

**SB 5032 - S AMD 516**  
By Senator Padden

**ADOPTED 02/01/2024**

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 2023 c 415 s 2 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) 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 (b) For the purposes of this section, adjudications of guilt  
22 pursuant to Title 13 RCW which are not murder in the first or second  
23 degree or class A felony sex offenses may not be included in the  
24 offender score.

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

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

34 (c) Except as provided in (e) of this subsection, class C prior  
35 felony convictions other than sex offenses shall not be included in  
36 the offender score if, since the last date of release from  
37 confinement (including full-time residential treatment) pursuant to a  
38 felony conviction, if any, or entry of judgment and sentence, the

1 offender had spent five consecutive years in the community without  
2 committing any crime that subsequently results in a conviction.

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

10 (e) If the present conviction is felony driving while under the  
11 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or  
12 felony physical control of a vehicle while under the influence of  
13 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate  
14 crimes for the offense as defined by RCW 46.61.5055(14) shall be  
15 included in the offender score, and prior convictions for felony  
16 driving while under the influence of intoxicating liquor or any drug  
17 (RCW 46.61.502(6)) or felony physical control of a vehicle while  
18 under the influence of intoxicating liquor or any drug (RCW  
19 46.61.504(6)) shall always be included in the offender score. All  
20 other convictions of the defendant shall be scored according to this  
21 section.

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

28 (g) This subsection applies to both prior adult convictions and  
29 prior juvenile adjudications.

30 (3) Out-of-state convictions for offenses shall be classified  
31 according to the comparable offense definitions and sentences  
32 provided by Washington law. Federal convictions for offenses shall be  
33 classified according to the comparable offense definitions and  
34 sentences provided by Washington law. Neither out-of-state or federal  
35 convictions which would have been presumptively adjudicated in  
36 juvenile court under Washington law may be included in the offender  
37 score unless they are comparable to murder in the first or second  
38 degree or a class A felony sex offense. If there is no clearly  
39 comparable offense under Washington law or the offense is one that is  
40 usually considered subject to exclusive federal jurisdiction, the

1 offense shall be scored as a class C felony equivalent if it was a  
2 felony under the relevant federal statute.

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

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

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

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

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

35 (6) If the present conviction is one of the anticipatory offenses  
36 of criminal attempt, solicitation, or conspiracy, count each prior  
37 conviction as if the present conviction were for a completed offense.  
38 When these convictions are used as criminal history, score them the  
39 same as a completed crime.

1 (7) If the present conviction is for a nonviolent offense and not  
2 covered by subsection (11), (12), or (13) of this section, count one  
3 point for each adult prior felony conviction and one point for each  
4 juvenile prior violent felony conviction which is scorable under  
5 subsection (1)(b) of this section.

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

12 (9) If the present conviction is for a serious violent offense,  
13 count three points for prior adult convictions and juvenile  
14 convictions which are scorable under subsection (1)(b) of this  
15 section for crimes in this category, two points for each prior adult  
16 and scorable juvenile violent conviction (not already counted), and  
17 one point for each prior adult nonviolent felony conviction.

18 (10) If the present conviction is for Burglary 1, count prior  
19 convictions as in subsection (8) of this section; however count two  
20 points for each prior Burglary 2 or residential burglary conviction.

21 (11) If the present conviction is for a felony traffic offense  
22 count two points for each prior conviction for Vehicular Homicide or  
23 Vehicular Assault; for each felony offense count one point for each  
24 adult prior conviction and 1/2 point for each juvenile prior  
25 conviction which is scorable under subsection (1)(b) of this section;  
26 for each serious traffic offense, other than those used for an  
27 enhancement pursuant to RCW 46.61.520(2), count one point for each  
28 adult prior conviction and 1/2 point for each juvenile prior  
29 conviction which is scorable under subsection (1)(b) of this section;  
30 count one point for each adult prior conviction for operation of a  
31 vessel while under the influence of intoxicating liquor or any drug;  
32 count one point for a deferred prosecution granted under chapter  
33 10.05 RCW for a second or subsequent violation of RCW 46.61.502 or  
34 46.61.504, or an equivalent local ordinance.

35 (12) If the present conviction is for homicide by watercraft or  
36 assault by watercraft count two points for each adult prior  
37 conviction for homicide by watercraft or assault by watercraft; for  
38 each felony offense count one point for each adult prior conviction  
39 and 1/2 point for each juvenile prior conviction which would be  
40 scorable under subsection (1)(b) of this section; count one point for

1 each adult prior conviction for driving under the influence of  
2 intoxicating liquor or any drug, actual physical control of a motor  
3 vehicle while under the influence of intoxicating liquor or any drug,  
4 or operation of a vessel while under the influence of intoxicating  
5 liquor or any drug.

6 (13) If the present conviction is for manufacture of  
7 methamphetamine count three points for each adult prior manufacture  
8 of methamphetamine conviction. If the present conviction is for a  
9 drug offense and the offender has a criminal history that includes a  
10 sex offense or serious violent offense, count three points for each  
11 adult prior felony drug offense conviction. All other felonies are  
12 scored as in subsection (8) of this section if the current drug  
13 offense is violent, or as in subsection (7) of this section if the  
14 current drug offense is nonviolent.

15 (14) If the present conviction is for Escape from Community  
16 Custody, RCW 72.09.310, count only adult prior escape convictions in  
17 the offender score. Count prior escape convictions as one point.

18 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or  
19 Escape 2, RCW 9A.76.120, count adult prior convictions as one point  
20 and juvenile prior convictions which are scorable under subsection  
21 (1)(b) of this section as 1/2 point.

22 (16) If the present conviction is for Burglary 2 or residential  
23 burglary, count priors as in subsection (7) of this section; however,  
24 count two points for each prior Burglary 1 conviction, and two points  
25 for each prior Burglary 2 or residential burglary conviction.

26 (17) If the present conviction is for a sex offense, count priors  
27 as in subsections (7) through (11) and (13) through (16) of this  
28 section; however, count three points for each adult prior sex offense  
29 conviction and juvenile prior class A felony sex offense  
30 adjudication.

31 (18) If the present conviction is for failure to register as a  
32 sex offender under RCW 9A.44.130 or 9A.44.132, count priors as in  
33 subsections (7) through (11) and (13) through (16) of this section;  
34 however, count three points for each adult prior sex offense  
35 conviction and juvenile prior sex offense conviction which is  
36 scorable under subsection (1)(b) of this section, excluding adult  
37 prior convictions for failure to register as a sex offender under RCW  
38 9A.44.130 or 9A.44.132, which shall count as one point.

39 (19) If the present conviction is for an offense committed while  
40 the offender was under community custody, add one point. For purposes

1 of this subsection, community custody includes community placement or  
2 postrelease supervision, as defined in chapter 9.94B RCW.

3 (20) If the present conviction is for Theft of a Motor Vehicle,  
4 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without  
5 Permission 1, or Taking a Motor Vehicle Without Permission 2, count  
6 priors as in subsections (7) through (18) of this section; however  
7 count one point for prior convictions of Vehicle Prowling 2, and  
8 three points for each adult prior Theft 1 (of a motor vehicle), Theft  
9 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor  
10 vehicle), Possession of Stolen Property 2 (of a motor vehicle), Theft  
11 of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor  
12 Vehicle Without Permission 1, or Taking a Motor Vehicle Without  
13 Permission 2 conviction.

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

18 (a) Count two points for each adult prior conviction where  
19 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
20 after August 1, 2011, for any of the following offenses: A felony  
21 violation of a no-contact or protection order (RCW 7.105.450 or  
22 former RCW 26.50.110), felony Harassment (RCW 9A.46.020(2)(b)),  
23 felony Stalking (RCW 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020),  
24 Kidnapping 1 (RCW 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful  
25 imprisonment (RCW 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2  
26 (RCW 9A.56.210), Assault 1 (RCW 9A.36.011), Assault 2 (RCW  
27 9A.36.021), Assault 3 (RCW 9A.36.031), Arson 1 (RCW 9A.48.020), or  
28 Arson 2 (RCW 9A.48.030);

29 (b) Count two points for each adult prior conviction where  
30 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
31 after July 23, 2017, for any of the following offenses: Assault of a  
32 child in the first degree, RCW 9A.36.120; Assault of a child in the  
33 second degree, RCW 9A.36.130; Assault of a child in the third degree,  
34 RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW  
35 9A.42.020; or Criminal Mistreatment in the second degree, RCW  
36 9A.42.030; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36        The procedure for imposing sanctions for violations of sentence  
37 conditions or requirements is as follows:



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

4 (2) If the offender was sentenced under the drug offender  
5 sentencing alternative for driving under the influence, any sanctions  
6 shall be imposed by the department or the court pursuant to section 1  
7 of this act.

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

11 ~~((3))~~ (4) If the offender was sentenced under the parenting  
12 sentencing alternative, any sanctions shall be imposed by the  
13 department or by the court pursuant to RCW 9.94A.655.

14 ~~((4))~~ (5) If the offender was sentenced under the mental health  
15 sentencing alternative, any sanctions shall be imposed by the  
16 department or the court pursuant to RCW 9.94A.695.

17 ~~((5))~~ (6) If a sex offender was sentenced pursuant to RCW  
18 9.94A.507, any sanctions shall be imposed by the board pursuant to  
19 RCW 9.95.435.

20 ~~((6))~~ (7) If the offender was released pursuant to RCW  
21 9.94A.730, any sanctions shall be imposed by the board pursuant to  
22 RCW 9.95.435.

23 ~~((7))~~ (8) If the offender was sentenced pursuant to RCW  
24 10.95.030(3) or 10.95.035, any sanctions shall be imposed by the  
25 board pursuant to RCW 9.95.435.

26 ~~((8))~~ (9) In any other case, if the offender is being  
27 supervised by the department, any sanctions shall be imposed by the  
28 department pursuant to RCW 9.94A.737. If a probationer is being  
29 supervised by the department pursuant to RCW 9.92.060, 9.95.204, or  
30 9.95.210, upon receipt of a violation hearing report from the  
31 department, the court retains any authority that those statutes  
32 provide to respond to a probationer's violation of conditions.

33 ~~((9))~~ (10) If the offender is not being supervised by the  
34 department, any sanctions shall be imposed by the court pursuant to  
35 RCW 9.94A.6333.

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

38 (1) An offender is eligible for the special drug offender  
39 sentencing alternative if:

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

4 (b) The offender is convicted of a felony that is not a felony  
5 driving while under the influence of intoxicating liquor or any drug  
6 under RCW 46.61.502(6) or felony physical control of a vehicle while  
7 under the influence of intoxicating liquor or any drug under RCW  
8 46.61.504(6);

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

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

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

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

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

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

30 (g) The offender has not received a drug offender sentencing  
31 alternative under this section, or a drug offender sentencing  
32 alternative for driving under the influence under section 1 of this  
33 act, more than once in the prior (~~ten~~) 10 years before the current  
34 offense.

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

37 (3) If the sentencing court determines that the offender is  
38 eligible for an alternative sentence under this section and that the  
39 alternative sentence is appropriate, the court shall waive imposition  
40 of a sentence within the standard sentence range and impose a

1 sentence consisting of either a prison-based alternative under RCW  
2 9.94A.662 or a residential substance use disorder treatment-based  
3 alternative under RCW 9.94A.664. The residential substance use  
4 disorder treatment-based alternative is only available if the  
5 midpoint of the standard sentence range is (~~twenty-six~~) 26 months  
6 or less.

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

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

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

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

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

25 ~~(c))~~ (c) Whether effective treatment for the offender's substance  
26 use disorder is available from a provider that has been licensed or  
27 certified by the department of health, and where applicable, whether  
28 effective domestic violence perpetrator treatment is available from a  
29 state-certified domestic violence treatment provider pursuant to RCW  
30 43.20A.735; and

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

33 (6) When a court imposes a sentence of community custody under  
34 this section:

35 (a) The court may impose conditions as provided in RCW 9.94A.703  
36 and may impose other affirmative conditions as the court considers  
37 appropriate. In addition, an offender may be required to pay (~~thirty~~  
38 ~~dollars~~) \$30 per month while on community custody to offset the cost  
39 of monitoring for alcohol or controlled substances, or in cases of

1 domestic violence for monitoring with global positioning system  
2 technology for compliance with a no-contact order.

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

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

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

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

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

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

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

31 (10) The Washington state institute for public policy shall  
32 submit a report to the governor and the appropriate committees of the  
33 legislature by November 1, 2022, analyzing the effectiveness of the  
34 drug offender sentencing alternative in reducing recidivism among  
35 various offender populations. An additional report is due November 1,  
36 2028, and every five years thereafter. The Washington state institute  
37 for public policy may coordinate with the department and the caseload  
38 forecast council in tracking data and preparing the report.

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

3       (1) If an offender is sentenced to the custody of the department  
4 for one of the following crimes, the court shall, in addition to the  
5 other terms of the sentence, sentence the offender to community  
6 custody for three years:

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

8       (b) A serious violent offense.

9       (2) A court shall, in addition to the other terms of the  
10 sentence, sentence an offender to community custody for ~~((eighteen))~~  
11 18 months when the court sentences the person to the custody of the  
12 department for a violent offense that is not considered a serious  
13 violent offense.

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

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

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

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

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

26       (4) If an offender is sentenced under the drug offender  
27 sentencing alternative, the court shall impose community custody as  
28 provided in:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~gross misdemeanor under Title 46 RCW, and a person may not~~  
2 ~~participate in a deferred prosecution program for a misdemeanor or~~  
3 ~~gross misdemeanor domestic violence offense if he or she has~~  
4 ~~participated in a deferred prosecution program for a prior domestic~~  
5 ~~violence offense)) who petitions the court for the deferred  
6 prosecution and participates in the deferred prosecution under this  
7 chapter for his or her first violation of RCW 46.61.502 or 46.61.504  
8 is eligible to petition the court for a second deferred prosecution  
9 for the person's next violation of RCW 46.61.502 or 46.61.504 when  
10 the person has no other prior convictions defined as a "prior  
11 offense" under RCW 46.61.5055. The person's first deferred  
12 prosecution shall not be considered a prior offense for the purpose  
13 of granting a second deferred prosecution. Separate offenses  
14 committed more than seven days apart may not be consolidated in a  
15 single program.~~

16 (3) A person charged with a misdemeanor or a gross misdemeanor  
17 under chapter 9A.42 RCW shall not be eligible for a deferred  
18 prosecution (~~program~~) unless the court makes specific findings  
19 pursuant to RCW 10.05.020. Such person shall not be eligible for a  
20 deferred prosecution (~~program~~) more than once.

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

24 (5) A person may petition a court for a second deferred  
25 prosecution while still under the jurisdiction of a court for the  
26 person's first deferred prosecution; however, the first deferred  
27 prosecution shall be revoked prior to the entry of the second  
28 deferred prosecution.

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

33 (7) A person charged with a misdemeanor or gross misdemeanor for  
34 a violation of RCW 46.61.502 or 46.61.504 who does not participate in  
35 a deferred prosecution for his or her first violation of RCW  
36 46.61.502 or 46.61.504 remains eligible to petition the court for a  
37 deferred prosecution pursuant to the terms of this section and  
38 specific findings made under RCW 10.05.020. Such person shall not be  
39 eligible for a deferred prosecution more than once.

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

3       At the time of arraignment a person charged with a violation of  
4 RCW 46.61.502 or 46.61.504 or a misdemeanor or gross misdemeanor  
5 domestic violence offense may be given a statement by the court that  
6 explains the availability, operation, and effects of the deferred  
7 prosecution (~~(program)~~).

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

10       (1) Except as provided in subsection (2) of this section, the  
11 petitioner shall allege under oath in the petition that the wrongful  
12 conduct charged is the result of or caused by substance use disorders  
13 or mental (~~(problems)~~) health disorders or domestic violence behavior  
14 problems for which the person is in need of treatment and unless  
15 treated the probability of future recurrence is great, along with a  
16 statement that the person agrees to pay the cost of a diagnosis and  
17 treatment of the alleged problem or problems if financially able to  
18 do so. The petition shall also contain a case history and written  
19 assessment prepared by an approved (~~(substance use disorder treatment~~  
20 ~~program)~~) behavioral health agency, approved for mental health  
21 services or substance use disorder services, as designated in chapter  
22 71.24 RCW (~~(if the petition alleges a substance use disorder, by an~~  
23 ~~approved mental health center if the petition alleges a mental~~  
24 ~~problem)~~) or by a state-certified domestic violence treatment  
25 provider pursuant to RCW 43.20A.735 (~~(if the petition alleges a~~  
26 ~~domestic violence behavior problem)~~).

27       (2) In the case of a petitioner charged with a misdemeanor or  
28 gross misdemeanor under chapter 9A.42 RCW, the petitioner shall  
29 allege under oath in the petition that the petitioner is the natural  
30 or adoptive parent of the alleged victim; that the wrongful conduct  
31 charged is the result of parenting problems for which the petitioner  
32 is in need of services; that the petitioner is in need of child  
33 welfare services under chapter 74.13 RCW to improve his or her  
34 parenting skills in order to better provide his or her child or  
35 children with the basic necessities of life; that the petitioner  
36 wants to correct his or her conduct to reduce the likelihood of harm  
37 to his or her minor children; that in the absence of child welfare  
38 services the petitioner may be unable to reduce the likelihood of  
39 harm to his or her minor children; and that the petitioner has



1 cooperated with the department of (~~social and health services~~)  
2 children, youth, and families to develop a plan to receive  
3 appropriate child welfare services; along with a statement that the  
4 person agrees to pay the cost of the services if he or she is  
5 financially able to do so. The petition shall also contain a case  
6 history and a written service plan from the department of (~~social  
7 and health services~~) children, youth, and families.

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

34 (4) Before entering an order deferring prosecution, the court  
35 shall make specific findings that: (a) The petitioner has stipulated  
36 to the admissibility and sufficiency of the facts as contained in the  
37 written police report; (b) the petitioner has acknowledged the  
38 admissibility of the stipulated facts in any criminal hearing on the  
39 underlying offense or offenses held subsequent to revocation of the  
40 order granting deferred prosecution; (c) the petitioner has

1 acknowledged and waived the right to testify, the right to a speedy  
2 trial, the right to call witnesses to testify, the right to present  
3 evidence in his or her defense, and the right to a jury trial; and  
4 (d) the petitioner's statements were made knowingly and voluntarily.  
5 Such findings shall be included in the order granting deferred  
6 prosecution.

7 **Sec. 14.** RCW 10.05.030 and 2023 c 102 s 17 are each amended to  
8 read as follows:

9 The arraigning judge upon consideration of the petition may  
10 continue the arraignment and refer such person for a diagnostic  
11 investigation and evaluation to:

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

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

20 (3) The department of (~~social and health services~~) children,  
21 youth, and families if the petition is brought under RCW  
22 10.05.020(2); or

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

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

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

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

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

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

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

1 (5) Whether the person is (~~amenable~~): (a) Amenable to treatment  
2 as demonstrated by (i) completion of residential treatment; (ii)  
3 completion of a minimum of 18 hours of intensive outpatient  
4 treatment, for substance use disorder petitions; (iii) completion of  
5 a minimum of six mental health sessions, for mental health disorder  
6 petitions; or (iv) completion of a minimum of six domestic violence  
7 treatment sessions for domestic violence petitions; or (b) willing to  
8 cooperate with child welfare services. The requirement for completing  
9 a minimum number of sessions may be waived if the court finds good  
10 cause.

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

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

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

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

30 (3) The report with the treatment or service plan shall be filed  
31 with the court and a copy given to the petitioner and petitioner's  
32 counsel. A copy of the treatment or service plan shall be given to  
33 the prosecutor by petitioner's counsel at the request of the  
34 prosecutor. The evaluation facility, or the department of (~~social~~  
35 ~~and health services~~) children, youth, and families if the petition  
36 is brought under RCW 10.05.020(2), making the written report shall  
37 append to the report a commitment by the treatment program or the  
38 department of (~~social and health services~~) children, youth, and  
39 families that it will provide the treatment or child welfare services

1 in accordance with this chapter. The facility or the service provider  
2 shall agree to provide the court with a statement (~~every three~~  
3 ~~months for the first year and every six months for the second year~~)  
4 monthly regarding (a) the petitioner's cooperation with the treatment  
5 or child welfare service plan proposed and (b) the petitioner's  
6 progress or failure in treatment or child welfare services. These  
7 statements shall be made as a declaration by the person who is  
8 personally responsible for providing the treatment or services.

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

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

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

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

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

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

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

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

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

34 (2) When a deferred prosecution is ordered pursuant to a petition  
35 brought under RCW 10.05.020(2) and the court has received proof that  
36 the petitioner has successfully completed the child welfare service  
37 plan, or the plan has been terminated because the alleged victim has  
38 reached his or her majority and there are no other minor children in

1 the home, the court shall dismiss the charges pending against the  
2 petitioner: PROVIDED, That in any case where the petitioner's  
3 parental rights have been terminated with regard to the alleged  
4 victim due to abuse or neglect that occurred during the pendency of  
5 the deferred prosecution, the termination shall be per se evidence  
6 that the petitioner did not successfully complete the child welfare  
7 service plan.

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

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

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

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

1 (a) The court shall order the petitioner not to possess firearms  
2 and order the petitioner to surrender firearms under RCW 9.41.800;  
3 and

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

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

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

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

24 ~~((2) Participation in an intensive inpatient or intensive~~  
25 ~~outpatient program in a state-approved substance use disorder~~  
26 ~~treatment program;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

24       (a) Completion of an intensive outpatient treatment program or  
25 residential inpatient treatment program, depending on the severity of  
26 the diagnosis; and

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

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

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

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

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



1 A deferred prosecution ((program)) for domestic violence  
2 behavior, or domestic violence co-occurring with substance abuse or  
3 mental health, must include, but is not limited to, the following  
4 requirements:

5 (1) Completion of a risk assessment;

6 (2) Participation in the level of treatment recommended by the  
7 program as outlined in the current treatment plan;

8 (3) Compliance with the contract for treatment;

9 (4) Participation in any ancillary or co-occurring treatments  
10 that are determined to be necessary for the successful completion of  
11 the domestic violence intervention treatment including, but not  
12 limited to, mental health or substance use treatment;

13 (5) Domestic violence intervention treatment within the purview  
14 of this section to be completed with a state-certified domestic  
15 violence intervention treatment program;

16 (6) Signature of the petitioner agreeing to the terms and  
17 conditions of the treatment program;

18 (7) Proof of compliance with any active order to surrender  
19 weapons issued in this program or related civil protection orders or  
20 no-contact orders.

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

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

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

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

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

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

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

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

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

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

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

33 (3) Following receipt of an abstract indicating a deferred  
34 prosecution has been granted under RCW 10.05.060, or upon  
35 reinstatement or reissuance of a driver's license suspended or  
36 revoked as the result of a conviction of RCW 46.61.502 or 46.61.504,  
37 the department shall require the person to obtain a probationary  
38 license in order to operate a motor vehicle in the state of  
39 Washington, except as otherwise exempt under RCW 46.20.025. The

1 department shall not issue the probationary license unless the person  
2 is otherwise qualified for licensing, and the person must renew the  
3 probationary license on the same cycle as the person's regular  
4 license would have been renewed until the expiration of the five-year  
5 probationary status period imposed under subsection (2) of this  
6 section.

7 (4) If a person is eligible for full credit under RCW  
8 46.61.5055(9)(b)(ii) and, by the date specified in the notice issued  
9 under RCW 46.20.245, has completed the requirements under RCW  
10 46.20.311 and paid the fee under subsection (5) of this section, the  
11 department shall issue a probationary license on the date specified  
12 in the notice with no further action required of the person.

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

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

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

29 (1)(a) Any person licensed under this chapter or who has a valid  
30 driver's license from another state, who is convicted of: (i) A  
31 violation of RCW 46.61.502 or 46.61.504 or an equivalent local or  
32 out-of-state statute or ordinance, or (ii) a violation of RCW  
33 46.61.520(1)(a) or an equivalent local or out-of-state statute or  
34 ordinance, or (iii) a conviction for a violation of RCW 46.61.520(1)  
35 (b) or (c) if the conviction is the result of a charge that was  
36 originally filed as a violation of RCW 46.61.520(1)(a), or (iv) RCW  
37 46.61.522(1)(b) or an equivalent local or out-of-state statute or  
38 ordinance, or (v) RCW 46.61.522(1) (a) or (c) if the conviction is  
39 the result of a charge that was originally filed as a violation of

1 RCW 46.61.522(1)(b) committed while under the influence of  
2 intoxicating liquor or any drug, or (vi) who has had or will have his  
3 or her license suspended, revoked, or denied under RCW 46.20.3101, or  
4 has had his or her license suspended, revoked, or denied under RCW  
5 46.61.5055(11)(c), or who is otherwise permitted under subsection (8)  
6 of this section, may submit to the department an application for an  
7 ignition interlock driver's license. The department, upon receipt of  
8 the prescribed fee and upon determining that the petitioner is  
9 eligible to receive the license, may issue an ignition interlock  
10 driver's license.

11 (b) A person may apply for an ignition interlock driver's license  
12 anytime, including immediately after receiving the notices under RCW  
13 46.20.308 or after his or her license is suspended, revoked, or  
14 denied.

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

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

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

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

35 (3) Upon receipt of evidence that a holder of an ignition  
36 interlock driver's license granted under this subsection no longer  
37 has a functioning ignition interlock device installed on all vehicles  
38 operated by the driver, the director shall give written notice by  
39 first-class mail to the driver that the ignition interlock driver's  
40 license shall be canceled. If at any time before the cancellation

1 goes into effect the driver submits evidence that a functioning  
2 ignition interlock device has been installed on all vehicles operated  
3 by the driver, the cancellation shall be stayed. If the cancellation  
4 becomes effective, the driver may obtain, at no additional charge, a  
5 new ignition interlock driver's license upon submittal of evidence  
6 that a functioning ignition interlock device has been installed on  
7 all vehicles operated by the driver.

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

11 (5) The director shall cancel an ignition interlock driver's  
12 license after receiving notice that the holder thereof has been  
13 convicted of operating a motor vehicle in violation of its  
14 restrictions, no longer meets the eligibility requirements, or has  
15 been convicted of or found to have committed a separate offense or  
16 any other act or omission that under this chapter would warrant  
17 suspension or revocation of a regular driver's license. The  
18 department must give notice of the cancellation as provided under RCW  
19 46.20.245. A person whose ignition interlock driver's license has  
20 been canceled under this section may reapply for a new ignition  
21 interlock driver's license if he or she is otherwise qualified under  
22 this section and pays the fee required under RCW 46.20.380.

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

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

38 (7) The department shall adopt rules to implement ignition  
39 interlock licensing. The department shall consult with the  
40 administrative office of the courts, the state patrol, the Washington

1 association of sheriffs and police chiefs, ignition interlock  
2 companies, and any other organization or entity the department deems  
3 appropriate.

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

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

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

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

21 (a) **Pretrial release.** Upon receipt of notice from a court that an  
22 ignition interlock device restriction has been imposed under RCW  
23 10.21.055;

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

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

29 (i) RCW 46.61.502 or 46.61.504 or an equivalent local ordinance;  
30 or

31 (ii) RCW 46.61.5249 or 46.61.500 or an equivalent local ordinance  
32 if the person would be required under RCW 46.61.5249(4) or  
33 46.61.500(3) (a) or (b) to install an ignition interlock device on  
34 all vehicles operated by the person in the event of a conviction;

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

1 (i) Due to a conviction of a violation of RCW 46.61.502 or  
2 46.61.504 or an equivalent local or out-of-state statute or  
3 ordinance; or

4 (ii) Due to a conviction of a violation of RCW 46.61.5249 or  
5 46.61.500 or an equivalent local ordinance if the person is required  
6 under RCW 46.61.5249(4) or 46.61.500(3) (a) or (b) to install an  
7 ignition interlock device on all vehicles operated by the person; or

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

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

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

23 (a) Subsection (1)(a) of this section shall remain in effect  
24 until:

25 (i) The court has authorized the removal of the device under RCW  
26 10.21.055; or

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

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

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

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

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

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

1 The restriction of a person who is convicted of a violation of  
2 RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and who  
3 committed the offense while one or more passengers under the age of  
4 (~~sixteen~~) 16 were in the vehicle shall be extended for an  
5 additional period as required by RCW 46.61.5055(6) (a).

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

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

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

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

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



1 (4) **Requirements for removal.** A restriction imposed under  
2 subsection (1)(c) or (d) of this section shall remain in effect until  
3 the department receives a declaration from the person's ignition  
4 interlock device vendor, in a form provided or approved by the  
5 department, certifying the following:

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

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

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

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

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

25 (v) Removal of the ignition interlock device by a person other  
26 than an ignition interlock technician certified by the Washington  
27 state patrol; and

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

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

39 (b) The department must also give the person a day-for-day credit  
40 for any time period, beginning from the date of the incident, during

1 which the person kept an ignition interlock device installed on all  
2 vehicles the person operates, other than those subject to the  
3 employer exemption under subsection (6) of this section.

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

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

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

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

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

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

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

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

35           (2) It is a gross misdemeanor for a person with such a notation  
36 on his or her driving record to operate a motor vehicle that is not  
37 so equipped, unless the notation resulted from a restriction imposed  
38 as a condition of release and the restriction has been released by  
39 the court prior to driving. Any time a person is convicted under this

1 section, the court shall immediately notify the department for  
2 purposes of RCW 46.20.720(3)(e). It is an affirmative defense, which  
3 the defendant must prove by a preponderance of the evidence, that the  
4 employer exemption in RCW 46.20.720(6) applies. The court shall not  
5 admit evidence of this defense unless the defendant notifies the  
6 prosecution prior to the omnibus or pretrial hearing in the case of  
7 the defendant's intent to assert the affirmative defense.

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

11 **Sec. 30.** RCW 46.61.502 and 2022 c 16 s 40 are each amended to  
12 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1       **Sec. 31.** RCW 46.61.5055 and 2020 c 330 s 15 are each amended to  
2 read as follows:

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

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

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

28       (ii) By a fine of not less than (~~three hundred fifty dollars~~)  
29 \$350 nor more than (~~five thousand dollars~~) \$5,000. (~~Three hundred~~  
30 ~~fifty dollars~~) \$350 of the fine may not be suspended unless the  
31 court finds the offender to be indigent; or

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

37       (i) By imprisonment for not less than (~~forty-eight~~) 48  
38 consecutive hours nor more than (~~three hundred sixty-four~~) 364  
39 days. In lieu of the mandatory minimum term of imprisonment required  
40 under this subsection (1)(b)(i), the court, in its discretion, may

1 order not less than (~~(thirty)~~) 30 days of electronic home monitoring  
2 or a (~~(one hundred twenty day)~~) 120-day period of 24/7 sobriety  
3 program monitoring. The court may consider the offender's pretrial  
4 24/7 sobriety program testing as fulfilling a portion of posttrial  
5 sentencing. The offender shall pay the cost of electronic home  
6 monitoring. The county or municipality in which the penalty is being  
7 imposed shall determine the cost. The court may also require the  
8 offender's electronic home monitoring device to include an alcohol  
9 detection breathalyzer or other separate alcohol monitoring device,  
10 and the court may restrict the amount of alcohol the offender may  
11 consume during the time the offender is on electronic home  
12 monitoring; and

13 (ii) By a fine of not less than (~~(five hundred dollars)~~) \$500 nor  
14 more than (~~(five thousand dollars)~~) \$5,000. (~~(Five hundred dollars)~~)  
15 \$500 of the fine may not be suspended unless the court finds the  
16 offender to be indigent.

17 (2) **One prior offense in seven years.** Except as provided in RCW  
18 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
19 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense  
20 within seven years shall be punished as follows:

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

26 (i) By imprisonment for not less than (~~(thirty)~~) 30 days nor more  
27 than (~~(three hundred sixty four)~~) 364 days and (~~(sixty)~~) 60 days of  
28 electronic home monitoring. Thirty days of imprisonment and (~~(sixty)~~)  
29 60 days of electronic home monitoring may not be suspended or  
30 converted unless the court finds that the imposition of this  
31 mandatory minimum sentence would impose a substantial risk to the  
32 offender's physical or mental well-being. If the offender shows that  
33 the imposition of this mandatory minimum sentence would impose a  
34 substantial risk to the offender's physical or mental well-being, in  
35 lieu of the mandatory term of imprisonment and electronic home  
36 monitoring under this subsection (2)(a)(i), the court may order a  
37 minimum of either (~~(one hundred eighty)~~) 180 days of electronic home  
38 monitoring or a (~~(one hundred twenty day)~~) 120-day period of 24/7  
39 sobriety program monitoring pursuant to RCW 36.28A.300 through  
40 36.28A.390. Whenever the mandatory minimum sentence is suspended or

1 converted, the court shall state in writing the reason for granting  
2 the suspension or conversion and the facts upon which the suspension  
3 or conversion is based. The court may consider the offender's  
4 pretrial 24/7 sobriety program monitoring as fulfilling a portion of  
5 posttrial sentencing. The court shall order an expanded substance use  
6 disorder assessment and treatment, if deemed appropriate by the  
7 assessment. The offender shall pay for the cost of the electronic  
8 monitoring. The county or municipality where the penalty is being  
9 imposed shall determine the cost. The court may also require the  
10 offender's electronic home monitoring device include an alcohol  
11 detection breathalyzer or other separate alcohol monitoring device,  
12 and may restrict the amount of alcohol the offender may consume  
13 during the time the offender is on electronic home monitoring; and

14 (ii) By a fine of not less than (~~five hundred dollars~~) \$500 nor  
15 more than (~~five thousand dollars~~) \$5,000. (~~Five hundred dollars~~)  
16 \$500 of the fine may not be suspended unless the court finds the  
17 offender to be indigent; or

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

23 (i) By imprisonment for not less than (~~forty-five~~) 45 days nor  
24 more than (~~three hundred sixty-four~~) 364 days and (~~ninety~~) 90  
25 days of electronic home monitoring. Forty-five days of imprisonment  
26 and (~~ninety~~) 90 days of electronic home monitoring may not be  
27 suspended or converted unless the court finds that the imposition of  
28 this mandatory minimum sentence would impose a substantial risk to  
29 the offender's physical or mental well-being. If the offender shows  
30 that the imposition of this mandatory minimum sentence would impose a  
31 substantial risk to the offender's physical or mental well-being, in  
32 lieu of the mandatory minimum term of imprisonment and electronic  
33 home monitoring under this subsection (2)(b)(i), the court may order  
34 a minimum of either six months of electronic home monitoring or a  
35 (~~one hundred twenty-day~~) 120-day period of 24/7 sobriety program  
36 monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever  
37 the mandatory minimum sentence is suspended or converted, the court  
38 shall state in writing the reason for granting the suspension or  
39 conversion and the facts upon which the suspension or conversion is  
40 based. The court may consider the offender's pretrial 24/7 sobriety



1 program monitoring as fulfilling a portion of posttrial sentencing.  
2 The court shall order an expanded substance use disorder assessment  
3 and treatment, if deemed appropriate by the assessment. The offender  
4 shall pay for the cost of the electronic monitoring. The county or  
5 municipality where the penalty is being imposed shall determine the  
6 cost. The court may also require the offender's electronic home  
7 monitoring device include an alcohol detection breathalyzer or other  
8 separate alcohol monitoring device, and may restrict the amount of  
9 alcohol the offender may consume during the time the offender is on  
10 electronic home monitoring; and

11 (ii) By a fine of not less than (~~seven hundred fifty dollars~~)  
12 \$750 nor more than (~~five thousand dollars~~) \$5,000. (~~Seven hundred~~  
13 ~~fifty dollars~~) \$750 of the fine may not be suspended unless the  
14 court finds the offender to be indigent.

15 (3) **Two prior offenses in seven years.** Except as provided in RCW  
16 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
17 violation of RCW 46.61.502 or 46.61.504 and who has two prior  
18 offenses within seven years shall be punished as follows:

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

24 (i) By imprisonment for not less than (~~ninety~~) 90 days nor more  
25 than (~~three hundred sixty-four~~) 364 days, if available in that  
26 county or city, a six-month period of 24/7 sobriety program  
27 monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and (~~one~~  
28 ~~hundred twenty~~) 120 days of electronic home monitoring. Ninety days  
29 of imprisonment and (~~one hundred twenty~~) 120 days of electronic  
30 home monitoring may not be suspended or converted unless the court  
31 finds that the imposition of this mandatory minimum sentence would  
32 impose a substantial risk to the offender's physical or mental well-  
33 being. If the offender shows that the imposition of this mandatory  
34 minimum sentence would impose a substantial risk to the offender's  
35 physical or mental well-being, in lieu of the mandatory minimum term  
36 of (~~ninety~~) 90 days of imprisonment and (~~one hundred twenty~~) 120  
37 days of electronic home monitoring, the court may order (~~three~~  
38 ~~hundred sixty~~) 360 days of electronic home monitoring or a (~~three~~  
39 ~~hundred sixty-day~~) 360-day period of 24/7 sobriety monitoring  
40 pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory

1 minimum sentence is suspended or converted, the court shall state in  
2 writing the reason for granting the suspension or conversion and the  
3 facts upon which the suspension or conversion is based. The court  
4 shall order an expanded substance use disorder assessment and  
5 treatment, if deemed appropriate by the assessment. The offender  
6 shall pay for the cost of the electronic monitoring. The county or  
7 municipality where the penalty is being imposed shall determine the  
8 cost. The court may also require the offender's electronic home  
9 monitoring device include an alcohol detection breathalyzer or other  
10 separate alcohol monitoring device, and may restrict the amount of  
11 alcohol the offender may consume during the time the offender is on  
12 electronic home monitoring; and

13 (ii) By a fine of not less than (~~one thousand dollars~~) \$1,000  
14 nor more than (~~five thousand dollars~~) \$5,000. (~~One thousand~~  
15 ~~dollars~~) \$1,000 of the fine may not be suspended unless the court  
16 finds the offender to be indigent; or

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

22 (i) By imprisonment for not less than (~~one hundred twenty~~) 120  
23 days nor more than (~~three hundred sixty-four~~) 364 days, if  
24 available in that county or city, a six-month period of 24/7 sobriety  
25 program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and  
26 (~~one hundred fifty~~) 150 days of electronic home monitoring. One  
27 hundred twenty days of imprisonment and (~~one hundred fifty~~) 150  
28 days of electronic home monitoring may not be suspended or converted  
29 unless the court finds that the imposition of this mandatory minimum  
30 sentence would impose a substantial risk to the offender's physical  
31 or mental well-being. If the offender shows that the imposition of  
32 this mandatory minimum sentence would impose a substantial risk to  
33 the offender's physical or mental well-being, in lieu of the  
34 mandatory minimum term of (~~one hundred twenty~~) 120 days of  
35 imprisonment and (~~one hundred fifty~~) 150 days of electronic home  
36 monitoring, the court may order (~~three hundred sixty~~) 360 days of  
37 electronic home monitoring or a (~~three hundred sixty-day~~) 360-day  
38 period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through  
39 36.28A.390. Whenever the mandatory minimum sentence is suspended or  
40 converted, the court shall state in writing the reason for granting

1 the suspension or conversion and the facts upon which the suspension  
2 or conversion is based. The offender shall pay for the cost of the  
3 electronic monitoring. The court shall order an expanded substance  
4 use disorder assessment and treatment, if deemed appropriate by the  
5 assessment. The county or municipality where the penalty is being  
6 imposed shall determine the cost. The court may also require the  
7 offender's electronic home monitoring device include an alcohol  
8 detection breathalyzer or other separate alcohol monitoring device,  
9 and may restrict the amount of alcohol the offender may consume  
10 during the time the offender is on electronic home monitoring; and

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

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

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

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

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

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

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

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

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

34 (b) **Monitoring devices.** If the court orders that a person refrain  
35 from consuming any alcohol, the court may order the person to submit  
36 to alcohol monitoring through an alcohol detection breathalyzer  
37 device, transdermal sensor device, or other technology designed to  
38 detect alcohol in a person's system. The person shall pay for the  
39 cost of the monitoring, unless the court specifies that the cost of  
40 monitoring will be paid with funds that are available from an

1 alternative source identified by the court. The county or  
2 municipality where the penalty is being imposed shall determine the  
3 cost.

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

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

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

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

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

21 (a) Order the use of an ignition interlock or other device for an  
22 additional (~~twelve~~) 12 months for each passenger under the age of  
23 (~~sixteen~~) 16 when the person is subject to the penalties under  
24 subsection (1)(a), (2)(a), or (3)(a) of this section; and order the  
25 use of an ignition interlock device for an additional (~~eighteen~~) 18  
26 months for each passenger under the age of (~~sixteen~~) 16 when the  
27 person is subject to the penalties under subsection (1)(b), (2)(b),  
28 (3)(b), or (4) of this section;

29 (b) In any case in which the person has no prior offenses within  
30 seven years, and except as provided in RCW 46.61.502(6) or  
31 46.61.504(6), order an additional (~~twenty-four~~) 24 hours of  
32 imprisonment to be served consecutively for each passenger under the  
33 age of (~~sixteen~~) 16, and a fine of not less than (~~one-thousand~~  
34 ~~dollars~~) \$1,000 and not more than (~~five-thousand-dollars~~) \$5,000  
35 for each passenger under the age of (~~sixteen~~) 16. (~~One-thousand~~  
36 ~~dollars~~) \$1,000 of the fine for each passenger under the age of  
37 (~~sixteen~~) 16 may not be suspended unless the court finds the  
38 offender to be indigent;

39 (c) In any case in which the person has one prior offense within  
40 seven years, and except as provided in RCW 46.61.502(6) or

1 46.61.504(6), order an additional five days of imprisonment to be  
2 served consecutively for each passenger under the age of (~~sixteen~~)  
3 16, and a fine of not less than (~~two thousand dollars~~) \$2,000 and  
4 not more than (~~five thousand dollars~~) \$5,000 for each passenger  
5 under the age of (~~sixteen~~) 16. One thousand dollars of the fine for  
6 each passenger under the age of (~~sixteen~~) 16 may not be suspended  
7 unless the court finds the offender to be indigent;

8 (d) In any case in which the person has two prior offenses within  
9 seven years, and except as provided in RCW 46.61.502(6) or  
10 46.61.504(6), order an additional ten 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 (~~three thousand dollars~~) \$3,000 and  
13 not more than (~~ten thousand dollars~~) \$10,000 for each passenger  
14 under the age of (~~sixteen~~) 16. (~~One thousand dollars~~) \$1,000 of  
15 the fine for each passenger under the age of (~~sixteen~~) 16 may not  
16 be suspended unless the court finds the offender to be indigent.

17 (7) **Other items courts must consider while setting penalties.** In  
18 exercising its discretion in setting penalties within the limits  
19 allowed by this section, the court shall particularly consider the  
20 following:

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

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

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

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

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

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

38 (i) **Penalty for alcohol concentration less than 0.15.** If the  
39 person's alcohol concentration was less than 0.15, or if for reasons  
40 other than the person's refusal to take a test offered under RCW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (11) **Conditions of probation.** (a) In addition to any  
40 nonsuspendable and nondeferrable jail sentence required by this

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

26 (b) For each violation of mandatory conditions of probation under  
27 (a)(i), (ii), (iii), (iv), or (v) of this subsection, the court shall  
28 order the convicted person to be confined for (~~thirty~~) 30 days,  
29 which shall not be suspended or deferred.

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



1 this subsection. The person may apply for an ignition interlock  
2 driver's license under RCW 46.20.385 during the suspension period.

3 (ii) For each incident involving a violation of RCW  
4 46.20.342(1)(c), the court has discretion not to impose a suspension  
5 when the person provides the court with proof that the violation has  
6 been cured within 30 days. The court is not required to notify the  
7 department of the violation unless it is not cured within 30 days.

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

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

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

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

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

27 Whenever the combination of jail time and electronic home  
28 monitoring or alternative sentence would exceed (~~three hundred~~  
29 ~~sixty-four~~) 364 days, the offender shall serve the jail portion of  
30 the sentence first, and the electronic home monitoring or alternative  
31 portion of the sentence shall be reduced so that the combination does  
32 not exceed (~~three hundred sixty-four~~) 364 days.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **Sec. 32.** RCW 46.61.504 and 2022 c 16 s 42 are each amended to  
4 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 NEW SECTION. **Sec. 33.** If any provision of this act or its  
5 application to any person or circumstance is held invalid, the  
6 remainder of the act or the application of the provision to other  
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 34.** This act takes effect January 1, 2025."

**SB 5032 - S AMD 516**  
By Senator Padden

**ADOPTED 02/01/2024**

9 On page 1, line 1 of the title, after "Relating to" strike the  
10 remainder of the title and insert "impaired driving; amending RCW  
11 9.94A.030, 9.94A.190, 9.94A.501, 9.94A.505, 9.94A.525, 9.94A.633,  
12 9.94A.6332, 9.94A.660, 9.94A.701, 10.05.010, 10.05.015, 10.05.020,  
13 10.05.030, 10.05.040, 10.05.050, 10.05.060, 10.05.090, 10.05.100,  
14 10.05.120, 10.05.140, 10.05.150, 10.05.155, 10.05.170, 46.20.355,  
15 46.20.385, 46.20.720, 46.20.740, 46.61.502, 46.61.5055, and  
16 46.61.504; adding a new section to chapter 9.94A RCW; adding a new  
17 section to chapter 10.05 RCW; providing an effective date; and  
18 prescribing penalties."

**EFFECT:** (1) Permits a person who participates in a deferred prosecution for a first 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 on a person's next DUI or PC charge if the person has no other prior convictions defined as prior offenses, or while under the court's jurisdiction for a first deferred prosecution if the first deferred prosecution is revoked. Excepts a first deferred prosecution from counting as a prior offense for the purpose of granting a second deferred prosecution. 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.

(2) Amends the definition of serious traffic offense to include negligent driving and reckless endangerment. Modifies provisions relating to ignition interlock licenses addressing probation violations. Modifies provisions relating to ignition interlock device restrictions addressing physical disability waivers, self-employed drivers, and prior offenses.

(3) Changes the effective date to January 1, 2025.

(4) Updates statutory language to reflect changes enacted during the 2023 legislative session.

--- **END** ---