RCW
11 9.92.060, 9.95.204, or 9.95.210:

12 (a) Offenders convicted of:

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

14 (ii) Custodial sexual misconduct second degree;

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

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

17 (b) Offenders who have:

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

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

24 (2) Misdemeanor and gross misdemeanor offenders supervised by the
25 department pursuant to this section shall be placed on community
26 custody.

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

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

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

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

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

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

6 (e)(i) Has a current conviction for a domestic violence felony
7 offense where domestic violence has been pleaded and proven after
8 August 1, 2011, and a prior conviction for a repetitive domestic
9 violence offense or domestic violence felony offense where domestic
10 violence was pleaded and proven after August 1, 2011. This subsection
11 (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

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

18 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660,
19 9.94A.670, 9.94A.711, ~~((or))~~ 9.94A.695, or section 1 of this act;

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

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

24 (5) The department shall supervise any offender who is released
25 by the indeterminate sentence review board and who was sentenced to
26 community custody or subject to community custody under the terms of
27 release.

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

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

35 (8) The period of time the department is authorized to supervise
36 an offender under this section may not exceed the duration of
37 community custody specified under RCW 9.94B.050, 9.94A.701 (1)
38 through (9), or 9.94A.702, except in cases where the court has
39 imposed an exceptional term of community custody under RCW 9.94A.535.

1 (9) The period of time the department is authorized to supervise
2 an offender under this section may be reduced by the earned award of
3 supervision compliance credit pursuant to RCW 9.94A.717.

4 **Sec. 5.** RCW 9.94A.505 and 2022 c 260 s 23 are each amended to
5 read as follows:

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

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

10 (i) Unless another term of confinement applies, a sentence within
11 the standard sentence range established in RCW 9.94A.510 or
12 9.94A.517;

13 (ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

14 (iii) RCW 9.94A.570, relating to persistent offenders;

15 (iv) RCW 9.94A.540, relating to mandatory minimum terms;

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

17 (vi) RCW 9.94A.660, relating to the drug offender sentencing
18 alternative;

19 (vii) Section 1 of this act, relating to the drug offender
20 sentencing alternative for driving under the influence;

21 (viii) RCW 9.94A.670, relating to the special sex offender
22 sentencing alternative;

23 ~~((viii))~~ (ix) RCW 9.94A.655, relating to the parenting
24 sentencing alternative;

25 ~~((ix))~~ (x) RCW 9.94A.695, relating to the mental health
26 sentencing alternative;

27 ~~((x))~~ (xi) RCW 9.94A.507, relating to certain sex offenses;

28 ~~((xi))~~ (xii) RCW 9.94A.535, relating to exceptional sentences;

29 ~~((xii))~~ (xiii) RCW 9.94A.589, relating to consecutive and
30 concurrent sentences;

31 ~~((xiii))~~ (xiv) RCW 9.94A.603, relating to felony driving while
32 under the influence of intoxicating liquor or any drug and felony
33 physical control of a vehicle while under the influence of
34 intoxicating liquor or any drug;

35 ~~((xiv))~~ (xv) RCW 9.94A.711, relating to the theft or taking of
36 a motor vehicle.

37 (b) If a standard sentence range has not been established for the
38 offender's crime, the court shall impose a determinate sentence which
39 may include not more than one year of confinement; community

1 restitution work; a term of community custody under RCW 9.94A.702 not
2 to exceed one year; and/or other legal financial obligations. The
3 court may impose a sentence which provides more than one year of
4 confinement and a community custody term under RCW 9.94A.701 if the
5 court finds reasons justifying an exceptional sentence as provided in
6 RCW 9.94A.535.

7 (3) If the court imposes a sentence requiring confinement of 30
8 days or less, the court may, in its discretion, specify that the
9 sentence be served on consecutive or intermittent days. A sentence
10 requiring more than 30 days of confinement shall be served on
11 consecutive days. Local jail administrators may schedule court-
12 ordered intermittent sentences as space permits.

13 (4) If a sentence imposed includes payment of a legal financial
14 obligation, it shall be imposed as provided in RCW 9.94A.750,
15 9.94A.753, and 9.94A.760.

16 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
17 court may not impose a sentence providing for a term of confinement
18 or community custody that exceeds the statutory maximum for the crime
19 as provided in chapter 9A.20 RCW.

20 (6) The sentencing court shall give the offender credit for all
21 confinement time served before the sentencing if that confinement was
22 solely in regard to the offense for which the offender is being
23 sentenced.

24 (7) The sentencing court shall not give the offender credit for
25 any time the offender was required to comply with an electronic
26 monitoring program prior to sentencing if the offender was convicted
27 of one of the following offenses:

28 (a) A violent offense;

29 (b) Any sex offense;

30 (c) Any drug offense;

31 (d) Reckless burning in the first or second degree as defined in
32 RCW 9A.48.040 or 9A.48.050;

33 (e) Assault in the third degree as defined in RCW 9A.36.031;

34 (f) Assault of a child in the third degree;

35 (g) Unlawful imprisonment as defined in RCW 9A.40.040; or

36 (h) Harassment as defined in RCW 9A.46.020.

37 (8) The court shall order restitution as provided in RCW
38 9.94A.750 and 9.94A.753.

39 (9) As a part of any sentence, the court may impose and enforce
40 crime-related prohibitions and affirmative conditions as provided in

1 this chapter. "Crime-related prohibitions" may include a prohibition
2 on the use or possession of alcohol or controlled substances if the
3 court finds that any chemical dependency or substance abuse
4 contributed to the offense.

5 (10) In any sentence of partial confinement, the court may
6 require the offender to serve the partial confinement in work
7 release, in a program of home detention, on work crew, or in a
8 combined program of work crew and home detention.

9 **Sec. 6.** RCW 9.94A.525 and 2021 c 215 s 100 are each amended to
10 read as follows:

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

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

15 (1) A prior conviction is a conviction which exists before the
16 date of sentencing for the offense for which the offender score is
17 being computed. Convictions entered or sentenced on the same date as
18 the conviction for which the offender score is being computed shall
19 be deemed "other current offenses" within the meaning of RCW
20 9.94A.589.

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

23 (b) Class B prior felony convictions other than sex offenses
24 shall not be included in the offender score, if since the last date
25 of release from confinement (including full-time residential
26 treatment) pursuant to a felony conviction, if any, or entry of
27 judgment and sentence, the offender had spent (~~ten~~) 10 consecutive
28 years in the community without committing any crime that subsequently
29 results in a conviction.

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

37 (d) Except as provided in (e) of this subsection, serious traffic
38 convictions shall not be included in the offender score if, since the
39 last date of release from confinement (including full-time

1 residential treatment) pursuant to a conviction, if any, or entry of
2 judgment and sentence, the offender spent five years in the community
3 without committing any crime that subsequently results in a
4 conviction.

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

17 (f) Prior convictions for a repetitive domestic violence offense,
18 as defined in RCW 9.94A.030, shall not be included in the offender
19 score if, since the last date of release from confinement or entry of
20 judgment and sentence, the offender had spent (~~ten~~) 10 consecutive
21 years in the community without committing any crime that subsequently
22 results in a conviction.

23 (g) This subsection applies to both adult and juvenile prior
24 convictions.

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

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

37 (5) (a) In the case of multiple prior convictions, for the purpose
38 of computing the offender score, count all convictions separately,
39 except:

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

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

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

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

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

38 (8) If the present conviction is for a violent offense and not
39 covered in subsection (9), (10), (11), (12), or (13) of this section,
40 count two points for each prior adult and juvenile violent felony

1 conviction, one point for each prior adult nonviolent felony
2 conviction, and 1/2 point for each prior juvenile nonviolent felony
3 conviction.

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

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

15 (11) If the present conviction is for a felony traffic offense
16 count two points for each adult or juvenile prior conviction for
17 Vehicular Homicide or Vehicular Assault; for each felony offense
18 count one point for each adult and 1/2 point for each juvenile prior
19 conviction; for each serious traffic offense, other than those used
20 for an enhancement pursuant to RCW 46.61.520(2), count one point for
21 each adult and 1/2 point for each juvenile prior conviction; count
22 one point for each adult and 1/2 point for each juvenile prior
23 conviction for operation of a vessel while under the influence of
24 intoxicating liquor or any drug; count one point for a deferred
25 prosecution granted under chapter 10.05 RCW for a second or
26 subsequent violation of RCW 46.61.502 or 46.61.504, or an equivalent
27 local ordinance.

28 (12) If the present conviction is for homicide by watercraft or
29 assault by watercraft count two points for each adult or juvenile
30 prior conviction for homicide by watercraft or assault by watercraft;
31 for each felony offense count one point for each adult and 1/2 point
32 for each juvenile prior conviction; count one point for each adult
33 and 1/2 point for each juvenile prior conviction for driving under
34 the influence of intoxicating liquor or any drug, actual physical
35 control of a motor vehicle while under the influence of intoxicating
36 liquor or any drug, or operation of a vessel while under the
37 influence of intoxicating liquor or any drug.

38 (13) If the present conviction is for manufacture of
39 methamphetamine count three points for each adult prior manufacture
40 of methamphetamine conviction and two points for each juvenile

1 manufacture of methamphetamine offense. If the present conviction is
2 for a drug offense and the offender has a criminal history that
3 includes a sex offense or serious violent offense, count three points
4 for each adult prior felony drug offense conviction and two points
5 for each juvenile drug offense. All other adult and juvenile felonies
6 are scored as in subsection (8) of this section if the current drug
7 offense is violent, or as in subsection (7) of this section if the
8 current drug offense is nonviolent.

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

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

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

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

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

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

37 (20) If the present conviction is for Theft of a Motor Vehicle,
38 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
39 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
40 priors as in subsections (7) through (18) of this section; however,

1 count one point for prior convictions of Vehicle Prowling 2, and
2 three points for each adult and juvenile prior Theft 1 (of a motor
3 vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property
4 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor
5 vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle,
6 Taking a Motor Vehicle Without Permission 1, or Taking a Motor
7 Vehicle Without Permission 2 conviction.

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

12 (a) Count two points for each adult prior conviction where
13 domestic violence as defined in RCW 9.94A.030 was pleaded and proven
14 after August 1, 2011, for any of the following offenses: A felony
15 violation of a no-contact or protection order (RCW 7.105.450 or
16 former RCW 26.50.110), felony Harassment (RCW 9A.46.020(2)(b)),
17 felony Stalking (RCW 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020),
18 Kidnapping 1 (RCW 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful
19 imprisonment (RCW 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2
20 (RCW 9A.56.210), Assault 1 (RCW 9A.36.011), Assault 2 (RCW
21 9A.36.021), Assault 3 (RCW 9A.36.031), Arson 1 (RCW 9A.48.020), or
22 Arson 2 (RCW 9A.48.030);

23 (b) Count two points for each adult prior conviction where
24 domestic violence as defined in RCW 9.94A.030 was pleaded and proven
25 after July 23, 2017, for any of the following offenses: Assault of a
26 child in the first degree, RCW 9A.36.120; Assault of a child in the
27 second degree, RCW 9A.36.130; Assault of a child in the third degree,
28 RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW
29 9A.42.020; or Criminal Mistreatment in the second degree, RCW
30 9A.42.030;

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

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

39 (22) The fact that a prior conviction was not included in an
40 offender's offender score or criminal history at a previous

1 sentencing shall have no bearing on whether it is included in the
2 criminal history or offender score for the current offense. Prior
3 convictions that were not counted in the offender score or included
4 in criminal history under repealed or previous versions of the
5 sentencing reform act shall be included in criminal history and shall
6 count in the offender score if the current version of the sentencing
7 reform act requires including or counting those convictions. Prior
8 convictions that were not included in criminal history or in the
9 offender score shall be included upon any resentencing to ensure
10 imposition of an accurate sentence.

11 **Sec. 7.** RCW 9.94A.633 and 2021 c 242 s 4 are each amended to
12 read as follows:

13 (1) (a) An offender who violates any condition or requirement of a
14 sentence may be sanctioned by the court with up to (~~sixty~~) 60 days'
15 confinement for each violation or by the department with up to
16 (~~thirty~~) 30 days' confinement as provided in RCW 9.94A.737.

17 (b) In lieu of confinement, an offender may be sanctioned with
18 work release, home detention with electronic monitoring, work crew,
19 community restitution, inpatient treatment, daily reporting, curfew,
20 educational or counseling sessions, supervision enhanced through
21 electronic monitoring, or any other community-based sanctions.

22 (2) If an offender was under community custody pursuant to one of
23 the following statutes, the offender may be sanctioned as follows:

24 (a) If the offender was transferred to community custody in lieu
25 of earned early release in accordance with RCW 9.94A.728, the
26 offender may be transferred to a more restrictive confinement status
27 to serve up to the remaining portion of the sentence, less credit for
28 any period actually spent in community custody or in detention
29 awaiting disposition of an alleged violation.

30 (b) If the offender was sentenced under the drug offender
31 sentencing alternative set out in RCW 9.94A.660, the offender may be
32 sanctioned in accordance with that section.

33 (c) If the offender was sentenced under the drug offender
34 sentencing alternative for driving under the influence set out in
35 section 1 of this act, the offender may be sanctioned in accordance
36 with that section.

37 (d) If the offender was sentenced under the parenting sentencing
38 alternative set out in RCW 9.94A.655, the offender may be sanctioned
39 in accordance with that section.

1 ~~((d))~~ (e) If the offender was sentenced under the special sex
2 offender sentencing alternative set out in RCW 9.94A.670, the
3 suspended sentence may be revoked and the offender committed to serve
4 the original sentence of confinement.

5 ~~((e))~~ (f) If the offender was sentenced under the mental health
6 sentencing alternative set out in RCW 9.94A.695, the offender may be
7 sanctioned in accordance with that section.

8 ~~((f))~~ (g) If the offender was sentenced to a work ethic camp
9 pursuant to RCW 9.94A.690, the offender may be reclassified to serve
10 the unexpired term of his or her sentence in total confinement.

11 ~~((g))~~ (h) If a sex offender was sentenced pursuant to RCW
12 9.94A.507, the offender may be transferred to a more restrictive
13 confinement status to serve up to the remaining portion of the
14 sentence, less credit for any period actually spent in community
15 custody or in detention awaiting disposition of an alleged violation.

16 (3) If a probationer is being supervised by the department
17 pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may
18 be sanctioned pursuant to subsection (1) of this section. The
19 department shall have authority to issue a warrant for the arrest of
20 an offender who violates a condition of community custody, as
21 provided in RCW 9.94A.716. Any sanctions shall be imposed by the
22 department pursuant to RCW 9.94A.737. Nothing in this subsection is
23 intended to limit the power of the sentencing court to respond to a
24 probationer's violation of conditions.

25 (4) The parole or probation of an offender who is charged with a
26 new felony offense may be suspended and the offender placed in total
27 confinement pending disposition of the new criminal charges if:

28 (a) The offender is on parole pursuant to RCW 9.95.110(1); or

29 (b) The offender is being supervised pursuant to RCW 9.94A.745
30 and is on parole or probation pursuant to the laws of another state.

31 **Sec. 8.** RCW 9.94A.6332 and 2021 c 242 s 5 are each amended to
32 read as follows:

33 The procedure for imposing sanctions for violations of sentence
34 conditions or requirements is as follows:

35 (1) If the offender was sentenced under the drug offender
36 sentencing alternative, any sanctions shall be imposed by the
37 department or the court pursuant to RCW 9.94A.660.

38 (2) If the offender was sentenced under the drug offender
39 sentencing alternative for driving under the influence, any sanctions

1 shall be imposed by the department or the court pursuant to section 1
2 of this act.

3 (3) If the offender was sentenced under the special sex offender
4 sentencing alternative, any sanctions shall be imposed by the
5 department or the court pursuant to RCW 9.94A.670.

6 ~~((3))~~ (4) If the offender was sentenced under the parenting
7 sentencing alternative, any sanctions shall be imposed by the
8 department or by the court pursuant to RCW 9.94A.655.

9 ~~((4))~~ (5) If the offender was sentenced under the mental health
10 sentencing alternative, any sanctions shall be imposed by the
11 department or the court pursuant to RCW 9.94A.695.

12 ~~((5))~~ (6) If a sex offender was sentenced pursuant to RCW
13 9.94A.507, any sanctions shall be imposed by the board pursuant to
14 RCW 9.95.435.

15 ~~((6))~~ (7) If the offender was released pursuant to RCW
16 9.94A.730, any sanctions shall be imposed by the board pursuant to
17 RCW 9.95.435.

18 ~~((7))~~ (8) If the offender was sentenced pursuant to RCW
19 10.95.030(3) or 10.95.035, any sanctions shall be imposed by the
20 board pursuant to RCW 9.95.435.

21 ~~((8))~~ (9) In any other case, if the offender is being
22 supervised by the department, any sanctions shall be imposed by the
23 department pursuant to RCW 9.94A.737. If a probationer is being
24 supervised by the department pursuant to RCW 9.92.060, 9.95.204, or
25 9.95.210, upon receipt of a violation hearing report from the
26 department, the court retains any authority that those statutes
27 provide to respond to a probationer's violation of conditions.

28 ~~((9))~~ (10) If the offender is not being supervised by the
29 department, any sanctions shall be imposed by the court pursuant to
30 RCW 9.94A.6333.

31 **Sec. 9.** RCW 9.94A.660 and 2021 c 215 s 102 are each amended to
32 read as follows:

33 (1) An offender is eligible for the special drug offender
34 sentencing alternative if:

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

38 (b) The offender is convicted of a felony that is not a felony
39 driving while under the influence of intoxicating liquor or any drug

1 under RCW 46.61.502(6) or felony physical control of a vehicle while
2 under the influence of intoxicating liquor or any drug under RCW
3 46.61.504(6);

4 (c) The offender has no current or prior convictions for a sex
5 offense for which the offender is currently or may be required to
6 register pursuant to RCW 9A.44.130;

7 (d) The offender has no prior convictions in this state, and no
8 prior convictions for an equivalent out-of-state or federal offense,
9 for the following offenses during the following time frames:

10 (i) Robbery in the second degree that did not involve the use of
11 a firearm and was not reduced from robbery in the first degree within
12 seven years before conviction of the current offense; or

13 (ii) Any other violent offense within (~~ten~~) 10 years before
14 conviction of the current offense;

15 (e) For a violation of the uniform controlled substances act
16 under chapter 69.50 RCW or a criminal solicitation to commit such a
17 violation under chapter 9A.28 RCW, the offense involved only a small
18 quantity of the particular controlled substance as determined by the
19 judge upon consideration of such factors as the weight, purity,
20 packaging, sale price, and street value of the controlled substance;

21 (f) The offender has not been found by the United States attorney
22 general to be subject to a deportation detainer or order and does not
23 become subject to a deportation order during the period of the
24 sentence; and

25 (g) The offender has not received a drug offender sentencing
26 alternative under this section, or a drug offender sentencing
27 alternative for driving under the influence under section 1 of this
28 act, more than once in the prior (~~ten~~) 10 years before the current
29 offense.

30 (2) A motion for a special drug offender sentencing alternative
31 may be made by the court, the offender, or the state.

32 (3) If the sentencing court determines that the offender is
33 eligible for an alternative sentence under this section and that the
34 alternative sentence is appropriate, the court shall waive imposition
35 of a sentence within the standard sentence range and impose a
36 sentence consisting of either a prison-based alternative under RCW
37 9.94A.662 or a residential substance use disorder treatment-based
38 alternative under RCW 9.94A.664. The residential substance use
39 disorder treatment-based alternative is only available if the

1 midpoint of the standard sentence range is (~~twenty-six~~) 26 months
2 or less.

3 (4) (a) To assist the court in making its determination, the court
4 may order the department to complete either or both a risk assessment
5 report and a substance use disorder screening report as provided in
6 RCW 9.94A.500.

7 (b) To assist the court in making its determination in domestic
8 violence cases, the court shall order the department to complete a
9 presentence investigation and a chemical dependency screening report
10 as provided in RCW 9.94A.500, unless otherwise specifically waived by
11 the court.

12 (5) If the court is considering imposing a sentence under the
13 residential substance use disorder treatment-based alternative, the
14 court may order an examination of the offender by the department. The
15 examination must be performed by an agency licensed or certified by
16 the department of health to provide substance use disorder services.
17 The examination shall, at a minimum, address the following issues:

18 (a) Whether the offender suffers from a substance use disorder;

19 (b) (~~Whether the substance use disorder is such that there is a~~
20 ~~probability that criminal behavior will occur in the future;~~

21 ~~(c)~~) Whether effective treatment for the offender's substance
22 use disorder is available from a provider that has been licensed or
23 certified by the department of health, and where applicable, whether
24 effective domestic violence perpetrator treatment is available from a
25 state-certified domestic violence treatment provider pursuant to RCW
26 43.20A.735; and

27 (~~(d)~~) (c) Whether the offender and the community will benefit
28 from the use of the alternative.

29 (6) When a court imposes a sentence of community custody under
30 this section:

31 (a) The court may impose conditions as provided in RCW 9.94A.703
32 and may impose other affirmative conditions as the court considers
33 appropriate. In addition, an offender may be required to pay (~~thirty~~
34 ~~dollars~~) \$30 per month while on community custody to offset the cost
35 of monitoring for alcohol or controlled substances, or in cases of
36 domestic violence for monitoring with global positioning system
37 technology for compliance with a no-contact order.

38 (b) The department may impose conditions and sanctions as
39 authorized in RCW 9.94A.704 and 9.94A.737.

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

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

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

14 (d) An offender ordered to serve a term of total confinement
15 under (c) of this subsection shall receive credit for time previously
16 served in total or partial confinement and inpatient treatment under
17 this section, and shall receive (~~(fifty)~~) 50 percent credit for time
18 previously served in community custody under this section.

19 (8) In serving a term of community custody imposed upon failure
20 to complete, or administrative termination from, the special drug
21 offender sentencing alternative program, the offender shall receive
22 no credit for time served in community custody prior to termination
23 of the offender's participation in the program.

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

27 (10) The Washington state institute for public policy shall
28 submit a report to the governor and the appropriate committees of the
29 legislature by November 1, 2022, analyzing the effectiveness of the
30 drug offender sentencing alternative in reducing recidivism among
31 various offender populations. An additional report is due November 1,
32 2028, and every five years thereafter. The Washington state institute
33 for public policy may coordinate with the department and the caseload
34 forecast council in tracking data and preparing the report.

35 **Sec. 10.** RCW 9.94A.701 and 2021 c 242 s 6 are each amended to
36 read as follows:

37 (1) If an offender is sentenced to the custody of the department
38 for one of the following crimes, the court shall, in addition to the

1 other terms of the sentence, sentence the offender to community
2 custody for three years:

3 (a) A sex offense not sentenced under RCW 9.94A.507; or

4 (b) A serious violent offense.

5 (2) A court shall, in addition to the other terms of the
6 sentence, sentence an offender to community custody for ~~((eighteen))~~
7 18 months when the court sentences the person to the custody of the
8 department for a violent offense that is not considered a serious
9 violent offense.

10 (3) A court shall, in addition to the other terms of the
11 sentence, sentence an offender to community custody for one year when
12 the court sentences the person to the custody of the department for:

13 (a) Any crime against persons under RCW 9.94A.411(2);

14 (b) An offense involving the unlawful possession of a firearm
15 under RCW 9.41.040, where the offender is a criminal street gang
16 member or associate;

17 (c) A felony offense under chapter 69.50 or 69.52 RCW, committed
18 on or after July 1, 2000; or

19 (d) A felony violation of RCW 9A.44.132(1) (failure to register)
20 that is the offender's first violation for a felony failure to
21 register.

22 (4) If an offender is sentenced under the drug offender
23 sentencing alternative, the court shall impose community custody as
24 provided in:

25 (a) RCW 9.94A.660 and 9.94A.662 for a prison-based drug offender
26 sentencing alternative;

27 (b) RCW 9.94A.660 and 9.94A.664 for a residential-based drug
28 offender sentencing alternative;

29 (c) RCW 9.94A.662 and section 1(6) of this act for a prison-based
30 drug offender sentencing alternative for driving under the influence;
31 and

32 (d) Section 1 (5) and (6) of this act for a residential-based
33 drug offender sentencing alternative for driving under the influence.

34 (5) If an offender is sentenced under the special sex offender
35 sentencing alternative, the court shall impose community custody as
36 provided in RCW 9.94A.670.

37 (6) If an offender is sentenced to a work ethic camp, the court
38 shall impose community custody as provided in RCW 9.94A.690.

1 (7) If an offender is sentenced under the parenting sentencing
2 alternative, the court shall impose a term of community custody as
3 provided in RCW 9.94A.655.

4 (8) If the offender is sentenced under the mental health
5 sentencing alternative, the court shall impose a term of community
6 custody as provided in RCW 9.94A.695.

7 (9) If a sex offender is sentenced as a nonpersistent offender
8 pursuant to RCW 9.94A.507, the court shall impose community custody
9 as provided in that section.

10 (10) The term of community custody specified by this section
11 shall be reduced by the court whenever an offender's standard
12 sentence range term of confinement in combination with the term of
13 community custody exceeds the statutory maximum for the crime as
14 provided in RCW 9A.20.021.

15 **Sec. 11.** RCW 10.05.010 and 2019 c 263 s 701 are each amended to
16 read as follows:

17 (1) In a court of limited jurisdiction a person charged with a
18 misdemeanor or gross misdemeanor may petition the court to be
19 considered for a deferred prosecution (~~(program)~~). The petition shall
20 be filed with the court at least seven days before the date set for
21 trial but, upon a written motion and affidavit establishing good
22 cause for the delay and failure to comply with this section, the
23 court may waive this requirement subject to the defendant's
24 reimbursement to the court of the witness fees and expenses due for
25 subpoenaed witnesses who have appeared on the date set for trial. A
26 person charged with a misdemeanor or gross misdemeanor shall not be
27 eligible for a deferred prosecution unless the court makes specific
28 findings pursuant to RCW 10.05.020.

29 (2) A person charged with a (~~traffic infraction, misdemeanor, or~~
30 ~~gross misdemeanor under Title 46 RCW, or a misdemeanor or gross~~
31 ~~misdemeanor domestic violence offense,)) violation of RCW 46.61.502
32 or 46.61.504 shall not be eligible for a deferred prosecution
33 (~~(program)~~) unless the court makes specific findings pursuant to RCW
34 10.05.020. A person (~~may not participate in a deferred prosecution~~
35 ~~program for a traffic infraction, misdemeanor, or gross misdemeanor~~
36 ~~under Title 46 RCW if he or she has participated in a deferred~~
37 ~~prosecution program for a prior traffic infraction, misdemeanor, or~~
38 ~~gross misdemeanor under Title 46 RCW, and a person may not~~
39 ~~participate in a deferred prosecution program for a misdemeanor or~~~~

1 ~~gross misdemeanor domestic violence offense if he or she has~~
2 ~~participated in a deferred prosecution program for a prior domestic~~
3 ~~violence offense))~~ who petitions the court for the deferred
4 prosecution and participates in the deferred prosecution under this
5 chapter for his or her first violation of RCW 46.61.502 or 46.61.504
6 is eligible to petition the court for a second deferred prosecution
7 for the person's next violation of RCW 46.61.502 or 46.61.504 when
8 the person has no other prior convictions defined as a "prior
9 offense" under RCW 46.61.5055. Separate offenses committed more than
10 seven days apart may not be consolidated in a single program.

11 (3) A person charged with a misdemeanor or a gross misdemeanor
12 under chapter 9A.42 RCW shall not be eligible for a deferred
13 prosecution (~~program~~) unless the court makes specific findings
14 pursuant to RCW 10.05.020. Such person shall not be eligible for a
15 deferred prosecution (~~program~~) more than once.

16 (4) A person is not eligible for a deferred prosecution
17 (~~program~~) if the misdemeanor or gross misdemeanor domestic violence
18 offense was originally charged as a felony offense in superior court.

19 (5) A person may petition a court for a second deferred
20 prosecution while still under the jurisdiction of a court for the
21 person's first deferred prosecution; however, the first deferred
22 prosecution shall be revoked prior to the entry of the second
23 deferred prosecution.

24 (6) A person may not be on two deferred prosecutions at the same
25 time unless separate offenses are committed within seven days of each
26 other and the person petitions to consolidate each offense into a
27 single deferred prosecution.

28 (7) A person charged with a misdemeanor or gross misdemeanor for
29 a violation of RCW 46.61.502 or 46.61.504 who does not participate in
30 a deferred prosecution for his or her first violation of RCW
31 46.61.502 or 46.61.504 remains eligible to petition the court for a
32 deferred prosecution pursuant to the terms of this section and
33 specific findings made under RCW 10.05.020. Such person shall not be
34 eligible for a deferred prosecution more than once.

35 **Sec. 12.** RCW 10.05.015 and 2019 c 263 s 702 are each amended to
36 read as follows:

37 At the time of arraignment a person charged with a violation of
38 RCW 46.61.502 or 46.61.504 or a misdemeanor or gross misdemeanor
39 domestic violence offense may be given a statement by the court that

1 explains the availability, operation, and effects of the deferred
2 prosecution (~~(program)~~).

3 **Sec. 13.** RCW 10.05.020 and 2021 c 215 s 115 are each amended to
4 read as follows:

5 (1) Except as provided in subsection (2) of this section, the
6 petitioner shall allege under oath in the petition that the wrongful
7 conduct charged is the result of or caused by substance use disorders
8 or mental (~~(problems)~~) health disorders or domestic violence behavior
9 problems for which the person is in need of treatment and unless
10 treated the probability of future recurrence is great, along with a
11 statement that the person agrees to pay the cost of a diagnosis and
12 treatment of the alleged problem or problems if financially able to
13 do so. The petition shall also contain a case history and written
14 assessment prepared by an approved (~~(substance use disorder treatment~~
15 ~~program)~~) behavioral health agency, approved for mental health
16 services or substance use disorder services, as designated in chapter
17 71.24 RCW (~~(if the petition alleges a substance use disorder, by an~~
18 ~~approved mental health center if the petition alleges a mental~~
19 ~~problem,~~) or by a state-certified domestic violence treatment
20 provider pursuant to RCW 43.20A.735 (~~(if the petition alleges a~~
21 ~~domestic violence behavior problem)~~).

22 (2) In the case of a petitioner charged with a misdemeanor or
23 gross misdemeanor under chapter 9A.42 RCW, the petitioner shall
24 allege under oath in the petition that the petitioner is the natural
25 or adoptive parent of the alleged victim; that the wrongful conduct
26 charged is the result of parenting problems for which the petitioner
27 is in need of services; that the petitioner is in need of child
28 welfare services under chapter 74.13 RCW to improve his or her
29 parenting skills in order to better provide his or her child or
30 children with the basic necessities of life; that the petitioner
31 wants to correct his or her conduct to reduce the likelihood of harm
32 to his or her minor children; that in the absence of child welfare
33 services the petitioner may be unable to reduce the likelihood of
34 harm to his or her minor children; and that the petitioner has
35 cooperated with the department of (~~(social and health services)~~)
36 children, youth, and families to develop a plan to receive
37 appropriate child welfare services; along with a statement that the
38 person agrees to pay the cost of the services if he or she is
39 financially able to do so. The petition shall also contain a case

1 history and a written service plan from the department of (~~social~~
2 ~~and health services~~) children, youth, and families.

3 (3) Before entry of an order deferring prosecution, a petitioner
4 shall be advised of his or her rights as an accused and execute, as a
5 condition of receiving treatment, a statement that contains: (a) An
6 acknowledgment of his or her rights; (b) an acknowledgment and waiver
7 of the right to testify, the right to a speedy trial, the right to
8 call witnesses to testify, the right to present evidence in his or
9 her defense, and the right to a jury trial; (c) a stipulation to the
10 admissibility and sufficiency of the facts contained in the written
11 police report; and (d) an acknowledgment that the statement will be
12 entered and used to support a finding of guilty if the court finds
13 cause to revoke the order granting deferred prosecution. The
14 petitioner shall also be advised that he or she may, if he or she
15 proceeds to trial and is found guilty, be allowed to seek suspension
16 of some or all of the fines and incarceration that may be ordered
17 upon the condition that he or she seek treatment and, further, that
18 he or she may seek treatment from public and private agencies at any
19 time without regard to whether or not he or she is found guilty of
20 the offense charged. He or she shall also be advised that the court
21 will not accept a petition for deferred prosecution from a person
22 who: (i) Sincerely believes that he or she is innocent of the
23 charges; (ii) sincerely believes that he or she does not, in fact,
24 suffer from (~~alcoholism, drug addiction, mental problems~~) a
25 substance use disorder, a mental health disorder, or domestic
26 violence behavior problems; or (iii) in the case of a petitioner
27 charged under chapter 9A.42 RCW, sincerely believes that he or she
28 does not need child welfare services.

29 (4) Before entering an order deferring prosecution, the court
30 shall make specific findings that: (a) The petitioner has stipulated
31 to the admissibility and sufficiency of the facts as contained in the
32 written police report; (b) the petitioner has acknowledged the
33 admissibility of the stipulated facts in any criminal hearing on the
34 underlying offense or offenses held subsequent to revocation of the
35 order granting deferred prosecution; (c) the petitioner has
36 acknowledged and waived the right to testify, the right to a speedy
37 trial, the right to call witnesses to testify, the right to present
38 evidence in his or her defense, and the right to a jury trial; and
39 (d) the petitioner's statements were made knowingly and voluntarily.

1 Such findings shall be included in the order granting deferred
2 prosecution.

3 **Sec. 14.** RCW 10.05.030 and 2021 c 215 s 116 are each amended to
4 read as follows:

5 The arraigining judge upon consideration of the petition and with
6 the concurrence of the prosecuting attorney may continue the
7 arraignment and refer such person for a diagnostic investigation and
8 evaluation to:

9 (1) (~~An approved substance use disorder treatment program~~) A
10 state-approved behavioral health agency, approved for substance use
11 disorder services, as designated in chapter 71.24 RCW if the petition
12 alleges a substance use disorder;

13 (2) (~~An approved mental health center~~) A state-approved
14 behavioral health agency, approved for mental health services, as
15 designated in chapter 71.24 RCW, if the petition alleges a mental
16 (~~problem~~) health disorder;

17 (3) The department of (~~social and health services~~) children,
18 youth, and families if the petition is brought under RCW
19 10.05.020(2); or

20 (4) An approved state-certified domestic violence treatment
21 provider pursuant to RCW 43.20A.735 if the petition alleges a
22 domestic violence behavior problem.

23 **Sec. 15.** RCW 10.05.040 and 2018 c 201 s 9005 are each amended to
24 read as follows:

25 The program to which such person is referred, or the department
26 of (~~social and health services~~) children, youth, and families if
27 the petition is brought under RCW 10.05.020(2), shall conduct an
28 investigation and examination to determine:

29 (1) Whether the person suffers from the problem described;

30 (2) Whether the problem is such that if not treated, or if no
31 child welfare services are provided, there is a probability that
32 similar misconduct will occur in the future;

33 (3) Whether extensive and long term treatment is required;

34 (4) Whether effective treatment or child welfare services for the
35 person's problem are available; and

36 (5) Whether the person is (~~amenable~~): (a) Amenable to treatment
37 as demonstrated by (i) completion of residential treatment; (ii)
38 completion of a minimum of 18 hours of intensive outpatient

1 treatment, for substance use disorder petitions; (iii) completion of
2 a minimum of six mental health sessions, for mental health disorder
3 petitions; or (iv) completion of a minimum of six domestic violence
4 treatment sessions for domestic violence petitions; or (b) willing to
5 cooperate with child welfare services. The requirement for completing
6 a minimum number of sessions may be waived if the court finds good
7 cause.

8 **Sec. 16.** RCW 10.05.050 and 2018 c 201 s 9006 are each amended to
9 read as follows:

10 (1) The program, or the department of (~~social and health~~
11 ~~services~~) children, youth, and families if the petition is brought
12 under RCW 10.05.020(2), shall make a written report to the court
13 stating its findings and recommendations after the examination
14 required by RCW 10.05.040. If its findings and recommendations
15 support treatment or the implementation of a child welfare service
16 plan, it shall also recommend a treatment or service plan setting
17 out:

- 18 (a) The type;
- 19 (b) Nature;
- 20 (c) Length;
- 21 (d) A treatment or service time schedule; and
- 22 (e) Approximate cost of the treatment or child welfare services.

23 (2) In the case of a child welfare service plan, the plan shall
24 be designed in a manner so that a parent who successfully completes
25 the plan will not be likely to withhold the basic necessities of life
26 from his or her child.

27 (3) The report with the treatment or service plan shall be filed
28 with the court and a copy given to the petitioner and petitioner's
29 counsel. A copy of the treatment or service plan shall be given to
30 the prosecutor by petitioner's counsel at the request of the
31 prosecutor. The evaluation facility, or the department of (~~social~~
32 ~~and health services~~) children, youth, and families if the petition
33 is brought under RCW 10.05.020(2), making the written report shall
34 append to the report a commitment by the treatment program or the
35 department of (~~social and health services~~) children, youth, and
36 families that it will provide the treatment or child welfare services
37 in accordance with this chapter. The facility or the service provider
38 shall agree to provide the court with a statement (~~every three~~
39 ~~months for the first year and every six months for the second year~~)

1 monthly regarding (a) the petitioner's cooperation with the treatment
2 or child welfare service plan proposed and (b) the petitioner's
3 progress or failure in treatment or child welfare services. These
4 statements shall be made as a declaration by the person who is
5 personally responsible for providing the treatment or services.

6 **Sec. 17.** RCW 10.05.060 and 2009 c 135 s 1 are each amended to
7 read as follows:

8 If the report recommends treatment, the court shall examine the
9 treatment plan. If it approves the plan and the petitioner agrees to
10 comply with its terms and conditions and agrees to pay the cost
11 thereof, if able to do so, or arrange for the treatment, an entry
12 shall be made upon the person's court docket showing that the person
13 has been accepted for deferred prosecution. A copy of the treatment
14 plan shall be filed with the court. If the charge be one that an
15 abstract of the docket showing the charge, the date of the violation
16 for which the charge was made, and the date of petitioner's
17 acceptance is required to be sent to the department of licensing, an
18 abstract shall be sent, and the department of licensing shall make an
19 entry of the charge and of the petitioner's acceptance for deferred
20 prosecution on the department's driving record of the petitioner. The
21 entry is not a conviction for purposes of Title 46 RCW. Upon receipt
22 of the abstract of the docket, the department shall issue notice that
23 45 days after receipt, the petitioner must apply for a probationary
24 license in accordance with RCW 46.20.355, and the petitioner's
25 driver's license shall be on probationary status for five years from
26 the date of the violation that gave rise to the charge. The
27 department shall maintain the record (~~for ten years from date of~~
28 ~~entry of the order granting deferred prosecution~~) consistent with
29 the requirements of RCW 46.01.260.

30 **Sec. 18.** RCW 10.05.090 and 2010 c 269 s 10 are each amended to
31 read as follows:

32 If a petitioner, who has been accepted for a deferred
33 prosecution, fails or neglects to carry out and fulfill any term or
34 condition of the petitioner's treatment plan or any term or condition
35 imposed in connection with the installation of an interlock or other
36 device under RCW 46.20.720, the facility, center, institution, or
37 agency administering the treatment or the entity administering the
38 use of the device, shall immediately report such breach to the court,

1 the prosecutor, and the petitioner or petitioner's attorney of
2 record, together with its recommendation. The court upon receiving
3 such a report shall hold a hearing to determine whether the
4 petitioner should be removed from the deferred prosecution
5 (~~program~~). At the hearing, evidence shall be taken of the
6 petitioner's alleged failure to comply with the treatment plan or
7 device installation and the petitioner shall have the right to
8 present evidence on his or her own behalf. The court shall either
9 order that the petitioner continue on the treatment plan or be
10 removed from deferred prosecution. If removed from deferred
11 prosecution, the court shall enter judgment pursuant to RCW 10.05.020
12 and, if the charge for which the deferred prosecution was granted was
13 a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify
14 the department of licensing of the removal and entry of judgment.

15 **Sec. 19.** RCW 10.05.100 and 1998 c 208 s 2 are each amended to
16 read as follows:

17 If a petitioner is subsequently convicted of a similar offense
18 that was committed while the petitioner was in a deferred prosecution
19 (~~program~~), upon notice the court shall remove the petitioner's
20 docket from the deferred prosecution file and the court shall enter
21 judgment pursuant to RCW 10.05.020.

22 **Sec. 20.** RCW 10.05.120 and 2019 c 263 s 705 are each amended to
23 read as follows:

24 (1) Three years after receiving proof of successful completion of
25 the (~~two-year~~) approved treatment (~~program~~) plan, and following
26 proof to the court that the petitioner has complied with the
27 conditions imposed by the court following successful completion of
28 the (~~two-year~~) approved treatment (~~program~~) plan, but not before
29 five years following entry of the order of deferred prosecution
30 pursuant to a petition brought under RCW 10.05.020(1), the court
31 shall dismiss the charges pending against the petitioner.

32 (2) When a deferred prosecution is ordered pursuant to a petition
33 brought under RCW 10.05.020(2) and the court has received proof that
34 the petitioner has successfully completed the child welfare service
35 plan, or the plan has been terminated because the alleged victim has
36 reached his or her majority and there are no other minor children in
37 the home, the court shall dismiss the charges pending against the
38 petitioner: PROVIDED, That in any case where the petitioner's

1 parental rights have been terminated with regard to the alleged
2 victim due to abuse or neglect that occurred during the pendency of
3 the deferred prosecution, the termination shall be per se evidence
4 that the petitioner did not successfully complete the child welfare
5 service plan.

6 ~~((3) When a deferred prosecution is ordered for a petition
7 brought under RCW 10.05.020(1) involving a domestic violence behavior
8 problem and the court has received proof that the petitioner has
9 successfully completed the domestic violence treatment plan, the
10 court shall dismiss the charges pending against the petitioner.))~~

11 **Sec. 21.** RCW 10.05.140 and 2019 c 263 s 706 are each amended to
12 read as follows:

13 (1) As a condition of granting a deferred prosecution petition
14 for a violation of RCW 46.61.502 or 46.61.504, the court shall order
15 that the petitioner shall not operate a motor vehicle upon the public
16 highways without a valid operator's license and proof of liability
17 insurance. The amount of liability insurance shall be established by
18 the court at not less than that established by RCW 46.29.490. As a
19 condition of granting a deferred prosecution petition on any
20 ~~((alcohol-dependency))~~ substance use disorder-based case, the court
21 shall also order the installation of an ignition interlock under RCW
22 46.20.720. The required periods of use of the interlock shall be not
23 less than the periods provided for in RCW 46.20.720. As a condition
24 of granting a deferred prosecution petition, the court may order the
25 petitioner to make restitution and to pay costs as defined in RCW
26 10.01.160. To help ensure continued sobriety and reduce the
27 likelihood of reoffense, the court may order reasonable conditions
28 during the period of the deferred prosecution including, but not
29 limited to, attendance at self-help recovery support groups for
30 ~~((alcoholism or drugs))~~ substance use disorder, complete abstinence
31 from alcohol and all nonprescribed mind-altering drugs, periodic
32 urinalysis or breath analysis, and maintaining law-abiding behavior.
33 The court may terminate the deferred prosecution ~~((program))~~ upon
34 violation of the deferred prosecution order.

35 (2) As a condition of granting a deferred prosecution petition
36 for a case involving a domestic violence behavior problem:

37 (a) The court shall order the petitioner not to possess firearms
38 and order the petitioner to surrender firearms under RCW 9.41.800;
39 and

1 (b) The court may order the petitioner to make restitution and to
2 pay costs as defined in RCW 10.01.160. In addition, to help ensure
3 continued sobriety and reduce the likelihood of reoffense in co-
4 occurring domestic violence and substance ~~((abuse))~~ use disorder or
5 mental health disorder cases, the court may order reasonable
6 conditions during the period of the deferred prosecution including,
7 but not limited to, attendance at self-help recovery support groups
8 for ~~((alcoholism or drugs))~~ substance use disorder, complete
9 abstinence from alcohol and all nonprescribed mind-altering drugs,
10 periodic urinalysis or breath analysis, and maintaining law-abiding
11 behavior. The court may terminate the deferred prosecution
12 ~~((program))~~ upon violation of the deferred prosecution order.

13 **Sec. 22.** RCW 10.05.150 and 2016 sp.s. c 29 s 527 are each
14 amended to read as follows:

15 (1) A deferred prosecution ~~((program))~~ for ~~((alcoholism))~~ either
16 substance use disorder or mental health co-occurring disorder shall
17 be for a two-year period and shall include, but not be limited to,
18 the following requirements:

19 ~~((1))~~ (a) Total abstinence from alcohol and all other
20 nonprescribed mind-altering drugs;

21 ~~((2) Participation in an intensive inpatient or intensive~~
22 ~~outpatient program in a state-approved substance use disorder~~
23 ~~treatment program;~~

24 ~~(3) Participation in a minimum of two meetings per week of an~~
25 ~~alcoholism self-help recovery support group, as determined by the~~
26 ~~assessing agency, for the duration of the treatment program;~~

27 ~~(4) Participation in an alcoholism self-help recovery support~~
28 ~~group, as determined by the assessing agency, from the date of court~~
29 ~~approval of the plan to entry into intensive treatment;~~

30 ~~(5) Not less than weekly approved outpatient counseling, group or~~
31 ~~individual, for a minimum of six months following the intensive phase~~
32 ~~of treatment;~~

33 ~~(6) Not less than monthly outpatient contact, group or~~
34 ~~individual, for the remainder of the two-year deferred prosecution~~
35 ~~period;~~

36 ~~(7) The decision to include the use of prescribed drugs,~~
37 ~~including disulfiram, as a condition of treatment shall be reserved~~
38 ~~to the treating facility and the petitioner's physician;~~

1 ~~(8))~~ (b) All treatment within the purview of this section shall
2 occur within or be approved by a state-approved ((substance use
3 disorder treatment program)) behavioral health agency as described in
4 chapter ((70.96A)) 71.24 RCW;

5 ~~((9))~~ (c) Signature of the petitioner agreeing to the terms and
6 conditions of the treatment program;

7 (d) Periodic, random urinalysis or breath analysis;

8 (e) If the petitioner fails to remain abstinent, a full substance
9 use disorder reassessment and recommended treatment;

10 (f) No less than weekly approved outpatient counseling, whether
11 group or individual, for a minimum of six months following the
12 intensive phase of treatment;

13 (g) No less than monthly outpatient contact, whether group or
14 individual, for the remainder of the two-year deferred prosecution
15 period; and

16 (h) The decision to include the use of prescribed drugs,
17 including disulfiram, as a condition of treatment shall be reserved
18 to the treating facility and the petitioner's physician.

19 (2) A deferred prosecution for substance use disorder shall
20 include the following requirements:

21 (a) Completion of an intensive outpatient treatment program or
22 residential inpatient treatment program, depending on the severity of
23 the diagnosis; and

24 (b) Participation in a minimum of two meetings per week of a
25 substance use disorder self-help recovery support group, as
26 determined by the assessing agency, for the duration of the treatment
27 program.

28 (3) A deferred prosecution for mental health co-occurring
29 disorder shall include the following requirements:

30 (a) Completion of the requirements described in subsection (2) of
31 this section, or completion of an outpatient program as determined by
32 the petitioner's diagnostic evaluation; and

33 (b) Completion of individual or group mental health services.

34 **Sec. 23.** RCW 10.05.155 and 2019 c 263 s 708 are each amended to
35 read as follows:

36 A deferred prosecution ~~((program))~~ for domestic violence
37 behavior, or domestic violence co-occurring with substance abuse or
38 mental health, must include, but is not limited to, the following
39 requirements:

- 1 (1) Completion of a risk assessment;
- 2 (2) Participation in the level of treatment recommended by the
3 program as outlined in the current treatment plan;
- 4 (3) Compliance with the contract for treatment;
- 5 (4) Participation in any ancillary or co-occurring treatments
6 that are determined to be necessary for the successful completion of
7 the domestic violence intervention treatment including, but not
8 limited to, mental health or substance use treatment;
- 9 (5) Domestic violence intervention treatment within the purview
10 of this section to be completed with a state-certified domestic
11 violence intervention treatment program;
- 12 (6) Signature of the petitioner agreeing to the terms and
13 conditions of the treatment program;
- 14 (7) Proof of compliance with any active order to surrender
15 weapons issued in this program or related civil protection orders or
16 no-contact orders.

17 NEW SECTION. **Sec. 24.** A new section is added to chapter 10.05
18 RCW to read as follows:

19 A deferred prosecution for mental health disorder where the
20 wrongful conduct did not involve, and was not caused by, alcohol,
21 drugs, or a substance use disorder, shall include treatment
22 recommended by a state-approved mental health provider.

23 **Sec. 25.** RCW 10.05.170 and 1991 c 247 s 2 are each amended to
24 read as follows:

25 As a condition of granting deferred prosecution, the court may
26 order supervision of the petitioner during the period of deferral and
27 may levy a monthly assessment upon the petitioner as provided in RCW
28 10.64.120. In a jurisdiction with a probation department, the court
29 may appoint the probation department to supervise the petitioner. In
30 a jurisdiction without a probation department, the court may appoint
31 an appropriate person or agency to supervise the petitioner. A
32 supervisor appointed under this section shall be required to do at
33 least the following:

- 34 (1) If the charge for which deferral is granted relates to
35 operation of a motor vehicle, at least once every ~~((six))~~ three
36 months request ~~((from the department of licensing))~~ an abstract of
37 the petitioner's driving record; ~~((and))~~

1 (2) At least once every month make contact with the petitioner
2 (~~or with any agency to which the petitioner has been directed for~~
3 ~~treatment as a part of the deferral~~) until treatment is completed;

4 (3) Review the petitioner's criminal history at a minimum of
5 every 90 days until the end of the deferral period; and

6 (4) Report known violations of supervision or law and
7 noncompliance with conditions of the deferred prosecution to the
8 court within five business days or as soon as practicable.

9 **Sec. 26.** RCW 46.20.355 and 2020 c 330 s 8 are each amended to
10 read as follows:

11 (1) Upon receipt of an abstract indicating a deferred prosecution
12 has been granted under RCW 10.05.060, or upon receipt of a notice of
13 conviction of RCW 46.61.502 or 46.61.504, the department of licensing
14 shall issue notice that 45 days after receipt, the person must apply
15 for a probationary license, and order the person to surrender any
16 nonprobationary Washington state driver's license that may be in his
17 or her possession. The department shall revoke the license, permit,
18 or privilege to drive of any person who fails to surrender it as
19 required by this section for one year, unless the license has been
20 previously surrendered to the department, a law enforcement officer,
21 or a court, or the person has completed an affidavit of lost, stolen,
22 destroyed, or previously surrendered license, such revocation to take
23 effect (~~(thirty)~~) 30 days after notice is given of the requirement
24 for license surrender.

25 (2) The department shall place a person's driving privilege in
26 probationary status as required by RCW 10.05.060 or 46.61.5055 for a
27 period of five years from the date the probationary status is
28 required to go into effect.

29 (3) Following receipt of an abstract indicating a deferred
30 prosecution has been granted under RCW 10.05.060, or upon
31 reinstatement or reissuance of a driver's license suspended or
32 revoked as the result of a conviction of RCW 46.61.502 or 46.61.504,
33 the department shall require the person to obtain a probationary
34 license in order to operate a motor vehicle in the state of
35 Washington, except as otherwise exempt under RCW 46.20.025. The
36 department shall not issue the probationary license unless the person
37 is otherwise qualified for licensing, and the person must renew the
38 probationary license on the same cycle as the person's regular
39 license would have been renewed until the expiration of the five-year

1 probationary status period imposed under subsection (2) of this
2 section.

3 (4) If a person is eligible for full credit under RCW
4 46.61.5055(9)(b)(ii) and, by the date specified in the notice issued
5 under RCW 46.20.245, has completed the requirements under RCW
6 46.20.311 and paid the fee under subsection (5) of this section, the
7 department shall issue a probationary license on the date specified
8 in the notice with no further action required of the person.

9 (5) For each original issue or renewal of a probationary license
10 under this section, the department shall charge a fee of (~~fifty~~
11 ~~dollars~~) \$50 in addition to any other licensing fees required.
12 Except for when renewing a probationary license, the department shall
13 waive the requirement to obtain an additional probationary license
14 and the (~~fifty-dollar~~) \$50 fee if the person has a probationary
15 license in his or her possession at the time a new probationary
16 license is required.

17 (6) A probationary license shall enable the department and law
18 enforcement personnel to determine that the person is on probationary
19 status. The fact that a person's driving privilege is in probationary
20 status or that the person has been issued a probationary license
21 shall not be a part of the person's record that is available to
22 insurance companies.

23 **Sec. 27.** RCW 46.20.385 and 2020 c 330 s 9 are each amended to
24 read as follows:

25 (1)(a) Any person licensed under this chapter or who has a valid
26 driver's license from another state, who is convicted of: (i) A
27 violation of RCW 46.61.502 or 46.61.504 or an equivalent local or
28 out-of-state statute or ordinance, or (ii) a violation of RCW
29 46.61.520(1)(a) or an equivalent local or out-of-state statute or
30 ordinance, or (iii) a conviction for a violation of RCW 46.61.520(1)
31 (b) or (c) if the conviction is the result of a charge that was
32 originally filed as a violation of RCW 46.61.520(1)(a), or (iv) RCW
33 46.61.522(1)(b) or an equivalent local or out-of-state statute or
34 ordinance, or (v) RCW 46.61.522(1)(a) or (c) if the conviction is
35 the result of a charge that was originally filed as a violation of
36 RCW 46.61.522(1)(b) committed while under the influence of
37 intoxicating liquor or any drug, or (vi) who has had or will have his
38 or her license suspended, revoked, or denied under RCW 46.20.3101, or
39 has had his or her license suspended, revoked, or denied under RCW

1 46.61.5055(11)(c), or who is otherwise permitted under subsection (8)
2 of this section, may submit to the department an application for an
3 ignition interlock driver's license. The department, upon receipt of
4 the prescribed fee and upon determining that the petitioner is
5 eligible to receive the license, may issue an ignition interlock
6 driver's license.

7 (b) A person may apply for an ignition interlock driver's license
8 anytime, including immediately after receiving the notices under RCW
9 46.20.308 or after his or her license is suspended, revoked, or
10 denied.

11 (c) An applicant under this subsection shall provide proof to the
12 satisfaction of the department that a functioning ignition interlock
13 device has been installed on all vehicles operated by the person.

14 (i) The department shall require the person to maintain the
15 device on all vehicles operated by the person and shall restrict the
16 person to operating only vehicles equipped with the device, for the
17 remainder of the period of suspension, revocation, or denial, unless
18 otherwise permitted under RCW 46.20.720(6).

19 (ii) Subject to any periodic renewal requirements established by
20 the department under this section and subject to any applicable
21 compliance requirements under this chapter or other law, an ignition
22 interlock driver's license granted upon a suspension or revocation
23 under RCW 46.61.5055 or 46.20.3101 extends through the remaining
24 portion of any concurrent or consecutive suspension or revocation
25 that may be imposed as the result of administrative action and
26 criminal conviction arising out of the same incident.

27 (2) An applicant for an ignition interlock driver's license who
28 qualifies under subsection (1) of this section is eligible to receive
29 a license only if the applicant files satisfactory proof of financial
30 responsibility under chapter 46.29 RCW.

31 (3) Upon receipt of evidence that a holder of an ignition
32 interlock driver's license granted under this subsection no longer
33 has a functioning ignition interlock device installed on all vehicles
34 operated by the driver, the director shall give written notice by
35 first-class mail to the driver that the ignition interlock driver's
36 license shall be canceled. If at any time before the cancellation
37 goes into effect the driver submits evidence that a functioning
38 ignition interlock device has been installed on all vehicles operated
39 by the driver, the cancellation shall be stayed. If the cancellation
40 becomes effective, the driver may obtain, at no additional charge, a

1 new ignition interlock driver's license upon submittal of evidence
2 that a functioning ignition interlock device has been installed on
3 all vehicles operated by the driver.

4 (4) A person aggrieved by the decision of the department on the
5 application for an ignition interlock driver's license may request a
6 hearing as provided by rule of the department.

7 (5) The director shall cancel an ignition interlock driver's
8 license after receiving notice that the holder thereof has been
9 convicted of operating a motor vehicle in violation of its
10 restrictions, no longer meets the eligibility requirements, or has
11 been convicted of or found to have committed a separate offense or
12 any other act or omission that under this chapter would warrant
13 suspension or revocation of a regular driver's license. The
14 department must give notice of the cancellation as provided under RCW
15 46.20.245. A person whose ignition interlock driver's license has
16 been canceled under this section may reapply for a new ignition
17 interlock driver's license if he or she is otherwise qualified under
18 this section and pays the fee required under RCW 46.20.380.

19 (6) (a) Unless costs are waived by the ignition interlock company
20 or the person is indigent under RCW 10.101.010, the applicant shall
21 pay the cost of installing, removing, and leasing the ignition
22 interlock device and shall pay an additional fee of twenty-one
23 dollars per month. Payments shall be made directly to the ignition
24 interlock company. The company shall remit the additional fee to the
25 department, except that the company may retain (~~(twenty-five)~~) 25
26 cents per month of the additional fee to cover the expenses
27 associated with administering the fee.

28 (b) The department shall deposit the proceeds of the twenty-one
29 dollar fee into the ignition interlock device revolving account.
30 Expenditures from the account may be used only to administer and
31 operate the ignition interlock device revolving account program. The
32 department shall adopt rules to provide monetary assistance according
33 to greatest need and when funds are available.

34 (7) The department shall adopt rules to implement ignition
35 interlock licensing. The department shall consult with the
36 administrative office of the courts, the state patrol, the Washington
37 association of sheriffs and police chiefs, ignition interlock
38 companies, and any other organization or entity the department deems
39 appropriate.

1 (8) (a) Any person licensed under this chapter who is convicted of
2 a violation of RCW 46.61.500 when the charge was originally filed as
3 a violation of RCW 46.61.502 or 46.61.504, or an equivalent local
4 ordinance, may submit to the department an application for an
5 ignition interlock driver's license under this section.

6 (b) A person who does not have any driver's license under this
7 chapter, but who would otherwise be eligible under this section to
8 apply for an ignition interlock license, may submit to the department
9 an application for an ignition interlock license. The department may
10 require the person to take any driver's licensing examination under
11 this chapter and may require the person to also apply and qualify for
12 a temporary restricted driver's license under RCW 46.20.391.

13 **Sec. 28.** RCW 46.20.720 and 2020 c 330 s 10 are each amended to
14 read as follows:

15 (1) **Ignition interlock restriction.** The department shall require
16 that a person may drive only a motor vehicle equipped with a
17 functioning ignition interlock device:

18 (a) **Pretrial release.** Upon receipt of notice from a court that an
19 ignition interlock device restriction has been imposed under RCW
20 10.21.055;

21 (b) **Ignition interlock driver's license.** As required for issuance
22 of an ignition interlock driver's license under RCW 46.20.385;

23 (c) **Deferred prosecution.** Upon receipt of notice from a court
24 that the person is participating in a deferred prosecution program
25 under RCW 10.05.020 for a violation of:

26 (i) RCW 46.61.502 or 46.61.504 or an equivalent local ordinance;
27 or

28 (ii) RCW 46.61.5249 or 46.61.500 or an equivalent local ordinance
29 if the person would be required under RCW 46.61.5249(4) or
30 46.61.500(3) (a) or (b) to install an ignition interlock device on
31 all vehicles operated by the person in the event of a conviction;

32 (d) **Post conviction.** After any applicable period of mandatory
33 suspension, revocation, or denial of driving privileges, or upon
34 fulfillment of day-for-day credit under RCW 46.61.5055(9)(b)(ii) for
35 a suspension, revocation, or denial of driving privileges:

36 (i) Due to a conviction of a violation of RCW 46.61.502 or
37 46.61.504 or an equivalent local or out-of-state statute or
38 ordinance; or

1 (ii) Due to a conviction of a violation of RCW 46.61.5249 or
2 46.61.500 or an equivalent local ordinance if the person is required
3 under RCW 46.61.5249(4) or 46.61.500(3) (a) or (b) to install an
4 ignition interlock device on all vehicles operated by the person; or

5 (e) **Court order.** Upon receipt of an order by a court having
6 jurisdiction that a person charged or convicted of any offense
7 involving the use, consumption, or possession of alcohol while
8 operating a motor vehicle may drive only a motor vehicle equipped
9 with a functioning ignition interlock. The court shall establish a
10 specific alcohol set point at which the ignition interlock will
11 prevent the vehicle from being started. The court shall also
12 establish the period of time for which ignition interlock use will be
13 required.

14 (2) **Alcohol set point.** Unless otherwise specified by the court
15 for a restriction imposed under subsection (1)(e) of this section,
16 the ignition interlock device shall have an alcohol set point that
17 prevents the motor vehicle from being started when the breath sample
18 provided has an alcohol concentration of 0.020 or more.

19 (3) **Duration of restriction.** A restriction imposed under:

20 (a) Subsection (1)(a) of this section shall remain in effect
21 until:

22 (i) The court has authorized the removal of the device under RCW
23 10.21.055; or

24 (ii) The department has imposed a restriction under subsection
25 (1)(b), (c), or (d) of this section arising out of the same incident.

26 (b) Subsection (1)(b) of this section remains in effect during
27 the validity of any ignition interlock driver's license that has been
28 issued to the person.

29 (c) Subsection (1)(c)(i) or (d)(i) of this section shall be for
30 no less than:

31 (i) For a person who has not previously been restricted under
32 this subsection, a period of one year;

33 (ii) For a person who has previously been restricted under (c)(i)
34 of this subsection, a period of five years;

35 (iii) For a person who has previously been restricted under
36 (c)(ii) of this subsection, a period of (~~ten~~) 10 years.

37 The restriction of a person who is convicted of a violation of
38 RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and who
39 committed the offense while one or more passengers under the age of

1 ((~~sixteen~~)) 16 were in the vehicle shall be extended for an
2 additional period as required by RCW 46.61.5055(6) (a).

3 For purposes of determining a period of restriction for a person
4 restricted pursuant to a conviction under (d) of this subsection, a
5 restriction based on a deferred prosecution under subsection (1)(c)
6 of this section arising out of the same incident is not considered a
7 prior restriction for purposes of this subsection.

8 (d) Subsection (1)(c)(ii) or (d)(ii) of this section shall be for
9 a period of no less than six months.

10 (e) The period of restriction under (c) or (d) of this subsection
11 shall be extended by ((~~one hundred eighty~~)) 180 days whenever the
12 department receives notice that the restricted person has been
13 convicted under RCW 46.20.740 or 46.20.750. If the period of
14 restriction under (c) or (d) of this subsection has been fulfilled
15 and cannot be extended, the department must add a new ((~~one hundred~~
16 ~~eighty-day~~)) 180-day restriction that is imposed from the date of
17 conviction and is subject to the requirements for removal under
18 subsection (4) of this section.

19 (f) Subsection (1)(e) of this section shall remain in effect for
20 the period of time specified by the court.

21 (g) The period of restriction under (c) and (d) of this
22 subsection based on incidents occurring on or after June 9, 2016,
23 must be tolled for any period in which the person does not have an
24 ignition interlock device installed on a vehicle owned or operated by
25 the person unless the person receives a determination from the
26 department that the person is unable to operate an ignition interlock
27 device due to a physical disability. For all drivers restricted under
28 this section with incidents and restriction start dates prior to June
29 9, 2016, a driver may apply to waive the restriction by applying for
30 a determination from the department that the person is unable to
31 operate an ignition interlock device due to a physical disability.
32 The department's determination that a person is unable to operate an
33 ignition interlock device must be reasonable and be based upon good
34 and substantial evidence. This determination is subject to review by
35 a court of competent jurisdiction. The department may charge a person
36 seeking a medical exemption under this subsection a reasonable fee
37 for the assessment.

38 (4) **Requirements for removal.** A restriction imposed under
39 subsection (1)(c) or (d) of this section shall remain in effect until
40 the department receives a declaration from the person's ignition

1 interlock device vendor, in a form provided or approved by the
2 department, certifying the following:

3 (a) That there have been none of the following incidents in the
4 (~~(one hundred eighty)~~) 180 consecutive days prior to the date of
5 release:

6 (i) Any attempt to start the vehicle with a breath alcohol
7 concentration of 0.04 or more unless a subsequent test performed
8 within (~~(ten)~~) 10 minutes registers a breath alcohol concentration
9 lower than 0.04 and the digital image confirms the same person
10 provided both samples;

11 (ii) Failure to take any random test unless a review of the
12 digital image confirms that the vehicle was not occupied by the
13 driver at the time of the missed test;

14 (iii) Failure to pass any random retest with a breath alcohol
15 concentration of lower than 0.020 unless a subsequent test performed
16 within (~~(ten)~~) 10 minutes registers a breath alcohol concentration
17 lower than 0.020, and the digital image confirms the same person
18 provided both samples;

19 (iv) Failure of the person to appear at the ignition interlock
20 device vendor when required for maintenance, repair, calibration,
21 monitoring, inspection, or replacement of the device; or

22 (v) Removal of the ignition interlock device by a person other
23 than an ignition interlock technician certified by the Washington
24 state patrol; and

25 (b) That the ignition interlock device was inspected at the
26 conclusion of the (~~(one hundred eighty-day)~~) 180-day period by an
27 ignition interlock technician certified by the Washington state
28 patrol and no evidence was found that the device was tampered with in
29 the manner described in RCW 46.20.750.

30 (5) **Day-for-day credit.** (a) The time period during which a person
31 has an ignition interlock device installed in order to meet the
32 requirements of subsection (1)(b) of this section shall apply on a
33 day-for-day basis toward satisfying the period of time the ignition
34 interlock device restriction is imposed under subsection (1)(c) or
35 (d) of this section arising out of the same incident.

36 (b) The department must also give the person a day-for-day credit
37 for any time period, beginning from the date of the incident, during
38 which the person kept an ignition interlock device installed on all
39 vehicles the person operates, other than those subject to the
40 employer exemption under subsection (6) of this section.

1 (c) If the day-for-day credit granted under this subsection
2 equals or exceeds the period of time the ignition interlock device
3 restriction is imposed under subsection (1)(c) or (d) of this section
4 arising out of the same incident, and the person has already met the
5 requirements for removal of the device under subsection (4) of this
6 section, the department may waive the requirement that a device be
7 installed or that the person again meet the requirements for removal.

8 (6) **Employer exemption.** (a) Except as provided in (b) of this
9 subsection, the installation of an ignition interlock device is not
10 necessary on vehicles owned, leased, or rented by a person's employer
11 and on those vehicles whose care and/or maintenance is the temporary
12 responsibility of the employer, and driven at the direction of a
13 person's employer as a requirement of employment during working
14 hours. The person must provide the department with a declaration
15 pursuant to chapter 5.50 RCW from his or her employer stating that
16 the person's employment requires the person to operate a vehicle
17 owned by the employer or other persons during working hours. When the
18 department receives a declaration under this subsection, it shall
19 attach or imprint a notation on the person's driving record stating
20 that the employer exemption applies.

21 (b) The employer exemption does not apply when the employer's
22 vehicle is assigned exclusively to the restricted driver and used
23 solely for commuting to and from employment.

24 (c) The employer exemption does not apply to a person who is
25 self-employed unless the person's vehicle is used exclusively for the
26 person's employment.

27 (7) **Ignition interlock device revolving account.** In addition to
28 any other costs associated with the use of an ignition interlock
29 device imposed on the person restricted under this section, the
30 person shall pay an additional fee of (~~(twenty-one dollars)~~) \$21 per
31 month. Payments must be made directly to the ignition interlock
32 company. The company shall remit the additional fee to the department
33 to be deposited into the ignition interlock device revolving account,
34 except that the company may retain (~~(twenty-five)~~) 25 cents per month
35 of the additional fee to cover the expenses associated with
36 administering the fee. The department may waive the monthly fee if
37 the person is indigent under RCW 10.101.010.

38 (8) **Foreign jurisdiction.** For a person restricted under this
39 section who is residing outside of the state of Washington, the
40 department may accept verification of installation of an ignition

1 interlock device by an ignition interlock company authorized to do
2 business in the jurisdiction in which the person resides, provided
3 the device meets any applicable requirements of that jurisdiction.
4 The department may waive one or more requirements for removal under
5 subsection (4) of this section if compliance with the requirement or
6 requirements would be impractical in the case of a person residing in
7 another jurisdiction, provided the person is in compliance with any
8 equivalent requirement of that jurisdiction. The department may waive
9 the monthly fee required by subsection (7) of this section if
10 collection of the fee would be impractical in the case of a person
11 residing in another jurisdiction.

12 **Sec. 29.** RCW 46.20.740 and 2020 c 330 s 11 are each amended to
13 read as follows:

14 (1) The department shall attach or imprint a notation on the
15 driving record of any person restricted under RCW 46.20.720,
16 46.61.5055, or 10.05.140 stating that the person may operate only a
17 motor vehicle equipped with a functioning ignition interlock device.
18 The department shall determine the person's eligibility for licensing
19 based upon written verification by a company doing business in the
20 state that it has installed the required device on a vehicle owned or
21 operated by the person seeking reinstatement. If, based upon
22 notification from the interlock provider or otherwise, the department
23 determines that an ignition interlock required under this section is
24 no longer installed or functioning as required, the department shall
25 suspend the person's license or privilege to drive. Whenever the
26 license or driving privilege of any person is suspended or revoked as
27 a result of noncompliance with an ignition interlock requirement, the
28 suspension shall remain in effect until the person provides notice
29 issued by a company doing business in the state that a vehicle owned
30 or operated by the person is equipped with a functioning ignition
31 interlock device.

32 (2) It is a gross misdemeanor for a person with such a notation
33 on his or her driving record to operate a motor vehicle that is not
34 so equipped, unless the notation resulted from a restriction imposed
35 as a condition of release and the restriction has been released by
36 the court prior to driving. Any time a person is convicted under this
37 section, the court shall immediately notify the department for
38 purposes of RCW 46.20.720(3)(e). It is an affirmative defense, which
39 the defendant must prove by a preponderance of the evidence, that the

1 employer exemption in RCW 46.20.720(6) applies. The court shall not
2 admit evidence of this defense unless the defendant notifies the
3 prosecution prior to the omnibus or pretrial hearing in the case of
4 the defendant's intent to assert the affirmative defense.

5 (3) Any sentence imposed for a violation of subsection (2) of
6 this section shall be served consecutively with any sentence imposed
7 under RCW 46.20.750, 46.61.502, 46.61.504, or 46.61.5055.

8 **Sec. 30.** RCW 46.52.130 and 2022 c 182 s 206 are each amended to
9 read as follows:

10 Upon a proper request, the department may only furnish
11 information contained in an abstract of a person's driving record as
12 permitted under this section.

13 (1) **Contents of abstract of driving record.** An abstract of a
14 person's driving record, whenever possible, must include:

15 (a) An enumeration of motor vehicle accidents in which the person
16 was driving, including:

17 (i) The total number of vehicles involved;

18 (ii) Whether the vehicles were legally parked or moving;

19 (iii) Whether the vehicles were occupied at the time of the
20 accident; and

21 (iv) Whether the accident resulted in a fatality;

22 (b) Any reported convictions, forfeitures of bail, or findings
23 that an infraction was committed based upon a violation of any motor
24 vehicle law;

25 (c) The status of the person's driving privilege in this state;
26 and

27 (d) Any reports of failure to appear in response to a traffic
28 citation or failure to respond to a notice of infraction served upon
29 the named individual by an arresting officer.

30 (2) **Release of abstract of driving record.** Unless otherwise
31 required in this section, the release of an abstract does not require
32 a signed statement by the subject of the abstract. An abstract of a
33 person's driving record may be furnished to the following persons or
34 entities:

35 (a) **Named individuals.** (i) An abstract of the full driving record
36 maintained by the department may be furnished to the individual named
37 in the abstract.

38 (ii) Nothing in this section prevents a court from providing a
39 copy of the driver's abstract to the individual named in the abstract

1 or that named individual's attorney, provided that the named
2 individual has a pending or open infraction or criminal case in that
3 court. A pending case includes criminal cases that have not reached a
4 disposition by plea, stipulation, trial, or amended charge. An open
5 infraction or criminal case includes cases on probation, payment
6 agreement or subject to, or in collections. A probation clerk or
7 probation officer employed by the court may also provide a copy of
8 the driver's abstract to a treatment agency in accordance with (f) of
9 this subsection. Courts may charge a reasonable fee for the
10 production and copying of the abstract for the individual, unless the
11 person is indigent as defined in RCW 10.101.010.

12 (b) **Employers or prospective employers.** (i) An abstract of the
13 full driving record maintained by the department may be furnished to
14 an employer or prospective employer or agents acting on behalf of an
15 employer or prospective employer of the named individual for purposes
16 related to driving by the individual as a condition of employment or
17 otherwise at the direction of the employer.

18 (ii) The department may provide employers or their agents a
19 three-year insurance carrier driving record of existing employees
20 only for the purposes of sharing the driving record with its
21 insurance carrier for underwriting. Employers may not provide the
22 employees' full driving records to its insurance carrier.

23 (iii) An abstract of the full driving record maintained by the
24 department may be furnished to an employer or prospective employer or
25 the agent(s) acting on behalf of an employer or prospective employer
26 of the named individual for purposes unrelated to driving by the
27 individual when a driving record is required by federal or state law,
28 or the employee or prospective employee will be handling heavy
29 equipment or machinery.

30 (iv) Release of an abstract of the driving record of an employee
31 or prospective employee requires a statement signed by: (A) The
32 employee or prospective employee that authorizes the release of the
33 record; and (B) the employer attesting that the information is
34 necessary for employment purposes related to driving by the
35 individual as a condition of employment or otherwise at the direction
36 of the employer. If the employer or prospective employer authorizes
37 agents to obtain this information on their behalf, this must be noted
38 in the statement. The statement must also note that any information
39 contained in the abstract related to an adjudication that is subject
40 to a court order sealing the juvenile record of an employee or

1 prospective employee may not be used by the employer or prospective
2 employer, or an agent authorized to obtain this information on their
3 behalf, unless required by federal regulation or law. The employer or
4 prospective employer must afford the employee or prospective employee
5 an opportunity to demonstrate that an adjudication contained in the
6 abstract is subject to a court order sealing the juvenile record.

7 (v) Upon request of the person named in the abstract provided
8 under this subsection, and upon that same person furnishing copies of
9 court records ruling that the person was not at fault in a motor
10 vehicle accident, the department must indicate on any abstract
11 provided under this subsection that the person was not at fault in
12 the motor vehicle accident.

13 (vi) No employer or prospective employer, nor any agents of an
14 employer or prospective employer, may use information contained in
15 the abstract related to an adjudication that is subject to a court
16 order sealing the juvenile record of an employee or prospective
17 employee for any purpose unless required by federal regulation or
18 law. The employee or prospective employee must furnish a copy of the
19 court order sealing the juvenile record to the employer or
20 prospective employer, or the agents of the employer or prospective
21 employer, as may be required to ensure the application of this
22 subsection.

23 (c) **Volunteer organizations.** (i) An abstract of the full driving
24 record maintained by the department may be furnished to a volunteer
25 organization or an agent for a volunteer organization for which the
26 named individual has submitted an application for a position that
27 would require driving by the individual at the direction of the
28 volunteer organization.

29 (ii) Release of an abstract of the driving record of a
30 prospective volunteer requires a statement signed by: (A) The
31 prospective volunteer that authorizes the release of the record; and
32 (B) the volunteer organization attesting that the information is
33 necessary for purposes related to driving by the individual at the
34 direction of the volunteer organization. If the volunteer
35 organization authorizes an agent to obtain this information on their
36 behalf, this must be noted in the statement.

37 (d) **Transit authorities.** An abstract of the full driving record
38 maintained by the department may be furnished to an employee or
39 agents of a transit authority checking prospective or existing
40 volunteer vanpool drivers for insurance and risk management needs.

1 (e) **Insurance carriers.** (i) An abstract of the driving record
2 maintained by the department covering the period of not more than the
3 last three years may be furnished to an insurance company or its
4 agents:

5 (A) That has motor vehicle or life insurance in effect covering
6 the named individual;

7 (B) To which the named individual has applied; or

8 (C) That has insurance in effect covering the employer or a
9 prospective employer of the named individual.

10 (ii) The abstract provided to the insurance company must:

11 (A) Not contain any information related to actions committed by
12 law enforcement officers or firefighters, as both terms are defined
13 in RCW 41.26.030, or by Washington state patrol officers, while
14 driving official vehicles in the performance of their occupational
15 duty, or by registered tow truck operators as defined in RCW
16 46.55.010 in the performance of their occupational duties while at
17 the scene of a roadside impound or recovery so long as they are not
18 issued a citation. This does not apply to any situation where the
19 vehicle was used in the commission of a misdemeanor or felony;

20 (B) Include convictions under RCW 46.61.5249 and 46.61.525,
21 except that the abstract must report the convictions only as
22 negligent driving without reference to whether they are for first or
23 second degree negligent driving; and

24 (C) Exclude any deferred prosecution under RCW 10.05.060, except
25 that if a person is removed from a deferred prosecution under RCW
26 10.05.090, the abstract must show the deferred prosecution as well as
27 the removal.

28 (iii) Any policy of insurance may not be canceled, nonrenewed,
29 denied, or have the rate increased on the basis of information
30 regarding an accident included in the abstract of a driving record,
31 unless the policyholder was determined to be at fault.

32 (iv) Any insurance company or its agents, for underwriting
33 purposes relating to the operation of commercial motor vehicles, may
34 not use any information contained in the abstract relative to any
35 person's operation of motor vehicles while not engaged in such
36 employment. Any insurance company or its agents, for underwriting
37 purposes relating to the operation of noncommercial motor vehicles,
38 may not use any information contained in the abstract relative to any
39 person's operation of commercial motor vehicles. For the purposes of

1 this subsection, "commercial motor vehicle" has the same meaning as
2 in RCW 46.25.010(6).

3 (f) **Alcohol/drug assessment or treatment agencies.** An abstract of
4 the full driving record maintained by the department (~~(covering the~~
5 ~~period of not more than the last five years)~~) may be furnished to an
6 alcohol/drug assessment or treatment agency approved by the
7 department of health to which the named individual has applied or
8 been assigned for evaluation or treatment, for purposes of assisting
9 employees in making a determination as to what level of treatment, if
10 any, is appropriate, (~~(except that)~~) and the abstract must:

11 (i) Also include records of alcohol-related offenses, as defined
12 in RCW 46.01.260(2) (~~(, covering a period of not more than the last~~
13 ~~ten years)~~); and

14 (ii) Indicate whether an alcohol-related offense was originally
15 charged as a violation of either RCW 46.61.502 or 46.61.504.

16 (g) **Attorneys—City attorneys, county prosecuting attorneys, and**
17 **named individual's attorney of record.** An abstract of the full
18 driving record maintained by the department, including whether a
19 recorded violation is an alcohol-related offense, as defined in RCW
20 46.01.260(2), that was originally charged as a violation of either
21 RCW 46.61.502 or 46.61.504, may be furnished to city attorneys,
22 county prosecuting attorneys, or the named individual's attorney of
23 record. City attorneys, county prosecuting attorneys, or the named
24 individual's attorney of record may provide the driving record to
25 alcohol/drug assessment or treatment agencies approved by the
26 department of social and health services to which the named
27 individual has applied or been assigned for evaluation or treatment.

28 (h) **State colleges, universities, or agencies, or units of local**
29 **government.** An abstract of the full driving record maintained by the
30 department may be furnished to (i) state colleges, universities, or
31 agencies for employment and risk management purposes or (ii) units of
32 local government authorized to self-insure under RCW 48.62.031, or
33 their agents, for employment and risk management purposes. "Unit of
34 local government" includes an insurance pool established under RCW
35 48.62.031.

36 (i) **Superintendent of public instruction.** (i) An abstract of the
37 full driving record maintained by the department may be furnished to
38 the superintendent of public instruction for review of public school
39 bus driver records. The superintendent or superintendent's designee
40 may discuss information on the driving record with an authorized

1 representative of the employing school district for employment and
2 risk management purposes.

3 (ii) The superintendent of public instruction is exempt from
4 paying the fees related to the reviewing of records and the fee
5 required in subsection (5) of this section.

6 (j) **State and federal agencies.** An abstract of the driving record
7 maintained by the department may be furnished to state and federal
8 agencies, or their agents, in carrying out its functions.

9 (k) **Transportation network companies.** An abstract of the full
10 driving record maintained by the department may be furnished to a
11 transportation network company or its agents acting on its behalf of
12 the named individual for purposes related to driving by the
13 individual as a condition of being a contracted driver.

14 (l) **Research.** (i) The department may furnish driving record data
15 to state agencies and bona fide scientific research organizations.
16 The department may require review and approval by an institutional
17 review board. For the purposes of this subsection, "research" means a
18 planned and systematic sociological, psychological, epidemiological,
19 biomedical, or other scientific investigation carried out by a state
20 agency, or by a scientific research professional associated with a
21 bona fide scientific research organization with an objective to
22 contribute to scientific knowledge, the solution of social and health
23 problems, or the evaluation of public benefit and service programs.
24 This definition excludes methods of record analysis and data
25 collection that are subjective, do not permit replication, and are
26 not designed to yield reliable and valid results.

27 (ii) The state agency, or a scientific research professional
28 associated with a bona fide scientific research organization, are
29 exempt from paying the fees related to the reviewing of records and
30 the fee required in subsection (5) of this section. However, the
31 department may charge a cost-recovery fee for the actual cost of
32 providing the data.

33 (3) **Reviewing of driving records.** (a) In addition to the methods
34 described herein, the director may enter into a contractual agreement
35 for the purpose of reviewing the driving records of existing
36 employees for changes to the record during specified periods of time.
37 The department shall establish a fee for this service, which must be
38 deposited in the highway safety fund. The fee for this service must
39 be set at a level that does not result in a net revenue loss to the
40 state. Any information provided under this subsection must be treated

1 in the same manner and is subject to the same restrictions as driving
2 record abstracts.

3 (b) The department may provide reviewing services to the
4 following entities:

5 (i) Employers for existing employees, or their agents;

6 (ii) Transit authorities for current vanpool drivers, or their
7 agents;

8 (iii) Insurance carriers for current policyholders, or their
9 agents;

10 (iv) State colleges, universities, or agencies, or units of local
11 government, or their agents;

12 (v) The office of the superintendent of public instruction for
13 school bus drivers statewide; and

14 (vi) Transportation network companies, or their agents.

15 (4) **Release to third parties prohibited.** (a) Any person or entity
16 receiving an abstract of a person's driving record under subsection
17 (2)(b) through (l) of this section shall use the abstract exclusively
18 for his, her, or its own purposes or as otherwise expressly permitted
19 under this section, and shall not divulge any information contained
20 in the abstract to a third party.

21 (b) The following release of records to third parties are hereby
22 authorized:

23 (i) Employers may divulge driving records to regulatory bodies,
24 as defined by the department by rule, such as the United States
25 department of transportation and the federal motor carrier safety
26 administration.

27 (ii) Employers may divulge a three-year driving record to their
28 insurance carrier for underwriting purposes.

29 (iii) Employers may divulge driving records to contracted motor
30 carrier consultants for the purposes of ensuring driver compliance
31 and risk management.

32 (5) **Fees.** (a) The director shall collect a \$15 fee for each
33 abstract of a person's driving record furnished by the department.
34 After depositing \$2 of the driver's abstract fee in the move ahead WA
35 flexible account created in RCW 46.68.520, the remainder shall be
36 distributed as follows:

37 (i) Fifty percent must be deposited in the highway safety fund;
38 and

39 (ii) Fifty percent must be deposited according to RCW 46.68.038.

1 (b) Beginning July 1, 2029, the director shall collect an
2 additional \$2 fee for each abstract of a person's driving record
3 furnished by the department. The \$2 additional driver's abstract fee
4 must be deposited in the move ahead WA flexible account created in
5 RCW 46.68.520.

6 (c) City attorneys and county prosecuting attorneys are exempt
7 from paying the fees specified in (a) and (b) of this subsection for
8 an abstract of a person's driving record furnished by the department
9 for use in criminal proceedings.

10 (6) **Violation.** (a) Any negligent violation of this section is a
11 gross misdemeanor.

12 (b) Any intentional violation of this section is a class C
13 felony.

14 (7) Effective July 1, 2019, the contents of a driving abstract
15 pursuant to this section shall not include any information related to
16 sealed juvenile records unless that information is required by
17 federal law or regulation.

18 **Sec. 31.** RCW 46.61.502 and 2022 c 16 s 40 are each amended to
19 read as follows:

20 (1) A person is guilty of driving while under the influence of
21 intoxicating liquor, cannabis, or any drug if the person drives a
22 vehicle within this state:

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

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

29 (c) While the person is under the influence of or affected by
30 intoxicating liquor, cannabis, or any drug; or

31 (d) While the person is under the combined influence of or
32 affected by intoxicating liquor, cannabis, and any drug.

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

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

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

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

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

26 (b) Analyses of blood samples obtained more than two hours after
27 the alleged driving may be used as evidence that within two hours of
28 the alleged driving, a person had a THC concentration of 5.00 or more
29 in violation of subsection (1)(b) of this section, and in any case in
30 which the analysis shows a THC concentration above 0.00 may be used
31 as evidence that a person was under the influence of or affected by
32 cannabis in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

8 **Sec. 32.** RCW 46.61.5055 and 2020 c 330 s 15 are each amended to
9 read as follows:

10 (1) **No prior offenses in seven years.** Except as provided in RCW
11 46.61.502(6) or 46.61.504(6), a person who is convicted of a
12 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
13 within seven years shall be punished as follows:

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

19 (i) By imprisonment for not less than (~~twenty-four~~) 24
20 consecutive hours nor more than (~~three hundred sixty-four~~) 364
21 days. In lieu of the mandatory minimum term of imprisonment required
22 under this subsection (1)(a)(i), the court, in its discretion, may
23 order not less than (~~fifteen~~) 15 days of electronic home monitoring
24 or a (~~ninety-day~~) 90-day period of 24/7 sobriety program
25 monitoring. The court may consider the offender's pretrial 24/7
26 sobriety program monitoring as fulfilling a portion of posttrial
27 sentencing. The offender shall pay the cost of electronic home
28 monitoring. The county or municipality in which the penalty is being
29 imposed shall determine the cost. The court may also require the
30 offender's electronic home monitoring device or other separate
31 alcohol monitoring device to include an alcohol detection
32 breathalyzer, and the court may restrict the amount of alcohol the
33 offender may consume during the time the offender is on electronic
34 home monitoring; and

35 (ii) By a fine of not less than (~~three hundred fifty dollars~~)
36 \$350 nor more than (~~five thousand dollars~~) \$5,000. (~~Three hundred~~
37 ~~fifty dollars~~) \$350 of the fine may not be suspended unless the
38 court finds the offender to be indigent; or

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

6 (i) By imprisonment for not less than (~~forty-eight~~) 48
7 consecutive hours nor more than (~~three hundred sixty-four~~) 364
8 days. In lieu of the mandatory minimum term of imprisonment required
9 under this subsection (1)(b)(i), the court, in its discretion, may
10 order not less than (~~thirty~~) 30 days of electronic home monitoring
11 or a (~~one hundred twenty day~~) 120-day period of 24/7 sobriety
12 program monitoring. The court may consider the offender's pretrial
13 24/7 sobriety program testing as fulfilling a portion of posttrial
14 sentencing. The offender shall pay the cost of electronic home
15 monitoring. The county or municipality in which the penalty is being
16 imposed shall determine the cost. The court may also require the
17 offender's electronic home monitoring device to include an alcohol
18 detection breathalyzer or other separate alcohol monitoring device,
19 and the court may restrict the amount of alcohol the offender may
20 consume during the time the offender is on electronic home
21 monitoring; and

22 (ii) By a fine of not less than (~~five hundred dollars~~) \$500 nor
23 more than (~~five thousand dollars~~) \$5,000. (~~Five hundred dollars~~)
24 \$500 of the fine may not be suspended unless the court finds the
25 offender to be indigent.

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

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

35 (i) By imprisonment for not less than (~~thirty~~) 30 days nor more
36 than (~~three hundred sixty-four~~) 364 days and (~~sixty~~) 60 days of
37 electronic home monitoring. Thirty days of imprisonment and (~~sixty~~)
38 60 days of electronic home monitoring may not be suspended or
39 converted unless the court finds that the imposition of this
40 mandatory minimum sentence would impose a substantial risk to the

1 offender's physical or mental well-being. If the offender shows that
2 the imposition of this mandatory minimum sentence would impose a
3 substantial risk to the offender's physical or mental well-being, in
4 lieu of the mandatory term of imprisonment and electronic home
5 monitoring under this subsection (2)(a)(i), the court may order a
6 minimum of either (~~one hundred eighty~~) 180 days of electronic home
7 monitoring or a (~~one hundred twenty-day~~) 120-day period of 24/7
8 sobriety program monitoring pursuant to RCW 36.28A.300 through
9 36.28A.390. Whenever the mandatory minimum sentence is suspended or
10 converted, the court shall state in writing the reason for granting
11 the suspension or conversion and the facts upon which the suspension
12 or conversion is based. The court may consider the offender's
13 pretrial 24/7 sobriety program monitoring as fulfilling a portion of
14 posttrial sentencing. The court shall order an expanded substance use
15 disorder assessment and treatment, if deemed appropriate by the
16 assessment. The offender shall pay for the cost of the electronic
17 monitoring. The county or municipality where the penalty is being
18 imposed shall determine the cost. The court may also require the
19 offender's electronic home monitoring device include an alcohol
20 detection breathalyzer or other separate alcohol monitoring device,
21 and may restrict the amount of alcohol the offender may consume
22 during the time the offender is on electronic home monitoring; and

23 (ii) By a fine of not less than (~~five hundred dollars~~) \$500 nor
24 more than (~~five thousand dollars~~) \$5,000. (~~Five hundred dollars~~)
25 \$500 of the fine may not be suspended unless the court finds the
26 offender to be indigent; or

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

32 (i) By imprisonment for not less than (~~forty-five~~) 45 days nor
33 more than (~~three hundred sixty-four~~) 364 days and (~~ninety~~) 90
34 days of electronic home monitoring. Forty-five days of imprisonment
35 and (~~ninety~~) 90 days of electronic home monitoring may not be
36 suspended or converted unless the court finds that the imposition of
37 this mandatory minimum sentence would impose a substantial risk to
38 the offender's physical or mental well-being. If the offender shows
39 that the imposition of this mandatory minimum sentence would impose a
40 substantial risk to the offender's physical or mental well-being, in

1 lieu of the mandatory minimum term of imprisonment and electronic
2 home monitoring under this subsection (2)(b)(i), the court may order
3 a minimum of either six months of electronic home monitoring or a
4 (~~one hundred twenty day~~) 120-day period of 24/7 sobriety program
5 monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever
6 the mandatory minimum sentence is suspended or converted, the court
7 shall state in writing the reason for granting the suspension or
8 conversion and the facts upon which the suspension or conversion is
9 based. The court may consider the offender's pretrial 24/7 sobriety
10 program monitoring as fulfilling a portion of posttrial sentencing.
11 The court shall order an expanded substance use disorder assessment
12 and treatment, if deemed appropriate by the assessment. The offender
13 shall pay for the cost of the electronic monitoring. The county or
14 municipality where the penalty is being imposed shall determine the
15 cost. The court may also require the offender's electronic home
16 monitoring device include an alcohol detection breathalyzer or other
17 separate alcohol monitoring device, and may restrict the amount of
18 alcohol the offender may consume during the time the offender is on
19 electronic home monitoring; and

20 (ii) By a fine of not less than (~~seven hundred fifty dollars~~)
21 \$750 nor more than (~~five thousand dollars~~) \$5,000. (~~Seven hundred~~
22 ~~fifty dollars~~) \$750 of the fine may not be suspended unless the
23 court finds the offender to be indigent.

24 (3) **Two prior offenses in seven years.** Except as provided in RCW
25 46.61.502(6) or 46.61.504(6), a person who is convicted of a
26 violation of RCW 46.61.502 or 46.61.504 and who has two prior
27 offenses within seven years shall be punished as follows:

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

33 (i) By imprisonment for not less than (~~ninety~~) 90 days nor more
34 than (~~three hundred sixty-four~~) 364 days, if available in that
35 county or city, a six-month period of 24/7 sobriety program
36 monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and (~~one~~
37 ~~hundred twenty~~) 120 days of electronic home monitoring. Ninety days
38 of imprisonment and (~~one hundred twenty~~) 120 days of electronic
39 home monitoring may not be suspended or converted unless the court
40 finds that the imposition of this mandatory minimum sentence would

1 impose a substantial risk to the offender's physical or mental well-
2 being. If the offender shows that the imposition of this mandatory
3 minimum sentence would impose a substantial risk to the offender's
4 physical or mental well-being, in lieu of the mandatory minimum term
5 of (~~ninety~~) 90 days of imprisonment and (~~one hundred twenty~~) 120
6 days of electronic home monitoring, the court may order (~~three~~
7 ~~hundred sixty~~) 360 days of electronic home monitoring or a (~~three~~
8 ~~hundred sixty day~~) 360-day period of 24/7 sobriety monitoring
9 pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory
10 minimum sentence is suspended or converted, the court shall state in
11 writing the reason for granting the suspension or conversion and the
12 facts upon which the suspension or conversion is based. The court
13 shall order an expanded substance use disorder assessment and
14 treatment, if deemed appropriate by the assessment. The offender
15 shall pay for the cost of the electronic monitoring. The county or
16 municipality where the penalty is being imposed shall determine the
17 cost. The court may also require the offender's electronic home
18 monitoring device include an alcohol detection breathalyzer or other
19 separate alcohol monitoring device, and may restrict the amount of
20 alcohol the offender may consume during the time the offender is on
21 electronic home monitoring; and

22 (ii) By a fine of not less than (~~one thousand dollars~~) \$1,000
23 nor more than (~~five thousand dollars~~) \$5,000. (~~One thousand~~
24 ~~dollars~~) \$1,000 of the fine may not be suspended unless the court
25 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~~) 120
32 days nor more than (~~three hundred sixty four~~) 364 days, if
33 available in that county or city, a six-month period of 24/7 sobriety
34 program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and
35 (~~one hundred fifty~~) 150 days of electronic home monitoring. One
36 hundred twenty days of imprisonment and (~~one hundred fifty~~) 150
37 days of electronic home monitoring may not be suspended or converted
38 unless the court finds that the imposition of this mandatory minimum
39 sentence would impose a substantial risk to the offender's physical
40 or mental well-being. If the offender shows that the imposition of

1 this mandatory minimum sentence would impose a substantial risk to
2 the offender's physical or mental well-being, in lieu of the
3 mandatory minimum term of (~~one hundred twenty~~) 120 days of
4 imprisonment and (~~one hundred fifty~~) 150 days of electronic home
5 monitoring, the court may order (~~three hundred sixty~~) 360 days of
6 electronic home monitoring or a (~~three hundred sixty-day~~) 360-day
7 period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through
8 36.28A.390. Whenever the mandatory minimum sentence is suspended or
9 converted, the court shall state in writing the reason for granting
10 the suspension or conversion and the facts upon which the suspension
11 or conversion is based. The offender shall pay for the cost of the
12 electronic monitoring. The court shall order an expanded substance
13 use disorder assessment and treatment, if deemed appropriate by the
14 assessment. The county or municipality where the penalty is being
15 imposed shall determine the cost. The court may also require the
16 offender's electronic home monitoring device include an alcohol
17 detection breathalyzer or other separate alcohol monitoring device,
18 and may restrict the amount of alcohol the offender may consume
19 during the time the offender is on electronic home monitoring; and

20 (ii) By a fine of not less than (~~one thousand five hundred~~
21 ~~dollars~~) \$1,500 nor more than (~~five thousand dollars~~) \$5,000.
22 (~~One thousand five hundred~~) \$1,500 dollars of the fine may not be
23 suspended unless the court finds the offender to be indigent.

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

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

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

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

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

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

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

37 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall
38 require any person convicted of a violation of RCW 46.61.502 or
39 46.61.504 or an equivalent local ordinance to comply with the rules
40 and requirements of the department regarding the installation and use

1 of a functioning ignition interlock device installed on all motor
2 vehicles operated by the person.

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

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

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

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

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

26 (6) **Penalty for having a minor passenger in vehicle.** If a person
27 who is convicted of a violation of RCW 46.61.502 or 46.61.504
28 committed the offense while one or more passengers under the age of
29 (~~sixteen~~) 16 were in the vehicle, the court shall:

30 (a) Order the use of an ignition interlock or other device for an
31 additional (~~twelve~~) 12 months for each passenger under the age of
32 (~~sixteen~~) 16 when the person is subject to the penalties under
33 subsection (1)(a), (2)(a), or (3)(a) of this section; and order the
34 use of an ignition interlock device for an additional (~~eighteen~~) 18
35 months for each passenger under the age of (~~sixteen~~) 16 when the
36 person is subject to the penalties under subsection (1)(b), (2)(b),
37 (3)(b), or (4) of this section;

38 (b) In any case in which the person has no prior offenses within
39 seven years, and except as provided in RCW 46.61.502(6) or
40 46.61.504(6), order an additional (~~twenty-four~~) 24 hours of

1 imprisonment to be served consecutively for each passenger under the
2 age of (~~sixteen~~) 16, and a fine of not less than (~~one thousand~~
3 ~~dollars~~) \$1,000 and not more than (~~five thousand dollars~~) \$5,000
4 for each passenger under the age of (~~sixteen~~) 16. (~~One thousand~~
5 ~~dollars~~) \$1,000 of the fine for each passenger under the age of
6 (~~sixteen~~) 16 may not be suspended unless the court finds the
7 offender to be indigent;

8 (c) In any case in which the person has one prior offense within
9 seven years, and except as provided in RCW 46.61.502(6) or
10 46.61.504(6), order an additional five days of imprisonment to be
11 served consecutively for each passenger under the age of (~~sixteen~~)
12 16, and a fine of not less than (~~two thousand dollars~~) \$2,000 and
13 not more than (~~five thousand dollars~~) \$5,000 for each passenger
14 under the age of (~~sixteen~~) 16. One thousand dollars of the fine for
15 each passenger under the age of (~~sixteen~~) 16 may not be suspended
16 unless the court finds the offender to be indigent;

17 (d) In any case in which the person has two prior offenses within
18 seven years, and except as provided in RCW 46.61.502(6) or
19 46.61.504(6), order an additional ten days of imprisonment to be
20 served consecutively for each passenger under the age of (~~sixteen~~)
21 16, and a fine of not less than (~~three thousand dollars~~) \$3,000 and
22 not more than (~~ten thousand dollars~~) \$10,000 for each passenger
23 under the age of (~~sixteen~~) 16. (~~One thousand dollars~~) \$1,000 of
24 the fine for each passenger under the age of (~~sixteen~~) 16 may not
25 be suspended unless the court finds the offender to be indigent.

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

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

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

34 (c) Whether the driver was driving in the opposite direction of
35 the normal flow of traffic on a multiple lane highway, as defined by
36 RCW 46.04.350, with a posted speed limit of (~~forty-five~~) 45 miles
37 per hour or greater; and

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

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

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

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

13 (A) Where there has been no prior offense within seven years, be
14 suspended or denied by the department for (~~ninety~~) 90 days or until
15 the person is evaluated by a substance use disorder agency or
16 probation department pursuant to RCW 46.20.311 and the person
17 completes or is enrolled in a (~~ninety-day~~) 90-day period of 24/7
18 sobriety program monitoring. In no circumstances shall the license
19 suspension be for fewer than two days;

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

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

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

31 (A) Where there has been no prior offense within seven years, be
32 revoked or denied by the department for one year or until the person
33 is evaluated by a substance use disorder agency or probation
34 department pursuant to RCW 46.20.311 and the person completes or is
35 enrolled in a one hundred twenty day period of 24/7 sobriety program
36 monitoring. In no circumstances shall the license revocation be for
37 fewer than four days;

38 (B) Where there has been one prior offense within seven years, be
39 revoked or denied by the department for (~~nine-hundred~~) 900 days; or

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

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

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

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

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

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

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

25 (c) Upon receipt of a notice from the court under RCW 36.28A.390
26 that a participant has been removed from a 24/7 sobriety program, the
27 department must resume any suspension, revocation, or denial that had
28 been terminated early under this subsection due to participation in
29 the program, granting credit on a day-for-day basis for any portion
30 of a suspension, revocation, or denial already served under RCW
31 46.20.3101 or this section arising out of the same incident.

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

1 revoke, suspend, or deny the license, permit, or nonresident
2 privilege of the person for that offense.

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

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

11 (11) **Conditions of probation.** (a) In addition to any
12 nonsuspendable and nondeferrable jail sentence required by this
13 section, whenever the court imposes up to (~~three hundred sixty-~~
14 ~~four~~) 364 days in jail, the court shall also suspend but shall not
15 defer a period of confinement for a period not exceeding five years.
16 The court shall impose conditions of probation that include: (i) Not
17 driving a motor vehicle within this state without a valid license to
18 drive; (ii) not driving a motor vehicle within this state without
19 proof of liability insurance or other financial responsibility for
20 the future pursuant to RCW 46.30.020; (iii) not driving or being in
21 physical control of a motor vehicle within this state while having an
22 alcohol concentration of 0.08 or more or a THC concentration of 5.00
23 nanograms per milliliter of whole blood or higher, within two hours
24 after driving; (iv) not refusing to submit to a test of his or her
25 breath or blood to determine alcohol or drug concentration upon
26 request of a law enforcement officer who has reasonable grounds to
27 believe the person was driving or was in actual physical control of a
28 motor vehicle within this state while under the influence of
29 intoxicating liquor or drug; and (v) not driving a motor vehicle in
30 this state without a functioning ignition interlock device as
31 required by the department under RCW 46.20.720. The court may impose
32 conditions of probation that include nonrepetition, installation of
33 an ignition interlock device on the probationer's motor vehicle,
34 substance use disorder treatment, supervised probation, or other
35 conditions that may be appropriate. The sentence may be imposed in
36 whole or in part upon violation of a condition of probation during
37 the suspension period.

38 (b) For each violation of mandatory conditions of probation under
39 (a)(i), (ii), (iii), (iv), or (v) of this subsection, the court shall

1 order the convicted person to be confined for (~~thirty~~) 30 days,
2 which shall not be suspended or deferred.

3 (c) (~~For~~) (i) Except as provided in (c)(ii) of this subsection,
4 for each incident involving a violation of a mandatory condition of
5 probation imposed under this subsection, the license, permit, or
6 privilege to drive of the person shall be suspended by the court for
7 (~~thirty~~) 30 days or, if such license, permit, or privilege to drive
8 already is suspended, revoked, or denied at the time the finding of
9 probation violation is made, the suspension, revocation, or denial
10 then in effect shall be extended by (~~thirty~~) 30 days. The court
11 shall notify the department of any suspension, revocation, or denial
12 or any extension of a suspension, revocation, or denial imposed under
13 this subsection. The person may apply for an ignition interlock
14 driver's license under RCW 46.20.385 during the suspension period.

15 (ii) For each incident involving a violation of RCW
16 46.20.342(1)(c), the court has discretion not to impose a suspension
17 when the person provides the court with proof that the violation has
18 been cured within 30 days. The court is not required to notify the
19 department of the violation unless it is not cured within 30 days.

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

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

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

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

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

39 Whenever the combination of jail time and electronic home
40 monitoring or alternative sentence would exceed (~~three hundred~~

1 ~~sixty-four~~)) 364 days, the offender shall serve the jail portion of
2 the sentence first, and the electronic home monitoring or alternative
3 portion of the sentence shall be reduced so that the combination does
4 not exceed (~~three hundred sixty-four~~) 364 days.

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

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

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

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

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

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

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

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

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

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

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

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

37 (x) A conviction for a violation of RCW 46.61.520 committed while
38 under the influence of intoxicating liquor or any drug, or a
39 conviction for a violation of RCW 46.61.520 committed in a reckless
40 manner or with the disregard for the safety of others if the

1 conviction is the result of a charge that was originally filed as a
2 violation of RCW 46.61.520 committed while under the influence of
3 intoxicating liquor or any drug;

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

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

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

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

22 (xv) A deferred prosecution under chapter 10.05 RCW granted in a
23 prosecution for a violation of RCW 46.61.5249, or an equivalent local
24 ordinance, if the charge under which the deferred prosecution was
25 granted was originally filed as a violation of RCW 46.61.502 or
26 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
27 46.61.522;

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

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

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

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

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

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

13 (15) All fines imposed by this section apply to adult offenders
14 only.

15 **Sec. 33.** RCW 46.61.504 and 2022 c 16 s 42 are each amended to
16 read as follows:

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

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

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

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

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

33 (2) The fact that a person charged with a violation of this
34 section is or has been entitled to use a drug under the laws of this
35 state does not constitute a defense against any charge of violating
36 this section. No person may be convicted under this section and it is
37 an affirmative defense to any action pursuant to RCW 46.20.308 to
38 suspend, revoke, or deny the privilege to drive if, prior to being

1 pursued by a law enforcement officer, the person has moved the
2 vehicle safely off the roadway.

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

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

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

34 (b) Analyses of blood samples obtained more than two hours after
35 the alleged being in actual physical control of a vehicle may be used
36 as evidence that within two hours of the alleged being in control of
37 the vehicle, a person had a THC concentration of 5.00 or more in
38 violation of subsection (1)(b) of this section, and in any case in
39 which the analysis shows a THC concentration above 0.00 may be used

1 as evidence that a person was under the influence of or affected by
2 cannabis in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

17 NEW SECTION. **Sec. 34.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 35.** This act takes effect February 1, 2024."

SHB 1493 - S COMM AMD

By Committee on Law & Justice

ADOPTED 04/11/2023

22 On page 1, line 1 of the title, after "Relating to" strike the
23 remainder of the title and insert "criminal justice system reforms
24 involving impaired driving and deferred prosecutions; amending RCW
25 9.94A.030, 9.94A.190, 9.94A.501, 9.94A.505, 9.94A.525, 9.94A.633,
26 9.94A.6332, 9.94A.660, 9.94A.701, 10.05.010, 10.05.015, 10.05.020,
27 10.05.030, 10.05.040, 10.05.050, 10.05.060, 10.05.090, 10.05.100,
28 10.05.120, 10.05.140, 10.05.150, 10.05.155, 10.05.170, 46.20.355,
29 46.20.385, 46.20.720, 46.20.740, 46.52.130, 46.61.502, 46.61.5055,
30 and 46.61.504; adding a new section to chapter 9.94A RCW; adding a
31 new section to chapter 10.05 RCW; providing an effective date; and
32 prescribing penalties."

EFFECT: Authorizes a person who participates in a deferred prosecution for a gross misdemeanor Driving Under the Influence (DUI) or Physical Control of a Vehicle Under the Influence (PC) charge to participate in a second deferred prosecution. Authorizes a second deferred prosecution on a person's subsequent DUI or PC charge if the person has no other prior convictions for prior offenses, or while under the court's jurisdiction for a first deferred prosecution, if the first deferred prosecution is revoked. Modifies requirements for participation in a deferred prosecution depending on the nature of the petitioner's underlying problem. Provides that a second deferred prosecution for a DUI or PC offense counts as one point on a defendant's offender score.

Changes the period for reviewing prior convictions of impaired driving from a 10-year period to a 15-year period for determining whether the current offense of impaired driving is a felony. Creates a new drug offender sentencing alternative for individuals convicted of felony impaired driving offenses.

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