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SENATE BILL 6683

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State of Washington 57th Legislature

2002 Regular Session

By Senators Eide, Costa, T. Sheldon, Oke, Long and Rasmussen

Read first time 01/26/2002. Referred to Committee on Judiciary.

1 AN ACT Relating to driving while under the influence of alcohol or  
2 any drug; amending RCW 46.61.502, 46.61.504, 46.61.5058, 46.61.524,  
3 9.94A.525, and 9.94A.650; reenacting and amending RCW 46.61.5055,  
4 9.94A.515, 46.20.3101, and 46.20.391; and prescribing penalties.

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

6 **Sec. 1.** RCW 46.61.502 and 1998 c 213 s 3 are each amended to read  
7 as follows:

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

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

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

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

18 (2) The fact that a person charged with a violation of this section  
19 is or has been entitled to use a drug under the laws of this state

1 shall not constitute a defense against a charge of violating this  
2 section.

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

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

21 (5) A violation of this section is a gross misdemeanor punishable  
22 pursuant to RCW 46.61.5055 except that a person is guilty of a class C  
23 felony punishable under chapter 9A.20 RCW if the person drives while  
24 under the influence of intoxicating liquor or any drug as defined by  
25 this section and has previously been convicted of driving or being in  
26 physical control of a motor vehicle while under the influence of  
27 intoxicating liquor or any drug on two or more prior occasions within  
28 a ten-year period, or the person has a previous conviction of felony  
29 driving or being in actual physical control while under the influence  
30 of intoxicating liquor or any drug, vehicular assault (RCW 46.61.522),  
31 or vehicular homicide (RCW 46.61.520).

32 **Sec. 2.** RCW 46.61.504 and 1998 c 213 s 5 are each amended to read  
33 as follows:

34 (1) A person is guilty of being in actual physical control of a  
35 motor vehicle while under the influence of intoxicating liquor or any  
36 drug if the person has actual physical control of a vehicle within this  
37 state:

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

5 (b) While the person is under the influence of or affected by  
6 intoxicating liquor or any drug; or

7 (c) While the person is under the combined influence of or affected  
8 by intoxicating liquor and any drug.

9 (2) The fact that a person charged with a violation of this section  
10 is or has been entitled to use a drug under the laws of this state does  
11 not constitute a defense against any charge of violating this section.  
12 No person may be convicted under this section if, prior to being  
13 pursued by a law enforcement officer, the person has moved the vehicle  
14 safely off the roadway.

15 (3) It is an affirmative defense to a violation of subsection  
16 (1)(a) of this section which the defendant must prove by a  
17 preponderance of the evidence that the defendant consumed a sufficient  
18 quantity of alcohol after the time of being in actual physical control  
19 of the vehicle and before the administration of an analysis of the  
20 person's breath or blood to cause the defendant's alcohol concentration  
21 to be 0.08 or more within two hours after being in such control. The  
22 court shall not admit evidence of this defense unless the defendant  
23 notifies the prosecution prior to the omnibus or pretrial hearing in  
24 the case of the defendant's intent to assert the affirmative defense.

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

34 (5) A violation of this section is a gross misdemeanor punishable  
35 pursuant to RCW 46.61.5055 except that a person is guilty of a class C  
36 felony punishable under chapter 9A.20 RCW if the person is in actual  
37 physical control of a motor vehicle while under the influence of  
38 intoxicating liquor or any drug as defined by this section and has been  
39 previously convicted of being in physical control of a motor vehicle or

1 driving a motor vehicle while under the influence of intoxicating  
2 liquor or any drug on two or more occasions within a ten-year period,  
3 or the person has a previous conviction of felony driving or being in  
4 actual physical control while under the influence of intoxicating  
5 liquor or any drug, vehicular assault (RCW 46.61.522), or vehicular  
6 homicide (RCW 46.61.520).

7       **Sec. 3.** RCW 46.61.5055 and 1999 c 324 s 5, 1999 c 274 s 6, and  
8 1999 c 5 s 1 are each reenacted and amended to read as follows:

9       (1) Except as provided in subsection (3) of this section, a person  
10 who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who  
11 has no prior offense within (~~seven~~) ten years shall be punished as  
12 follows:

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

17       (i) By imprisonment for not less than one day nor more than one  
18 year. Twenty-four consecutive hours of the imprisonment may not be  
19 suspended or deferred unless the court finds that the imposition of  
20 this mandatory minimum sentence would impose a substantial risk to the  
21 offender's physical or mental well-being. Whenever the mandatory  
22 minimum sentence is suspended or deferred, the court shall state in  
23 writing the reason for granting the suspension or deferral and the  
24 facts upon which the suspension or deferral is based. In lieu of the  
25 mandatory minimum term of imprisonment required under this subsection  
26 (1)(a)(i), the court may order not less than fifteen days of electronic  
27 home monitoring. The offender shall pay the cost of electronic home  
28 monitoring. The county or municipality in which the penalty is being  
29 imposed shall determine the cost. The court may also require the  
30 offender's electronic home monitoring device to include an alcohol  
31 detection breathalyzer, and the court may restrict the amount of  
32 alcohol the offender may consume during the time the offender is on  
33 electronic home monitoring; and

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

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

5 (i) By imprisonment for not less than two days nor more than one  
6 year. Two consecutive days of the imprisonment may not be suspended or  
7 deferred unless the court finds that the imposition of this mandatory  
8 minimum sentence would impose a substantial risk to the offender's  
9 physical or mental well-being. Whenever the mandatory minimum sentence  
10 is suspended or deferred, the court shall state in writing the reason  
11 for granting the suspension or deferral and the facts upon which the  
12 suspension or deferral is based. In lieu of the mandatory minimum term  
13 of imprisonment required under this subsection (1)(b)(i), the court may  
14 order not less than thirty days of electronic home monitoring. The  
15 offender shall pay the cost of electronic home monitoring. The county  
16 or municipality in which the penalty is being imposed shall determine  
17 the cost. The court may also require the offender's electronic home  
18 monitoring device to include an alcohol detection breathalyzer, and the  
19 court may restrict the amount of alcohol the offender may consume  
20 during the time the offender is on electronic home monitoring; and

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

25 (iii) By a court-ordered restriction under RCW 46.20.720.

26 (2) Except as provided in subsection (3) of this section, a person  
27 who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who  
28 has one prior offense within (~~seven~~) ten years shall be punished as  
29 follows:

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

34 (i) By imprisonment for not less than thirty days nor more than one  
35 year and sixty days of electronic home monitoring. The offender shall  
36 pay for the cost of the electronic monitoring. The county or  
37 municipality where the penalty is being imposed shall determine the  
38 cost. The court may also require the offender's electronic home  
39 monitoring device include an alcohol detection breathalyzer, and may

1 restrict the amount of alcohol the offender may consume during the time  
2 the offender is on electronic home monitoring. Thirty days of  
3 imprisonment and sixty days of electronic home monitoring may not be  
4 suspended or deferred unless the court finds that the imposition of  
5 this mandatory minimum sentence would impose a substantial risk to the  
6 offender's physical or mental well-being. Whenever the mandatory  
7 minimum sentence is suspended or deferred, the court shall state in  
8 writing the reason for granting the suspension or deferral and the  
9 facts upon which the suspension or deferral is based; and

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

14 (iii) By a court-ordered restriction under RCW 46.20.720; or

15 (b) In the case of a person whose alcohol concentration was at  
16 least 0.15, or for whom by reason of the person's refusal to take a  
17 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 forty-five days nor more than  
20 one year and ninety days of electronic home monitoring. The offender  
21 shall pay for the cost of the electronic monitoring. The county or  
22 municipality where the penalty is being imposed shall determine the  
23 cost. The court may also require the offender's electronic home  
24 monitoring device include an alcohol detection breathalyzer, and may  
25 restrict the amount of alcohol the offender may consume during the time  
26 the offender is on electronic home monitoring. Forty-five days of  
27 imprisonment and ninety days of electronic home monitoring may not be  
28 suspended or deferred unless the court finds that the imposition of  
29 this mandatory minimum sentence would impose a substantial risk to the  
30 offender's physical or mental well-being. Whenever the mandatory  
31 minimum sentence is suspended or deferred, the court shall state in  
32 writing the reason for granting the suspension or deferral and the  
33 facts upon which the suspension or deferral is based; and

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

38 (iii) By a court-ordered restriction under RCW 46.20.720.

1 (3) A person who is convicted of a violation of RCW 46.61.502 or  
2 46.61.504 and who has two or more prior offenses within ~~((seven))~~ ten  
3 years, or who has a previous conviction of felony driving or being in  
4 actual physical control while under the influence of intoxicating  
5 liquor or any drug, vehicular assault (RCW 46.61.522), or vehicular  
6 homicide (RCW 46.61.520), is guilty of a class C felony and shall be  
7 punished ((as follows):

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

12 (i) ~~By imprisonment for not less than ninety days nor more than one~~  
13 ~~year and one hundred twenty days of electronic home monitoring. The~~  
14 ~~offender shall pay for the cost of the electronic monitoring. The~~  
15 ~~county or municipality where the penalty is being imposed shall~~  
16 ~~determine the cost. The court may also require the offender's~~  
17 ~~electronic home monitoring device include an alcohol detection~~  
18 ~~breathalyzer, and may restrict the amount of alcohol the offender may~~  
19 ~~consume during the time the offender is on electronic home monitoring.~~  
20 ~~Ninety days of imprisonment and one hundred twenty days of electronic~~  
21 ~~home monitoring may not be suspended or deferred unless the court finds~~  
22 ~~that the imposition of this mandatory minimum sentence would impose a~~  
23 ~~substantial risk to the offender's physical or mental well being.~~  
24 ~~Whenever the mandatory minimum sentence is suspended or deferred, the~~  
25 ~~court shall state in writing the reason for granting the suspension or~~  
26 ~~deferral and the facts upon which the suspension or deferral is based;~~  
27 ~~and~~

28 (ii) ~~By a fine of not less than one thousand dollars nor more than~~  
29 ~~five thousand dollars. One thousand 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 a court ordered restriction under RCW 46.20.720; or~~

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

37 (i) ~~By imprisonment for not less than one hundred twenty days nor~~  
38 ~~more than one year and one hundred fifty days of electronic home~~  
39 ~~monitoring. The offender shall pay for the cost of the electronic~~

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

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

18 (iii) By a court-ordered restriction under RCW 46.20.720) ) pursuant  
19 to chapter 9A.20 RCW.

20 (4) In exercising its discretion in setting penalties within the  
21 limits allowed by this section, the court shall particularly consider  
22 the following:

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

25 (b) Whether the person was driving or in physical control of a  
26 vehicle with one or more passengers at the time of the offense.

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

29 (6) The license, permit, or nonresident privilege of a person  
30 convicted of driving or being in physical control of a motor vehicle  
31 while under the influence of intoxicating liquor or drugs must:

32 (a) If the person's alcohol concentration was less than 0.15, or if  
33 for reasons other than the person's refusal to take a test offered  
34 under RCW 46.20.308 there is no test result indicating the person's  
35 alcohol concentration:

36 (i) Where there has been no prior offense within ((seven)) ten  
37 years, be suspended or denied by the department for ninety days;

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

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

4 (b) If the person's alcohol concentration was at least 0.15, or if  
5 by reason of the person's refusal to take a test offered under RCW  
6 46.20.308 there is no test result indicating the person's alcohol  
7 concentration:

8 (i) Where there has been no prior offense within (~~seven~~) ten  
9 years, be revoked or denied by the department for one year;

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

12 (iii) Where there have been two or more prior offenses within  
13 (~~seven~~) ten years, be revoked or denied by the department for four  
14 years.

15 For purposes of this subsection, the department shall refer to the  
16 driver's record maintained under RCW 46.52.120 when determining the  
17 existence of prior offenses.

18 (7) After expiration of any period of suspension, revocation, or  
19 denial of the offender's license, permit, or privilege to drive  
20 required by this section, the department shall place the offender's  
21 driving privilege in probationary status pursuant to RCW 46.20.355.

22 (8)(a) In addition to any nonsuspendable and nondeferrable jail  
23 sentence required by this section, whenever the court imposes less than  
24 one year in jail, the court shall also suspend but shall not defer a  
25 period of confinement for a period not exceeding five years. The court  
26 shall impose conditions of probation that include: (i) Not driving a  
27 motor vehicle within this state without a valid license to drive and  
28 proof of financial responsibility for the future; (ii) not driving a  
29 motor vehicle within this state while having an alcohol concentration  
30 of 0.08 or more within two hours after driving; and (iii) not refusing  
31 to submit to a test of his or her breath or blood to determine alcohol  
32 concentration upon request of a law enforcement officer who has  
33 reasonable grounds to believe the person was driving or was in actual  
34 physical control of a motor vehicle within this state while under the  
35 influence of intoxicating liquor. The court may impose conditions of  
36 probation that include nonrepetition, installation of an ignition  
37 interlock or other biological or technical device on the probationer's  
38 motor vehicle, alcohol or drug treatment, supervised probation, or  
39 other conditions that may be appropriate. The sentence may be imposed

1 in whole or in part upon violation of a condition of probation during  
2 the suspension period.

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

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

17 (9) A court may waive the electronic home monitoring requirements  
18 of this chapter when:

19 (a) The offender does not have a dwelling, telephone service, or  
20 any other necessity to operate an electronic home monitoring system;

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

22 (c) The court determines that there is reason to believe that the  
23 offender would violate the conditions of the electronic home monitoring  
24 penalty.

25 Whenever the mandatory minimum term of electronic home monitoring  
26 is waived, the court shall state in writing the reason for granting the  
27 waiver and the facts upon which the waiver is based, and shall impose  
28 an alternative sentence with similar punitive consequences. The  
29 alternative sentence may include, but is not limited to, additional  
30 jail time, work crew, or work camp.

31 Whenever the combination of jail time and electronic home  
32 monitoring or alternative sentence would exceed three hundred sixty-  
33 five days, the offender shall serve the jail portion of the sentence  
34 first, and the electronic home monitoring or alternative portion of the  
35 sentence shall be reduced so that the combination does not exceed three  
36 hundred sixty-five days.

37 (10) An offender serving a sentence under this section, whether or  
38 not a mandatory minimum term has expired, may be granted an

1 extraordinary medical placement by the jail administrator subject to  
2 the standards and limitations set forth in RCW 9.94A.150(4).

3 (11) For purposes of this section:

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

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

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

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

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

13 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
14 9A.36.050 or an equivalent local ordinance, if the conviction is the  
15 result of a charge that was originally filed as a violation of RCW  
16 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
17 46.61.520 or 46.61.522;

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

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

24 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
25 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
26 ordinance, if the charge under which the deferred prosecution was  
27 granted was originally filed as a violation of RCW 46.61.502 or  
28 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
29 46.61.522; and

30 (b) "Within (~~seven~~) ten years" means that the arrest for a prior  
31 offense occurred within (~~seven~~) ten years of the arrest for the  
32 current offense.

33 **Sec. 4.** RCW 46.61.5058 and 1998 c 207 s 2 are each amended to read  
34 as follows:

35 (1) Upon the arrest of a person or upon the filing of a complaint,  
36 citation, or information in a court of competent jurisdiction, based  
37 upon probable cause to believe that a person has violated RCW 46.61.502  
38 or 46.61.504 or any similar municipal ordinance, if such person has a

1 prior offense within (~~seven~~) ten years as defined in RCW 46.61.5055,  
2 and where the person has been provided written notice that any  
3 transfer, sale, or encumbrance of such person's interest in the vehicle  
4 over which that person was actually driving or had physical control  
5 when the violation occurred, is unlawful pending either acquittal,  
6 dismissal, sixty days after conviction, or other termination of the  
7 charge, such person shall be prohibited from encumbering, selling, or  
8 transferring his or her interest in such vehicle, except as otherwise  
9 provided in (a), (b), and (c) of this subsection, until either  
10 acquittal, dismissal, sixty days after conviction, or other termination  
11 of the charge. The prohibition against transfer of title shall not be  
12 stayed pending the determination of an appeal from the conviction.

13 (a) A vehicle encumbered by a bona fide security interest may be  
14 transferred to the secured party or to a person designated by the  
15 secured party;

16 (b) A leased or rented vehicle may be transferred to the lessor,  
17 rental agency, or to a person designated by the lessor or rental  
18 agency; and

19 (c) A vehicle may be transferred to a third party or a vehicle  
20 dealer who is a bona fide purchaser or may be subject to a bona fide  
21 security interest in the vehicle unless it is established that (i) in  
22 the case of a purchase by a third party or vehicle dealer, such party  
23 or dealer had actual notice that the vehicle was subject to the  
24 prohibition prior to the purchase, or (ii) in the case of a security  
25 interest, the holder of the security interest had actual notice that  
26 the vehicle was subject to the prohibition prior to the encumbrance of  
27 title.

28 (2) On conviction for a violation of either RCW 46.61.502 or  
29 46.61.504 or any similar municipal ordinance where the person convicted  
30 has a prior offense within (~~seven~~) ten years as defined in RCW  
31 46.61.5055, the motor vehicle the person was driving or over which the  
32 person had actual physical control at the time of the offense, if the  
33 person has a financial interest in the vehicle, is subject to seizure  
34 and forfeiture pursuant to this section.

35 (3) A vehicle subject to forfeiture under this chapter may be  
36 seized by a law enforcement officer of this state upon process issued  
37 by a court of competent jurisdiction. Seizure of a vehicle may be made  
38 without process if the vehicle subject to seizure has been the subject

1 of a prior judgment in favor of the state in a forfeiture proceeding  
2 based upon this section.

3 (4) Seizure under subsection (3) of this section automatically  
4 commences proceedings for forfeiture. The law enforcement agency under  
5 whose authority the seizure was made shall cause notice of the seizure  
6 and intended forfeiture of the seized vehicle to be served within  
7 fifteen days after the seizure on the owner of the vehicle seized, on  
8 the person in charge of the vehicle, and on any person having a known  
9 right or interest in the vehicle, including a community property  
10 interest. The notice of seizure may be served by any method authorized  
11 by law or court rule, including but not limited to service by certified  
12 mail with return receipt requested. Service by mail is complete upon  
13 mailing within the fifteen-day period after the seizure. Notice of  
14 seizure in the case of property subject to a security interest that has  
15 been perfected on a certificate of title shall be made by service upon  
16 the secured party or the secured party's assignee at the address shown  
17 on the financing statement or the certificate of title.

18 (5) If no person notifies the seizing law enforcement agency in  
19 writing of the person's claim of ownership or right to possession of  
20 the seized vehicle within forty-five days of the seizure, the vehicle  
21 is deemed forfeited.

22 (6) If a person notifies the seizing law enforcement agency in  
23 writing of the person's claim of ownership or right to possession of  
24 the seized vehicle within forty-five days of the seizure, the law  
25 enforcement agency shall give the person or persons a reasonable  
26 opportunity to be heard as to the claim or right. The hearing shall be  
27 before the chief law enforcement officer of the seizing agency or the  
28 chief law enforcement officer's designee, except where the seizing  
29 agency is a state agency as defined in RCW 34.12.020, the hearing shall  
30 be before the chief law enforcement officer of the seizing agency or an  
31 administrative law judge appointed under chapter 34.12 RCW, except that  
32 any person asserting a claim or right may remove the matter to a court  
33 of competent jurisdiction. Removal may only be accomplished according  
34 to the rules of civil procedure. The person seeking removal of the  
35 matter must serve process against the state, county, political  
36 subdivision, or municipality that operates the seizing agency, and any  
37 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,  
38 within forty-five days after the person seeking removal has notified  
39 the seizing law enforcement agency of the person's claim of ownership

1 or right to possession. The court to which the matter is to be removed  
2 shall be the district court when the aggregate value of the vehicle is  
3 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
4 before the seizing agency and any appeal therefrom shall be under Title  
5 34 RCW. In a court hearing between two or more claimants to the  
6 vehicle involved, the prevailing party shall be entitled to a judgment  
7 for costs and reasonable attorneys' fees. The burden of producing  
8 evidence shall be upon the person claiming to be the legal owner or the  
9 person claiming to have the lawful right to possession of the vehicle.  
10 The seizing law enforcement agency shall promptly return the vehicle to  
11 the claimant upon a determination by the administrative law judge or  
12 court that the claimant is the present legal owner under Title 46 RCW  
13 or is lawfully entitled to possession of the vehicle.

14 (7) When a vehicle is forfeited under this chapter the seizing law  
15 enforcement agency may sell the vehicle, retain it for official use, or  
16 upon application by a law enforcement agency of this state release the  
17 vehicle to that agency for the exclusive use of enforcing this title;  
18 provided, however, that the agency shall first satisfy any bona fide  
19 security interest to which the vehicle is subject under subsection  
20 (1)(a) or (c) of this section.

21 (8) When a vehicle is forfeited, the seizing agency shall keep a  
22 record indicating the identity of the prior owner, if known, a  
23 description of the vehicle, the disposition of the vehicle, the value  
24 of the vehicle at the time of seizure, and the amount of proceeds  
25 realized from disposition of the vehicle.

26 (9) Each seizing agency shall retain records of forfeited vehicles  
27 for at least (~~seven~~) ten years.

28 (10) Each seizing agency shall file a report including a copy of  
29 the records of forfeited vehicles with the state treasurer each  
30 calendar quarter.

31 (11) The quarterly report need not include a record of a forfeited  
32 vehicle that is still being held for use as evidence during the  
33 investigation or prosecution of a case or during the appeal from a  
34 conviction.

35 (12) By January 31st of each year, each seizing agency shall remit  
36 to the state treasurer an amount equal to ten percent of the net  
37 proceeds of vehicles forfeited during the preceding calendar year.  
38 Money remitted shall be deposited in the public safety and education  
39 account.

1 (13) The net proceeds of a forfeited vehicle is the value of the  
2 forfeitable interest in the vehicle after deducting the cost of  
3 satisfying a bona fide security interest to which the vehicle is  
4 subject at the time of seizure; and in the case of a sold vehicle,  
5 after deducting the cost of sale, including reasonable fees or  
6 commissions paid to independent selling agents.

7 (14) The value of a sold forfeited vehicle is the sale price. The  
8 value of a retained forfeited vehicle is the fair market value of the  
9 vehicle at the time of seizure, determined when possible by reference  
10 to an applicable commonly used index, such as the index used by the  
11 department of licensing. A seizing agency may, but need not, use an  
12 independent qualified appraiser to determine the value of retained  
13 vehicles. If an appraiser is used, the value of the vehicle appraised  
14 is net of the cost of the appraisal.

15 **Sec. 5.** RCW 46.61.524 and 2001 c 64 s 7 are each amended to read  
16 as follows:

17 (1) A person convicted under RCW 46.61.520(1)(a) or 46.61.522(1)(b)  
18 or of a felony violation of RCW 46.61.502 or 46.61.504 shall, as a  
19 condition of community custody imposed under RCW 9.94A.545 or community  
20 placement imposed under RCW 9.94A.660, complete a diagnostic evaluation  
21 by an alcohol or drug dependency agency approved by the department of  
22 social and health services or a qualified probation department, as  
23 defined under RCW 46.61.516 that has been approved by the department of  
24 social and health services. This report shall be forwarded to the  
25 department of licensing. If the person is found to have an alcohol or  
26 drug problem that requires treatment, the person shall complete  
27 treatment in a program approved by the department of social and health  
28 services under chapter 70.96A RCW. If the person is found not to have  
29 an alcohol or drug problem that requires treatment, he or she shall  
30 complete a course in an information school approved by the department  
31 of social and health services under chapter 70.96A RCW. The convicted  
32 person shall pay all costs for any evaluation, education, or treatment  
33 required by this section, unless the person is eligible for an existing  
34 program offered or approved by the department of social and health  
35 services. Nothing in chapter 348, Laws of 1991 requires the addition  
36 of new treatment or assessment facilities nor affects the department of  
37 social and health services use of existing programs and facilities  
38 authorized by law.

1 (2) As provided for under RCW 46.20.285, the department shall  
2 revoke the license, permit to drive, or a nonresident privilege of a  
3 person convicted of vehicular homicide under RCW 46.61.520 or vehicular  
4 assault under RCW 46.61.522. The department shall determine the  
5 eligibility of a person convicted of vehicular homicide under RCW  
6 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to  
7 receive a license based upon the report provided by the designated  
8 alcoholism treatment facility or probation department, and shall deny  
9 reinstatement until satisfactory progress in an approved program has  
10 been established and the person is otherwise qualified.

11 **Sec. 6.** RCW 9.94A.515 and 2001 2nd sp.s. c 12 s 361, 2001 c 300 s  
12 4, 2001 c 217 s 12, and 2001 c 17 s 1 are each reenacted and amended to  
13 read as follows:

14 TABLE 2

15 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

16	XVI	Aggravated Murder 1 (RCW 10.95.020)
17	XV	Homicide by abuse (RCW 9A.32.055)
18		Malicious explosion 1 (RCW 70.74.280(1))
19		Murder 1 (RCW 9A.32.030)
20	XIV	Murder 2 (RCW 9A.32.050)
21	XIII	Malicious explosion 2 (RCW 70.74.280(2))
22		Malicious placement of an explosive 1 (RCW
23		70.74.270(1))
24	XII	Assault 1 (RCW 9A.36.011)
25		Assault of a Child 1 (RCW 9A.36.120)
26		Malicious placement of an imitation device
27		1 (RCW 70.74.272(1)(a))
28		Rape 1 (RCW 9A.44.040)
29		Rape of a Child 1 (RCW 9A.44.073)
30	XI	Manslaughter 1 (RCW 9A.32.060)
31		Rape 2 (RCW 9A.44.050)
32		Rape of a Child 2 (RCW 9A.44.076)
33	X	Child Molestation 1 (RCW 9A.44.083)

1 Indecent Liberties (with forcible  
2 compulsion) (RCW 9A.44.100(1)(a))  
3 Kidnapping 1 (RCW 9A.40.020)  
4 Leading Organized Crime (RCW  
5 9A.82.060(1)(a))  
6 Malicious explosion 3 (RCW 70.74.280(3))  
7 Manufacture of methamphetamine (RCW  
8 69.50.401(a)(1)(ii))  
9 Over 18 and deliver heroin,  
10 methamphetamine, a narcotic from  
11 Schedule I or II, or flunitrazepam  
12 from Schedule IV to someone under 18  
13 (RCW 69.50.406)  
14 Sexually Violent Predator Escape (RCW  
15 9A.76.115)

16 IX Assault of a Child 2 (RCW 9A.36.130)  
17 Controlled Substance Homicide (RCW  
18 69.50.415)  
19 Explosive devices prohibited (RCW  
20 70.74.180)  
21 Hit and Run--Death (RCW 46.52.020(4)(a))  
22 Homicide by Watercraft, by being under the  
23 influence of intoxicating liquor or  
24 any drug (RCW 79A.60.050)  
25 Inciting Criminal Profiteering (RCW  
26 9A.82.060(1)(b))  
27 Malicious placement of an explosive 2 (RCW  
28 70.74.270(2))  
29 Over 18 and deliver narcotic from Schedule  
30 III, IV, or V or a nonnarcotic, except  
31 flunitrazepam or methamphetamine, from  
32 Schedule I-V to someone under 18 and 3  
33 years junior (RCW 69.50.406)  
34 Robbery 1 (RCW 9A.56.200)  
35 Sexual Exploitation (RCW 9.68A.040)  
36 Vehicular Homicide, by being under the  
37 influence of intoxicating liquor or  
38 any drug (RCW 46.61.520)

1 VIII Arson 1 (RCW 9A.48.020)  
2 Deliver or possess with intent to deliver  
3 methamphetamine (RCW  
4 69.50.401(a)(1)(ii))  
5 Homicide by Watercraft, by the operation of  
6 any vessel in a reckless manner (RCW  
7 79A.60.050)  
8 Manslaughter 2 (RCW 9A.32.070)  
9 Manufacture, deliver, or possess with  
10 intent to deliver amphetamine (RCW  
11 69.50.401(a)(1)(ii))  
12 Manufacture, deliver, or possess with  
13 intent to deliver heroin or cocaine  
14 (RCW 69.50.401(a)(1)(i))  
15 Possession of Ephedrine, Pseudoephedrine,  
16 or Anhydrous Ammonia with intent to  
17 manufacture methamphetamine (RCW  
18 69.50.440)  
19 Promoting Prostitution 1 (RCW 9A.88.070)  
20 Selling for profit (controlled or  
21 counterfeit) any controlled substance  
22 (RCW 69.50.410)  
23 Theft of Anhydrous Ammonia (RCW 69.55.010)  
24 Vehicular Homicide, by the operation of any  
25 vehicle in a reckless manner (RCW  
26 46.61.520)

27 VII Burglary 1 (RCW 9A.52.020)  
28 Child Molestation 2 (RCW 9A.44.086)  
29 Dealing in depictions of minor engaged in  
30 sexually explicit conduct (RCW  
31 9.68A.050)  
32 Drive-by Shooting (RCW 9A.36.045)  
33 Homicide by Watercraft, by disregard for  
34 the safety of others (RCW 79A.60.050)  
35 Indecent Liberties (without forcible  
36 compulsion) (RCW 9A.44.100(1) (b) and  
37 (c))  
38 Introducing Contraband 1 (RCW 9A.76.140)

1 Involving a minor in drug dealing (RCW  
2 69.50.401(f))  
3 Malicious placement of an explosive 3 (RCW  
4 70.74.270(3))  
5 Sending, bringing into state depictions of  
6 minor engaged in sexually explicit  
7 conduct (RCW 9.68A.060)  
8 Unlawful Possession of a Firearm in the  
9 first degree (RCW 9.41.040(1)(a))  
10 Use of a Machine Gun in Commission of a  
11 Felony (RCW 9.41.225)  
12 Vehicular Homicide, by disregard for the  
13 safety of others (RCW 46.61.520)

14 VI Bail Jumping with Murder 1 (RCW  
15 9A.76.170(3)(a))  
16 Bribery (RCW 9A.68.010)  
17 Felony driving or physical control of a  
18 motor vehicle while under the  
19 influence of intoxicating liquor or  
20 any drug (RCW 46.61.5055(3))  
21 Incest 1 (RCW 9A.64.020(1))  
22 Intimidating a Judge (RCW 9A.72.160)  
23 Intimidating a Juror/Witness (RCW  
24 9A.72.110, 9A.72.130)  
25 Malicious placement of an imitation device  
26 2 (RCW 70.74.272(1)(b))  
27 Manufacture, deliver, or possess with  
28 intent to deliver narcotics from  
29 Schedule I or II (except heroin or  
30 cocaine) or flunitrazepam from  
31 Schedule IV (RCW 69.50.401(a)(1)(i))  
32 Rape of a Child 3 (RCW 9A.44.079)  
33 Theft of a Firearm (RCW 9A.56.300)  
34 Unlawful Storage of Anhydrous Ammonia (RCW  
35 69.55.020)

36 V Abandonment of dependent person 1 (RCW  
37 9A.42.060)

1 Advancing money or property for  
2 extortionate extension of credit (RCW  
3 9A.82.030)  
4 Bail Jumping with class A Felony (RCW  
5 9A.76.170(3)(b))  
6 Child Molestation 3 (RCW 9A.44.089)  
7 Criminal Mistreatment 1 (RCW 9A.42.020)  
8 Custodial Sexual Misconduct 1 (RCW  
9 9A.44.160)  
10 Delivery of imitation controlled substance  
11 by person eighteen or over to person  
12 under eighteen (RCW 69.52.030(2))  
13 Domestic Violence Court Order Violation  
14 (RCW 10.99.040, 10.99.050, 26.09.300,  
15 26.10.220, 26.26.138, 26.50.110,  
16 26.52.070, or 74.34.145)  
17 Extortion 1 (RCW 9A.56.120)  
18 Extortionate Extension of Credit (RCW  
19 9A.82.020)  
20 Extortionate Means to Collect Extensions of  
21 Credit (RCW 9A.82.040)  
22 Incest 2 (RCW 9A.64.020(2))  
23 Kidnapping 2 (RCW 9A.40.030)  
24 Perjury 1 (RCW 9A.72.020)  
25 Persistent prison misbehavior (RCW  
26 9.94.070)  
27 Possession of a Stolen Firearm (RCW  
28 9A.56.310)  
29 Rape 3 (RCW 9A.44.060)  
30 Rendering Criminal Assistance 1 (RCW  
31 9A.76.070)  
32 Sexual Misconduct with a Minor 1 (RCW  
33 9A.44.093)  
34 Sexually Violating Human Remains (RCW  
35 9A.44.105)  
36 Stalking (RCW 9A.46.110)  
37 IV Arson 2 (RCW 9A.48.030)  
38 Assault 2 (RCW 9A.36.021)  
39 Assault by Watercraft (RCW 79A.60.060)

1           Bribing a Witness/Bribe Received by Witness  
2                   (RCW 9A.72.090, 9A.72.100)  
3           Commercial Bribery (RCW 9A.68.060)  
4           Counterfeiting (RCW 9.16.035(4))  
5           Escape 1 (RCW 9A.76.110)  
6           Hit and Run--Injury (RCW 46.52.020(4)(b))  
7           Hit and Run with Vessel--Injury Accident  
8                   (RCW 79A.60.200(3))  
9           Identity Theft 1 (RCW 9.35.020(2)(a))  
10          Indecent Exposure to Person Under Age  
11                   Fourteen (subsequent sex offense) (RCW  
12                   9A.88.010)  
13          Influencing Outcome of Sporting Event (RCW  
14                   9A.82.070)  
15          Knowingly Trafficking in Stolen Property  
16                   (RCW 9A.82.050(2))  
17          Malicious Harassment (RCW 9A.36.080)  
18          Manufacture, deliver, or possess with  
19                   intent to deliver narcotics from  
20                   Schedule III, IV, or V or nonnarcotics  
21                   from Schedule I-V (except marijuana,  
22                   amphetamine, methamphetamines, or  
23                   flunitrazepam) (RCW 69.50.401(a)(1)  
24                   (iii) through (v))  
25          Residential Burglary (RCW 9A.52.025)  
26          Robbery 2 (RCW 9A.56.210)  
27          Theft of Livestock 1 (RCW 9A.56.080)  
28          Threats to Bomb (RCW 9.61.160)  
29          Use of Proceeds of Criminal Profiteering  
30                   (RCW 9A.82.080 (1) and (2))  
31          Vehicular Assault, by being under the  
32                   influence of intoxicating liquor or  
33                   any drug, or by the operation or  
34                   driving of a vehicle in a reckless  
35                   manner (RCW 46.61.522)  
36          Willful Failure to Return from Furlough  
37                   (RCW 72.66.060)  
38    III          Abandonment of dependent person 2 (RCW  
39                   9A.42.070)

1 Assault 3 (RCW 9A.36.031)  
2 Assault of a Child 3 (RCW 9A.36.140)  
3 Bail Jumping with class B or C Felony (RCW  
4 9A.76.170(3)(c))  
5 Burglary 2 (RCW 9A.52.030)  
6 Communication with a Minor for Immoral  
7 Purposes (RCW 9.68A.090)  
8 Criminal Gang Intimidation (RCW 9A.46.120)  
9 Criminal Mistreatment 2 (RCW 9A.42.030)  
10 Custodial Assault (RCW 9A.36.100)  
11 Delivery of a material in lieu of a  
12 controlled substance (RCW  
13 69.50.401(c))  
14 Escape 2 (RCW 9A.76.120)  
15 Extortion 2 (RCW 9A.56.130)  
16 Harassment (RCW 9A.46.020)  
17 Intimidating a Public Servant (RCW  
18 9A.76.180)  
19 Introducing Contraband 2 (RCW 9A.76.150)  
20 Maintaining a Dwelling or Place for  
21 Controlled Substances (RCW  
22 69.50.402(a)(6))  
23 Malicious Injury to Railroad Property (RCW  
24 81.60.070)  
25 Manufacture, deliver, or possess with  
26 intent to deliver marijuana (RCW  
27 69.50.401(a)(1)(iii))  
28 Manufacture, distribute, or possess with  
29 intent to distribute an imitation  
30 controlled substance (RCW  
31 69.52.030(1))  
32 Patronizing a Juvenile Prostitute (RCW  
33 9.68A.100)  
34 Perjury 2 (RCW 9A.72.030)  
35 Possession of Incendiary Device (RCW  
36 9.40.120)  
37 Possession of Machine Gun or Short-Barreled  
38 Shotgun or Rifle (RCW 9.41.190)  
39 Promoting Prostitution 2 (RCW 9A.88.080)

1 Recklessly Trafficking in Stolen Property  
2 (RCW 9A.82.050(1))  
3 Securities Act violation (RCW 21.20.400)  
4 Tampering with a Witness (RCW 9A.72.120)  
5 Telephone Harassment (subsequent conviction  
6 or threat of death) (RCW 9.61.230)  
7 Theft of Livestock 2 (RCW 9A.56.080)  
8 Unlawful Imprisonment (RCW 9A.40.040)  
9 Unlawful possession of firearm in the  
10 second degree (RCW 9.41.040(1)(b))  
11 Unlawful Use of Building for Drug Purposes  
12 (RCW 69.53.010)  
13 Vehicular Assault, by the operation or  
14 driving of a vehicle with disregard  
15 for the safety of others (RCW  
16 46.61.522)  
17 Willful Failure to Return from Work Release  
18 (RCW 72.65.070)

19 II Computer Trespass 1 (RCW 9A.52.110)  
20 Counterfeiting (RCW 9.16.035(3))  
21 Create, deliver, or possess a counterfeit  
22 controlled substance (RCW  
23 69.50.401(b))  
24 Escape from Community Custody (RCW  
25 72.09.310)  
26 Health Care False Claims (RCW 48.80.030)  
27 Identity Theft 2 (RCW 9.35.020(2)(b))  
28 Improperly Obtaining Financial Information  
29 (RCW 9.35.010)  
30 Malicious Mischief 1 (RCW 9A.48.070)  
31 Possession of controlled substance that is  
32 either heroin or narcotics from  
33 Schedule I or II or flunitrazepam from  
34 Schedule IV (RCW 69.50.401(d))  
35 Possession of phencyclidine (PCP) (RCW  
36 69.50.401(d))  
37 Possession of Stolen Property 1 (RCW  
38 9A.56.150)  
39 Theft 1 (RCW 9A.56.030)

1 Theft of Rental, Leased, or Lease-purchased  
2 Property (valued at one thousand five  
3 hundred dollars or more) (RCW  
4 9A.56.096(4))  
5 Trafficking in Insurance Claims (RCW  
6 48.30A.015)  
7 Unlawful Practice of Law (RCW 2.48.180)  
8 Unlicensed Practice of a Profession or  
9 Business (RCW 18.130.190(7))  
10 I Attempting to Elude a Pursuing Police  
11 Vehicle (RCW 46.61.024)  
12 False Verification for Welfare (RCW  
13 74.08.055)  
14 Forged Prescription (RCW 69.41.020)  
15 Forged Prescription for a Controlled  
16 Substance (RCW 69.50.403)  
17 Forgery (RCW 9A.60.020)  
18 Malicious Mischief 2 (RCW 9A.48.080)  
19 Possess Controlled Substance that is a  
20 Narcotic from Schedule III, IV, or V  
21 or Non-narcotic from Schedule I-V  
22 (except phencyclidine or  
23 flunitrazepam) (RCW 69.50.401(d))  
24 Possession of Stolen Property 2 (RCW  
25 9A.56.160)  
26 Reckless Burning 1 (RCW 9A.48.040)  
27 Taking Motor Vehicle Without Permission  
28 (RCW 9A.56.070)  
29 Theft 2 (RCW 9A.56.040)  
30 Theft of Rental, Leased, or Lease-purchased  
31 Property (valued at two hundred fifty  
32 dollars or more but less than one  
33 thousand five hundred dollars) (RCW  
34 9A.56.096(4))  
35 Unlawful Issuance of Checks or Drafts (RCW  
36 9A.56.060)  
37 Unlawful Use of Food Stamps (RCW 9.91.140  
38 (2) and (3))  
39 Vehicle Prowl 1 (RCW 9A.52.095)

1       **Sec. 7.** RCW 9.94A.525 and 2001 c 264 s 5 are each amended to read  
2 as follows:

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

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

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

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

32       (3) Out-of-state convictions for offenses shall be classified  
33 according to the comparable offense definitions and sentences provided  
34 by Washington law. Federal convictions for offenses shall be  
35 classified according to the comparable offense definitions and  
36 sentences provided by Washington law. If there is no clearly  
37 comparable offense under Washington law or the offense is one that is  
38 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 same  
5 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), to  
10 encompass the same criminal conduct, shall be counted as one offense,  
11 the offense that yields the highest offender score. The current  
12 sentencing court shall determine with respect to other prior adult  
13 offenses for which sentences were served concurrently or prior juvenile  
14 offenses for which sentences were served consecutively, whether those  
15 offenses shall be counted as one offense or as separate offenses using  
16 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and  
17 if the court finds that they shall be counted as one offense, then the  
18 offense that yields the highest offender score shall be used. The  
19 current sentencing court may presume that such other prior offenses  
20 were not the same criminal conduct from sentences imposed on separate  
21 dates, or in separate counties or jurisdictions, or in separate  
22 complaints, indictments, or informations;

23 (ii) In the case of multiple prior convictions for offenses  
24 committed before July 1, 1986, for the purpose of computing the  
25 offender score, count all adult convictions served concurrently as one  
26 offense, and count all juvenile convictions entered on the same date as  
27 one offense. Use the conviction for the offense that yields the  
28 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) or (12) of this section, count one point for  
3 each adult prior felony conviction and one point for each juvenile  
4 prior violent felony conviction and 1/2 point for each juvenile prior  
5 nonviolent felony conviction.

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

11 (9) If the present conviction is for a serious violent offense,  
12 count three points for prior adult and juvenile convictions for crimes  
13 in this category, two points for each prior adult and juvenile violent  
14 conviction (not already counted), one point for each prior adult  
15 nonviolent felony conviction, and 1/2 point for each prior juvenile  
16 nonviolent felony conviction.

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

22 (11) If the present conviction is for a felony traffic offense  
23 count two points for each adult or juvenile prior conviction for  
24 Vehicular Homicide ~~((or))~~, Vehicular Assault, or Felony Driving or  
25 Physical Control of a Motor Vehicle While Under the Influence of  
26 Intoxicating Liquor or any Drug; for each felony offense count one  
27 point for each adult and 1/2 point for each juvenile prior conviction;  
28 for each serious traffic offense, other than those used for an  
29 enhancement pursuant to RCW 46.61.520(2), count one point for each  
30 adult and 1/2 point for each juvenile prior conviction.

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

37 (13) If the present conviction is for Escape from Community  
38 Custody, RCW 72.09.310, count only prior escape convictions in the

1 offender score. Count adult prior escape convictions as one point and  
2 juvenile prior escape convictions as 1/2 point.

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

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

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

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

17 **Sec. 8.** RCW 9.94A.650 and 2000 c 28 s 18 are each amended to read  
18 as follows:

19 (1) This section applies to offenders who have never been  
20 previously convicted of a felony in this state, federal court, or  
21 another state, and who have never participated in a program of deferred  
22 prosecution for a felony, and who are convicted of a felony that is  
23 not:

24 (a) Classified as a violent offense or a sex offense under this  
25 chapter;

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

29 (c) Manufacture, delivery, or possession with intent to deliver a  
30 methamphetamine, its salts, isomers, and salts of its isomers as  
31 defined in RCW 69.50.206(d)(2); ~~((or))~~

32 (d) The selling for profit of any controlled substance or  
33 counterfeit substance classified in Schedule I, RCW 69.50.204, except  
34 leaves and flowering tops of marijuana; or

35 (e) Felony driving under the influence contrary to RCW 46.61.502 or  
36 felony being in actual physical control of a motor vehicle while under  
37 the influence contrary to RCW 46.61.504.

1 (2) In sentencing a first-time offender the court may waive the  
2 imposition of a sentence within the standard sentence range and impose  
3 a sentence which may include up to ninety days of confinement in a  
4 facility operated or utilized under contract by the county and a  
5 requirement that the offender refrain from committing new offenses.  
6 The sentence may also include a term of community supervision or  
7 community custody as specified in subsection (3) of this section,  
8 which, in addition to crime-related prohibitions, may include  
9 requirements that the offender perform any one or more of the  
10 following:

11 (a) Devote time to a specific employment or occupation;

12 (b) Undergo available outpatient treatment for up to the period  
13 specified in subsection (3) of this section, or inpatient treatment not  
14 to exceed the standard range of confinement for that offense;

15 (c) Pursue a prescribed, secular course of study or vocational  
16 training;

17 (d) Remain within prescribed geographical boundaries and notify the  
18 community corrections officer prior to any change in the offender's  
19 address or employment;

20 (e) Report as directed to a community corrections officer; or

21 (f) Pay all court-ordered legal financial obligations as provided  
22 in RCW 9.94A.030 and/or perform community service work.

23 (3) The terms and statuses applicable to sentences under subsection  
24 (2) of this section are:

25 (a) For sentences imposed on or after July 25, 1999, for crimes  
26 committed before July 1, 2000, up to one year of community supervision.  
27 If treatment is ordered, the period of community supervision may  
28 include up to the period of treatment, but shall not exceed two years;  
29 and

30 (b) For crimes committed on or after July 1, 2000, up to one year  
31 of community custody unless treatment is ordered, in which case the  
32 period of community custody may include up to the period of treatment,  
33 but shall not exceed two years. Any term of community custody imposed  
34 under this section is subject to conditions and sanctions as authorized  
35 in this section and in RCW 9.94A.715 (2) and (3).

36 (4) The department shall discharge from community supervision any  
37 offender sentenced under this section before July 25, 1999, who has  
38 served at least one year of community supervision and has completed any  
39 treatment ordered by the court.

1       **Sec. 9.** RCW 46.20.3101 and 1998 c 213 s 2, 1998 c 209 s 2, and  
2 1998 c 207 s 8 are each reenacted and amended to read as follows:

3       Pursuant to RCW 46.20.308, the department shall suspend, revoke, or  
4 deny the arrested person's license, permit, or privilege to drive as  
5 follows:

6       (1) In the case of a person who has refused a test or tests:

7       (a) For a first refusal within (~~seven~~) ten years, where there has  
8 not been a previous incident within (~~seven~~) ten years that resulted  
9 in administrative action under this section, revocation or denial for  
10 one year;

11       (b) For a second or subsequent refusal within (~~seven~~) ten years,  
12 or for a first refusal where there has been one or more previous  
13 incidents within (~~seven~~) ten years that have resulted in  
14 administrative action under this section, revocation or denial for two  
15 years or until the person reaches age twenty-one, whichever is longer.  
16 A revocation imposed under this subsection (1)(b) shall run  
17 consecutively to the period of any suspension, revocation, or denial  
18 imposed pursuant to a criminal conviction arising out of the same  
19 incident.

20       (2) In the case of an incident where a person has submitted to or  
21 been administered a test or tests indicating that the alcohol  
22 concentration of the person's breath or blood was 0.08 or more:

23       (a) For a first incident within (~~seven~~) ten years, where there  
24 has not been a previous incident within (~~seven~~) ten years that  
25 resulted in administrative action under this section, suspension for  
26 ninety days;

27       (b) For a second or subsequent incident within (~~seven~~) ten years,  
28 revocation or denial for two years.

29       (3) In the case of an incident where a person under age twenty-one  
30 has submitted to or been administered a test or tests indicating that  
31 the alcohol concentration of the person's breath or blood was in  
32 violation of RCW 46.61.502, 46.61.503, or 46.61.504:

33       (a) For a first incident within (~~seven~~) ten years, suspension or  
34 denial for ninety days;

35       (b) For a second or subsequent incident within (~~seven~~) ten years,  
36 revocation or denial for one year or until the person reaches age  
37 twenty-one, whichever is longer.

1       **Sec. 10.** RCW 46.20.391 and 1999 c 274 s 4 and 1999 c 272 s 1 are  
2 each reenacted and amended to read as follows:

3       (1) Any person licensed under this chapter who is convicted of an  
4 offense relating to motor vehicles for which suspension or revocation  
5 of the driver's license is mandatory, other than vehicular homicide or  
6 vehicular assault, or who has had his or her license suspended under  
7 RCW 46.20.3101 (2)(a) or (3)(a), may submit to the department an  
8 application for an occupational driver's license. The department, upon  
9 receipt of the prescribed fee and upon determining that the petitioner  
10 is engaged in an occupation or trade that makes it essential that the  
11 petitioner operate a motor vehicle, may issue an occupational driver's  
12 license and may set definite restrictions as provided in RCW 46.20.394.  
13 No person may petition for, and the department shall not issue, an  
14 occupational driver's license that is effective during the first thirty  
15 days of any suspension or revocation imposed either for a violation of  
16 RCW 46.61.502 or 46.61.504 or under RCW 46.20.3101 (2)(a) or (3)(a), or  
17 for both a violation of RCW 46.61.502 or 46.61.504 and under RCW  
18 46.20.3101 (2)(a) or (3)(a) where the action arises from the same  
19 incident. A person aggrieved by the decision of the department on the  
20 application for an occupational driver's license may request a hearing  
21 as provided by rule of the department.

22       (2)(a) A person licensed under this chapter whose driver's license  
23 is suspended administratively due to failure to appear or pay a traffic  
24 ticket under RCW 46.20.289; a violation of the financial responsibility  
25 laws under chapter 46.29 RCW; or for multiple violations within a  
26 specified period of time under RCW 46.20.291, may apply to the  
27 department for an occupational driver's license if the applicant  
28 demonstrates to the satisfaction of the department that one of the  
29 following additional conditions are met:

30       (i) The applicant is in an apprenticeship program or an on-the-job  
31 training program for which a driver's license is required;

32       (ii) The applicant presents evidence that he or she has applied for  
33 a position in an apprenticeship or on-the-job training program and the  
34 program has certified that a driver's license is required to begin the  
35 program, provided that a license granted under this provision shall be  
36 in effect no longer than fourteen days;

37       (iii) The applicant is in a program that assists persons who are  
38 enrolled in a WorkFirst program pursuant to chapter 74.08A RCW to

1 become gainfully employed and the program requires a driver's license;  
2 or

3 (iv) The applicant is undergoing substance abuse treatment or is  
4 participating in meetings of a twelve-step group such as alcoholics  
5 anonymous.

6 (b) If the suspension is for failure to respond, pay, or comply  
7 with a notice of traffic infraction or conviction, the applicant must  
8 enter into a payment plan with the court.

9 (c) An occupational driver's license issued to an applicant  
10 described in (a) of this subsection shall be valid for the period of  
11 the suspension or revocation but not more than two years.

12 (d) Upon receipt of evidence that a holder of an occupational  
13 driver's license granted under this subsection is no longer enrolled in  
14 an apprenticeship or on-the-job training program, the director shall  
15 give written notice by first class mail to the driver that the  
16 occupational driver's license shall be canceled. The effective date of  
17 cancellation shall be fifteen days from the date of mailing the notice.  
18 If at any time before the cancellation goes into effect the driver  
19 submits evidence of continued enrollment in the program, the  
20 cancellation shall be stayed. If the cancellation becomes effective,  
21 the driver may obtain, at no additional charge, a new occupational  
22 driver's license upon submittal of evidence of enrollment in another  
23 program that meets the criteria set forth in this subsection.

24 (e) The department shall not issue an occupational driver's license  
25 under (a)(iv) of this subsection if the applicant is able to receive  
26 transit services sufficient to allow for the applicant's participation  
27 in the programs referenced under (a)(iv) of this subsection.

28 (3) An applicant for an occupational driver's license is eligible  
29 to receive such license only if:

30 (a) Within one year immediately preceding the date of the offense  
31 that gave rise to the present conviction, the applicant has not  
32 committed any offense relating to motor vehicles for which suspension  
33 or revocation of a driver's license is mandatory; and

34 (b) Within (~~seven~~) ten years immediately preceding the date of  
35 the offense that gave rise to the present conviction or incident, the  
36 applicant has not committed any of the following offenses: (i) Driving  
37 or being in actual physical control of a motor vehicle while under the  
38 influence of intoxicating liquor; (ii) vehicular homicide under RCW  
39 46.61.520; or (iii) vehicular assault under RCW 46.61.522; and

1 (c) The applicant is engaged in an occupation or trade that makes  
2 it essential that he or she operate a motor vehicle, except as allowed  
3 under subsection (2)(a) of this section; and

4 (d) The applicant files satisfactory proof of financial  
5 responsibility under chapter 46.29 RCW.

6 (4) The director shall cancel an occupational driver's license upon  
7 receipt of notice that the holder thereof has been convicted of  
8 operating a motor vehicle in violation of its restrictions, or of a  
9 separate offense that under chapter 46.20 RCW would warrant suspension  
10 or revocation of a regular driver's license. The cancellation is  
11 effective as of the date of the conviction, and continues with the same  
12 force and effect as any suspension or revocation under this title.

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