

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6166

Chapter 211, Laws of 1998

55th Legislature
1998 Regular Session

DRIVING UNDER THE INFLUENCE--INCREASING PENALTIES

EFFECTIVE DATE: 1/1/99

Passed by the Senate March 7, 1998
YEAS 33 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 5, 1998
YEAS 97 NAYS 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved March 30, 1998

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6166** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL

Secretary

FILED

March 30, 1998 - 2:48 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6166

Passed Legislature - 1998 Regular Session

AS AMENDED BY THE HOUSE

State of Washington 55th Legislature 1998 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Rossi, Roach, Fairley, Goings, T. Sheldon, McCaslin, Strannigan, Zarelli, Long, Deccio, Oke, Rasmussen, Wood, Kline, Schow, Patterson, Swecker, Stevens, Haugen, McAuliffe, Kohl, Johnson and Benton)

Read first time 01/14/98.

1 AN ACT Relating to penalties for driving under the influence;
2 amending RCW 46.61.520 and 9.94A.360; reenacting and amending RCW
3 46.61.5055 and 9.94A.310; adding a new section to chapter 46.61 RCW;
4 creating a new section; prescribing penalties; and providing an
5 effective date.

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

7 **Sec. 1.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are
8 each reenacted and amended to read as follows:

9 (1) A person who is convicted of a violation of RCW 46.61.502 or
10 46.61.504 and who has no prior offense within five years shall be
11 punished as follows:

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

16 (i) By imprisonment for not less than one day nor more than one
17 year. Twenty-four consecutive hours of the imprisonment may not be
18 suspended or deferred unless the court finds that the imposition of
19 this mandatory minimum sentence would impose a substantial risk to the

1 offender's physical or mental well-being. Whenever the mandatory
2 minimum sentence is suspended or deferred, the court shall state in
3 writing the reason for granting the suspension or deferral and the
4 facts upon which the suspension or deferral is based; and

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

9 (iii) By suspension of the offender's license or permit to drive,
10 or suspension of any nonresident privilege to drive, for a period of
11 ninety days. The period of license, permit, or privilege suspension
12 may not be suspended. The court shall notify the department of
13 licensing of the conviction, and upon receiving notification of the
14 conviction the department shall suspend the offender's license, permit,
15 or privilege; or

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

20 (i) By imprisonment for not less than two days nor more than one
21 year. Two consecutive days of the imprisonment may not be suspended or
22 deferred unless the court finds that the imposition of this mandatory
23 minimum sentence would impose a substantial risk to the offender's
24 physical or mental well-being. Whenever the mandatory minimum sentence
25 is suspended or deferred, the court shall state in writing the reason
26 for granting the suspension or deferral and the facts upon which the
27 suspension or deferral is based; and

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

32 (iii) By revocation of the offender's license or permit to drive,
33 or suspension of any nonresident privilege to drive, for a period of
34 one year. The period of license, permit, or privilege suspension may
35 not be suspended. The court shall notify the department of licensing
36 of the conviction, and upon receiving notification of the conviction
37 the department shall suspend the offender's license, permit, or
38 privilege.

1 (2) A person who is convicted of a violation of RCW 46.61.502 or
2 46.61.504 and who has one prior offense within five years shall be
3 punished as follows:

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

8 (i) By imprisonment for not less than thirty days nor more than one
9 year. Thirty days of the imprisonment may not be suspended or deferred
10 unless the court finds that the imposition of this mandatory minimum
11 sentence would impose a substantial risk to the offender's physical or
12 mental well-being. Whenever the mandatory minimum sentence is
13 suspended or deferred, the court shall state in writing the reason for
14 granting the suspension or deferral and the facts upon which the
15 suspension or deferral is based; and

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

20 (iii) By revocation of the offender's license or permit to drive,
21 or suspension of any nonresident privilege to drive, for a period of
22 two years. The period of license, permit, or privilege revocation may
23 not be suspended. The court shall notify the department of licensing
24 of the conviction, and upon receiving notification of the conviction
25 the department shall revoke the offender's license, permit, or
26 privilege; or

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

31 (i) By imprisonment for not less than forty-five days nor more than
32 one year. Forty-five days of the imprisonment may not be suspended or
33 deferred unless the court finds that the imposition of this mandatory
34 minimum sentence would impose a substantial risk to the offender's
35 physical or mental well-being. Whenever the mandatory minimum sentence
36 is suspended or deferred, the court shall state in writing the reason
37 for granting the suspension or deferral and the facts upon which the
38 suspension or deferral is based; and

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

5 (iii) By revocation of the offender's license or permit to drive,
6 or suspension of any nonresident privilege to drive, for a period of
7 nine hundred days. The period of license, permit, or privilege
8 revocation may not be suspended. The court shall notify the department
9 of licensing of the conviction, and upon receiving notification of the
10 conviction the department shall revoke the offender's license, permit,
11 or privilege.

12 (3) A person who is convicted of a violation of RCW 46.61.502 or
13 46.61.504 and who has two or more prior offenses within five years
14 shall be punished as follows:

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

19 (i) By imprisonment for not less than ninety days nor more than one
20 year. Ninety days of the imprisonment may not be suspended or deferred
21 unless the court finds that the imposition of this mandatory minimum
22 sentence would impose a substantial risk to the offender's physical or
23 mental well-being. Whenever the mandatory minimum sentence is
24 suspended or deferred, the court shall state in writing the reason for
25 granting the suspension or deferral and the facts upon which the
26 suspension or deferral is based; and

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

31 (iii) By revocation of the offender's license or permit to drive,
32 or suspension of any nonresident privilege to drive, for a period of
33 three years. The period of license, permit, or privilege revocation
34 may not be suspended. The court shall notify the department of
35 licensing of the conviction, and upon receiving notification of the
36 conviction the department shall revoke the offender's license, permit,
37 or privilege; or

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

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

3 (i) By imprisonment for not less than one hundred twenty days nor
4 more than one year. One hundred twenty days of the imprisonment may
5 not be suspended or deferred unless the court finds that the imposition
6 of this mandatory minimum sentence would impose a substantial risk to
7 the offender's physical or mental well-being. Whenever the mandatory
8 minimum sentence is suspended or deferred, the court shall state in
9 writing the reason for granting the suspension or deferral and the
10 facts upon which the suspension or deferral is based; and

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

15 (iii) By revocation of the offender's license or permit to drive,
16 or suspension of any nonresident privilege to drive, for a period of
17 four years. The period of license, permit, or privilege revocation may
18 not be suspended. The court shall notify the department of licensing
19 of the conviction, and upon receiving notification of the conviction
20 the department shall revoke the offender's license, permit, or
21 privilege.

22 (4) In exercising its discretion in setting penalties within the
23 limits allowed by this section, the court shall particularly consider
24 whether the person's driving at the time of the offense was responsible
25 for injury or damage to another or another's property.

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

28 (6) After expiration of any period of suspension or revocation of
29 the offender's license, permit, or privilege to drive required by this
30 section, the department shall place the offender's driving privilege in
31 probationary status pursuant to RCW 46.20.355.

32 (7)(a) In addition to any nonsuspendable and nondeferrable jail
33 sentence required by this section, whenever the court imposes less than
34 one year in jail, the court shall also suspend but shall not defer a
35 period of confinement for a period not exceeding two years. The court
36 shall impose conditions of probation that include: (i) Not driving a
37 motor vehicle within this state without a valid license to drive and
38 proof of financial responsibility for the future; (ii) not driving a
39 motor vehicle within this state while having an alcohol concentration

1 of 0.08 or more within two hours after driving; and (iii) not refusing
2 to submit to a test of his or her breath or blood to determine alcohol
3 concentration upon request of a law enforcement officer who has
4 reasonable grounds to believe the person was driving or was in actual
5 physical control of a motor vehicle within this state while under the
6 influence of intoxicating liquor. The court may impose conditions of
7 probation that include nonrepetition, installation of an ignition
8 interlock or other biological or technical device on the probationer's
9 motor vehicle, alcohol or drug treatment, supervised probation, or
10 other conditions that may be appropriate. The sentence may be imposed
11 in whole or in part upon violation of a condition of probation during
12 the suspension period.

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

17 (c) For each incident involving a violation of a mandatory
18 condition of probation imposed under this subsection, the license,
19 permit, or privilege to drive of the person shall be suspended by the
20 court for thirty days or, if such license, permit, or privilege to
21 drive already is suspended, revoked, or denied at the time the finding
22 of probation violation is made, the suspension, revocation, or denial
23 then in effect shall be extended by thirty days. The court shall
24 notify the department of any suspension, revocation, or denial or any
25 extension of a suspension, revocation, or denial imposed under this
26 subsection.

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

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

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

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

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

36 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
37 9A.36.050 or an equivalent local ordinance, if the conviction is the
38 result of a charge that was originally filed as a violation of RCW

1 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
2 46.61.520 or 46.61.522;

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

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

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

15 (b) "Within five years" means that the arrest for a prior offense
16 occurred within five years of the arrest for the current offense.

17 **Sec. 2.** RCW 46.61.520 and 1996 c 199 s 7 are each amended to read
18 as follows:

19 (1) When the death of any person ensues within three years as a
20 proximate result of injury proximately caused by the driving of any
21 vehicle by any person, the driver is guilty of vehicular homicide if
22 the driver was operating a motor vehicle:

23 (a) While under the influence of intoxicating liquor or any drug,
24 as defined by RCW 46.61.502; or

25 (b) In a reckless manner; or

26 (c) With disregard for the safety of others.

27 (2) Vehicular homicide is a class A felony punishable under chapter
28 9A.20 RCW, except that, for a conviction under subsection (1)(a) of
29 this section, an additional two years shall be added to the sentence
30 for each prior offense as defined in RCW 46.61.5055.

31 **Sec. 3.** RCW 9.94A.310 and 1997 c 365 s 3 and 1997 c 338 s 50 are
32 each reenacted and amended to read as follows:

1 (1)

TABLE 1

2

Sentencing Grid

3 SERIOUSNESS

4 SCORE

OFFENDER SCORE

5 9 or

6 0 1 2 3 4 5 6 7 8 more

7

8 XV Life Sentence without Parole/Death Penalty

9

10	XIV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
11		240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
12		320	333	347	361	374	388	416	450	493	548

13

14	XIII	14y4m	15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y
15		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
16		220	234	244	254	265	275	295	316	357	397

17

18	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
19		93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
20		123	136	147	160	171	184	216	236	277	318

21

22	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
23		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
24		102	114	125	136	147	158	194	211	245	280

25

26	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
27		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
28		68	75	82	89	96	102	130	144	171	198

29

30	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
31		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
32		41	48	54	61	68	75	102	116	144	171

33

34	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
35		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
36		27	34	41	48	54	61	89	102	116	144

37

1	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
2		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
3		20	27	34	41	48	54	75	89	102	116
4											
5	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
6		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
7		14	20	27	34	41	48	61	75	89	102
8											
9	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
10		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
11		12	14	17	20	29	43	54	68	82	96
12											
13	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
14		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
15		9	12	14	17	20	29	43	57	70	84
16											
17	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
18		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
19		3	8	12	12	16	22	29	43	57	68
20											
21	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
22		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
23		Days	6	9	12	14	18	22	29	43	57
24											
25	I			3m	4m	5m	8m	13m	16m	20m	2y2m
26		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
27		Days	Days	5	6	8	12	14	18	22	29
28											

29 NOTE: Numbers in the first horizontal row of each seriousness category
30 represent sentencing midpoints in years(y) and months(m). Numbers in
31 the second and third rows represent presumptive sentencing ranges in
32 months, or in days if so designated. 12+ equals one year and one day.

33 (2) For persons convicted of the anticipatory offenses of criminal
34 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
35 presumptive sentence is determined by locating the sentencing grid
36 sentence range defined by the appropriate offender score and the
37 seriousness level of the completed crime, and multiplying the range by
38 75 percent.

1 (3) The following additional times shall be added to the
2 presumptive sentence for felony crimes committed after July 23, 1995,
3 if the offender or an accomplice was armed with a firearm as defined in
4 RCW 9.41.010 and the offender is being sentenced for one of the crimes
5 listed in this subsection as eligible for any firearm enhancements
6 based on the classification of the completed felony crime. If the
7 offender or an accomplice was armed with a firearm as defined in RCW
8 9.41.010 and the offender is being sentenced for an anticipatory
9 offense under chapter 9A.28 RCW to commit one of the crimes listed in
10 this subsection as eligible for any firearm enhancements, the following
11 additional times shall be added to the presumptive sentence determined
12 under subsection (2) of this section based on the felony crime of
13 conviction as classified under RCW 9A.28.020:

14 (a) Five years for any felony defined under any law as a class A
15 felony or with a maximum sentence of at least twenty years, or both,
16 and not covered under (f) of this subsection.

17 (b) Three years for any felony defined under any law as a class B
18 felony or with a maximum sentence of ten years, or both, and not
19 covered under (f) of this subsection.

20 (c) Eighteen months for any felony defined under any law as a
21 class C felony or with a maximum sentence of five years, or both, and
22 not covered under (f) of this subsection.

23 (d) If the offender is being sentenced for any firearm
24 enhancements under (a), (b), and/or (c) of this subsection and the
25 offender has previously been sentenced for any deadly weapon
26 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
27 subsection or subsection (4)(a), (b), and/or (c) of this section, or
28 both, any and all firearm enhancements under this subsection shall be
29 twice the amount of the enhancement listed.

30 (e) Notwithstanding any other provision of law, any and all
31 firearm enhancements under this section are mandatory, shall be served
32 in total confinement, and shall not run concurrently with any other
33 sentencing provisions.

34 (f) The firearm enhancements in this section shall apply to all
35 felony crimes except the following: Possession of a machine gun,
36 possessing a stolen firearm, drive-by shooting, theft of a firearm,
37 unlawful possession of a firearm in the first and second degree, and
38 use of a machine gun in a felony.

1 (g) If the presumptive sentence under this section exceeds the
2 statutory maximum for the offense, the statutory maximum sentence shall
3 be the presumptive sentence unless the offender is a persistent
4 offender as defined in RCW 9.94A.030.

5 (4) The following additional times shall be added to the
6 presumptive sentence for felony crimes committed after July 23, 1995,
7 if the offender or an accomplice was armed with a deadly weapon as
8 defined in this chapter other than a firearm as defined in RCW 9.41.010
9 and the offender is being sentenced for one of the crimes listed in
10 this subsection as eligible for any deadly weapon enhancements based on
11 the classification of the completed felony crime. If the offender or
12 an accomplice was armed with a deadly weapon other than a firearm as
13 defined in RCW 9.41.010 and the offender is being sentenced for an
14 anticipatory offense under chapter 9A.28 RCW to commit one of the
15 crimes listed in this subsection as eligible for any deadly weapon
16 enhancements, the following additional times shall be added to the
17 presumptive sentence determined under subsection (2) of this section
18 based on the felony crime of conviction as classified under RCW
19 9A.28.020:

20 (a) Two years for any felony defined under any law as a class A
21 felony or with a maximum sentence of at least twenty years, or both,
22 and not covered under (f) of this subsection.

23 (b) One year for any felony defined under any law as a class B
24 felony or with a maximum sentence of ten years, or both, and not
25 covered under (f) of this subsection.

26 (c) Six months for any felony defined under any law as a class C
27 felony or with a maximum sentence of five years, or both, and not
28 covered under (f) of this subsection.

29 (d) If the offender is being sentenced under (a), (b), and/or (c)
30 of this subsection for any deadly weapon enhancements and the offender
31 has previously been sentenced for any deadly weapon enhancements after
32 July 23, 1995, under (a), (b), and/or (c) of this subsection or
33 subsection (3)(a), (b), and/or (c) of this section, or both, any and
34 all deadly weapon enhancements under this subsection shall be twice the
35 amount of the enhancement listed.

36 (e) Notwithstanding any other provision of law, any and all deadly
37 weapon enhancements under this section are mandatory, shall be served
38 in total confinement, and shall not run concurrently with any other
39 sentencing provisions.

1 (f) The deadly weapon enhancements in this section shall apply to
2 all felony crimes except the following: Possession of a machine gun,
3 possessing a stolen firearm, drive-by shooting, theft of a firearm,
4 unlawful possession of a firearm in the first and second degree, and
5 use of a machine gun in a felony.

6 (g) If the presumptive sentence under this section exceeds the
7 statutory maximum for the offense, the statutory maximum sentence shall
8 be the presumptive sentence unless the offender is a persistent
9 offender as defined in RCW 9.94A.030.

10 (5) The following additional times shall be added to the
11 presumptive sentence if the offender or an accomplice committed the
12 offense while in a county jail or state correctional facility as that
13 term is defined in this chapter and the offender is being sentenced for
14 one of the crimes listed in this subsection. If the offender or an
15 accomplice committed one of the crimes listed in this subsection while
16 in a county jail or state correctional facility as that term is defined
17 in this chapter, and the offender is being sentenced for an
18 anticipatory offense under chapter 9A.28 RCW to commit one of the
19 crimes listed in this subsection, the following additional times shall
20 be added to the presumptive sentence determined under subsection (2) of
21 this section:

22 (a) Eighteen months for offenses committed under RCW
23 69.50.401(a)(1) (i) or (ii) or 69.50.410;

24 (b) Fifteen months for offenses committed under RCW
25 69.50.401(a)(1) (iii), (iv), and (v);

26 (c) Twelve months for offenses committed under RCW 69.50.401(d).

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

30 (6) An additional twenty-four months shall be added to the
31 presumptive sentence for any ranked offense involving a violation of
32 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

33 (7) An additional two years shall be added to the presumptive
34 sentence for vehicular homicide committed while under the influence of
35 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
36 prior offense as defined in RCW 46.61.5055.

37 **Sec. 4.** RCW 9.94A.360 and 1997 c 338 s 5 are each amended to read
38 as follows:

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

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

5 (1) A prior conviction is a conviction which exists before the
6 date of sentencing for the offense for which the offender score is
7 being computed. Convictions entered or sentenced on the same date as
8 the conviction for which the offender score is being computed shall be
9 deemed "other current offenses" within the meaning of RCW 9.94A.400.

10 (2) Class A and sex prior felony convictions shall always be
11 included in the offender score. Class B prior felony convictions other
12 than sex offenses shall not be included in the offender score, if since
13 the last date of release from confinement (including full-time
14 residential treatment) pursuant to a felony conviction, if any, or
15 entry of judgment and sentence, the offender had spent ten consecutive
16 years in the community without committing any crime that subsequently
17 results in a conviction. Class C prior felony convictions other than
18 sex offenses shall not be included in the offender score if, since the
19 last date of release from confinement (including full-time residential
20 treatment) pursuant to a felony conviction, if any, or entry of
21 judgment and sentence, the offender had spent five consecutive years in
22 the community without committing any crime that subsequently results in
23 a conviction. Serious traffic convictions shall not be included in the
24 offender score if, since the last date of release from confinement
25 (including full-time residential treatment) pursuant to a felony
26 conviction, if any, or entry of judgment and sentence, the offender
27 spent five years in the community without committing any crime that
28 subsequently results in a conviction. This subsection applies to both
29 adult and juvenile prior convictions.

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

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

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

7 (i) Prior offenses which were found, under RCW 9.94A.400(1)(a), to
8 encompass the same criminal conduct, shall be counted as one offense,
9 the offense that yields the highest offender score. The current
10 sentencing court shall determine with respect to other prior adult
11 offenses for which sentences were served concurrently or prior juvenile
12 offenses for which sentences were served consecutively, whether those
13 offenses shall be counted as one offense or as separate offenses using
14 the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and
15 if the court finds that they shall be counted as one offense, then the
16 offense that yields the highest offender score shall be used. The
17 current sentencing court may presume that such other prior offenses
18 were not the same criminal conduct from sentences imposed on separate
19 dates, or in separate counties or jurisdictions, or in separate
20 complaints, indictments, or informations;

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

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

33 (6) If the present conviction is one of the anticipatory offenses
34 of criminal attempt, solicitation, or conspiracy, count each prior
35 conviction as if the present conviction were for a completed offense.

36 (7) If the present conviction is for a nonviolent offense and not
37 covered by subsection (11) or (12) of this section, count one point for
38 each adult prior felony conviction and one point for each juvenile

1 prior violent felony conviction and 1/2 point for each juvenile prior
2 nonviolent felony conviction.

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

8 (9) If the present conviction is for Murder 1 or 2, Assault 1,
9 Assault of a Child 1, Kidnapping 1, Homicide by Abuse, or Rape 1, count
10 three points for prior adult and juvenile convictions for crimes in
11 these categories, two points for each prior adult and juvenile violent
12 conviction (not already counted), one point for each prior adult
13 nonviolent felony conviction, and 1/2 point for each prior juvenile
14 nonviolent felony conviction.

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

20 (11) If the present conviction is for a felony traffic offense
21 count two points for each adult or juvenile prior conviction for
22 Vehicular Homicide or Vehicular Assault; for each felony offense or
23 serious traffic offense, count one point for each adult and 1/2 point
24 for each juvenile prior conviction. This subsection shall not apply
25 when additional time is added to a sentence pursuant to RCW
26 46.61.520(2).

27 (12) If the present conviction is for a drug offense count three
28 points for each adult prior felony drug offense conviction and two
29 points for each juvenile drug offense. All other adult and juvenile
30 felonies are scored as in subsection (8) of this section if the current
31 drug offense is violent, or as in subsection (7) of this section if the
32 current drug offense is nonviolent.

33 (13) If the present conviction is for Willful Failure to Return
34 from Furlough, RCW 72.66.060, Willful Failure to Return from Work
35 Release, RCW 72.65.070, or Escape from Community Custody, RCW
36 72.09.310, count only prior escape convictions in the offender score.
37 Count adult prior escape convictions as one point and juvenile prior
38 escape convictions as 1/2 point.

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

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

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

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

15 NEW SECTION. **Sec. 5.** A new section is added to chapter 46.61 RCW
16 to read as follows:

17 (1) Immediately before the court defers prosecution under RCW
18 10.05.020, dismisses a charge, or orders a sentence for any offense
19 listed in subsection (2) of this section, the court and prosecutor
20 shall verify the defendant's criminal history and driving record. The
21 order shall include specific findings as to the criminal history and
22 driving record. For purposes of this section, the criminal history
23 shall include all previous convictions and orders of deferred
24 prosecution, as reported through the judicial information system or
25 otherwise available to the court or prosecutor, current to within the
26 period specified in subsection (3) of this section before the date of
27 the order. For purposes of this section, the driving record shall
28 include all information reported to the court by the department of
29 licensing.

30 (2) The offenses to which this section applies are violations of:
31 (a) RCW 46.61.502 or an equivalent local ordinance; (b) RCW 46.61.504
32 or an equivalent local ordinance; (c) RCW 46.61.520 committed while
33 under the influence of intoxicating liquor or any drug; (d) RCW
34 46.61.522 committed while under the influence of intoxicating liquor or
35 any drug; and (e) RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
36 equivalent local ordinance, if the conviction is the result of a charge
37 that was originally filed as a violation of RCW 46.61.502 or 46.61.504
38 or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

1 (3) The periods applicable to previous convictions and orders of
2 deferred prosecution are: (a) One working day, in the case of previous
3 actions of courts that fully participate in the state judicial
4 information system; and (b) seven calendar days, in the case of
5 previous actions of courts that do not fully participate in the
6 judicial information system. For purposes of this subsection, "fully
7 participate" means regularly providing records to and receiving records
8 from the system by electronic means on a daily basis.

9 NEW SECTION. **Sec. 6.** If specific funding for the purposes of
10 this act, referencing this act by bill or chapter number, is not
11 provided by June 30, 1998, in the omnibus appropriations act, this act
12 is null and void.

13 NEW SECTION. **Sec. 7.** This act takes effect January 1, 1999.
Passed the Senate March 7, 1998.
Passed the House March 5, 1998.
Approved by the Governor March 30, 1998.
Filed in Office of Secretary of State March 30, 1998.