
HOUSE BILL 1191

State of Washington 60th Legislature 2007 Regular Session

By Representatives Ahern, Kretz, Pearson, Ross, Ericksen, McDonald, Roach, Condotta, Kristiansen, Warnick, Haler and Simpson

Read first time 01/12/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to making it a felony to drive or be in physical
2 control of a vehicle while under the influence of intoxicating liquor
3 or any drug when the person has two or more prior offenses within seven
4 years; amending RCW 46.61.502, 46.61.504, 46.61.5055, and 9.94A.640;
5 reenacting and amending RCW 9.94A.525; prescribing penalties; providing
6 an effective date; and declaring an emergency.

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

8 **Sec. 1.** RCW 46.61.502 and 2006 c 73 s 1 are each amended to read
9 as follows:

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

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

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

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

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

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

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

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

25 (6) It is a class C felony punishable under chapter 9.94A RCW, or
26 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has
27 (~~four~~) two or more prior offenses within (~~ten~~) seven years as
28 defined in RCW 46.61.5055; or (b) the person has ever previously been
29 convicted of vehicular homicide while under the influence of
30 intoxicating liquor or any drug, RCW 46.61.520(1)(a), or vehicular
31 assault while under the influence of intoxicating liquor or any drug,
32 RCW 46.61.522(1)(b).

33 **Sec. 2.** RCW 46.61.504 and 2006 c 73 s 2 are each amended to read
34 as follows:

35 (1) A person is guilty of being in actual physical control of a
36 motor vehicle while under the influence of intoxicating liquor or any

1 drug if the person has actual physical control of a vehicle within this
2 state:

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

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

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

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

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

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

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

1 (6) It is a class C felony punishable under chapter 9.94A RCW, or
2 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has
3 (~~four~~) two or more prior offenses within (~~ten~~) seven years as
4 defined in RCW 46.61.5055; or (b) the person has ever previously been
5 convicted of vehicular homicide while under the influence of
6 intoxicating liquor or any drug, RCW 46.61.520(1)(a), or vehicular
7 assault while under the influence of intoxicating liquor or any drug,
8 RCW 46.61.522(1)(b).

9 **Sec. 3.** RCW 46.61.5055 and 2006 c 73 s 3 are each amended to read
10 as follows:

11 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
12 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
13 and who has no prior offense within seven years shall be punished as
14 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 one day nor more than one
20 year. Twenty-four consecutive hours of the imprisonment may not be
21 suspended or deferred unless the court finds that the imposition of
22 this mandatory minimum sentence would impose a substantial risk to the
23 offender's physical or mental well-being. Whenever the mandatory
24 minimum sentence is suspended or deferred, the court shall state in
25 writing the reason for granting the suspension or deferral and the
26 facts upon which the suspension or deferral is based. In lieu of the
27 mandatory minimum term of imprisonment required under this subsection
28 (1)(a)(i), the court may order not less than fifteen days of electronic
29 home monitoring. The offender shall pay the cost of electronic home
30 monitoring. The county or municipality in which the penalty is being
31 imposed shall determine the cost. The court may also require the
32 offender's electronic home monitoring device to include an alcohol
33 detection breathalyzer, and the court may restrict the amount of
34 alcohol the offender may consume during the time the offender is on
35 electronic home monitoring; and

36 (ii) By a fine of not less than three hundred fifty dollars nor

1 more than five thousand dollars. Three hundred fifty dollars of the
2 fine may not be suspended or deferred unless the court finds the
3 offender to be indigent; or

4 (b) In the case of a person whose alcohol concentration was at
5 least 0.15, or for whom by reason of the person's refusal to take a
6 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 two days nor more than one
9 year. Two consecutive days of the imprisonment may not be suspended or
10 deferred unless the court finds that the imposition of this mandatory
11 minimum sentence would impose a substantial risk to the offender's
12 physical or mental well-being. Whenever the mandatory minimum sentence
13 is suspended or deferred, the court shall state in writing the reason
14 for granting the suspension or deferral and the facts upon which the
15 suspension or deferral is based. In lieu of the mandatory minimum term
16 of imprisonment required under this subsection (1)(b)(i), the court may
17 order not less than thirty days of electronic home monitoring. The
18 offender shall pay the cost of electronic home monitoring. The county
19 or municipality in which the penalty is being imposed shall determine
20 the cost. The court may also require the offender's electronic home
21 monitoring device to include an alcohol detection breathalyzer, and the
22 court may restrict the amount of alcohol the offender may consume
23 during the time the offender is on electronic home monitoring; and

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

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

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

36 (i) By imprisonment for not less than thirty days nor more than one
37 year and sixty days of electronic home monitoring. The offender shall
38 pay for the cost of the electronic monitoring. The county or

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

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

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

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

36 (ii) By a fine of not less than seven hundred fifty dollars nor
37 more than five thousand dollars. Seven hundred fifty dollars of the

1 fine may not be suspended or deferred unless the court finds the
2 offender to be indigent.

3 ~~(3) ((Except as provided in RCW 46.61.502(6) or 46.61.504(6),))~~ A
4 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
5 and who has two or ~~((three prior))~~ more offenses within seven years
6 shall be punished ~~((as follows:~~

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

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

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

35 ~~(i) By imprisonment for not less than one hundred twenty days nor
36 more than one year and one hundred fifty days of electronic home
37 monitoring. The offender shall pay for the cost of the electronic
38 monitoring. The county or municipality where the penalty is being~~

1 ~~imposed shall determine the cost. The court may also require the~~
2 ~~offender's electronic home monitoring device include an alcohol~~
3 ~~detection breathalyzer, and may restrict the amount of alcohol the~~
4 ~~offender may consume during the time the offender is on electronic home~~
5 ~~monitoring. One hundred twenty days of imprisonment and one hundred~~
6 ~~fifty days of electronic home monitoring 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; and~~

13 ~~(ii) By a fine of not less than one thousand five hundred dollars~~
14 ~~nor more than five thousand dollars. One thousand five hundred dollars~~
15 ~~of the fine may not be suspended or deferred unless the court finds the~~
16 ~~offender to be indigent)) in accordance with chapter 9.94A RCW.~~

17 (4) A person who is convicted of a violation of RCW 46.61.502 or
18 46.61.504 and who has (~~four~~) two or more prior offenses within
19 (~~ten~~) seven years, or who has ever previously been convicted of a
20 violation of RCW 46.61.520 committed while under the influence of
21 intoxicating liquor or any drug or RCW 46.61.522 committed while under
22 the influence of intoxicating liquor or any drug, shall be punished in
23 accordance with chapter 9.94A RCW.

24 (5) If a person who is convicted of a violation of RCW 46.61.502 or
25 46.61.504 committed the offense while a passenger under the age of
26 sixteen was in the vehicle, the court shall:

27 (a) In any case in which the installation and use of an interlock
28 or other device is not mandatory under RCW 46.20.720 or other law,
29 order the use of such a device for not less than sixty days following
30 the restoration of the person's license, permit, or nonresident driving
31 privileges; and

32 (b) In any case in which the installation and use of such a device
33 is otherwise mandatory, order the use of such a device for an
34 additional sixty days.

35 (6) In exercising its discretion in setting penalties within the
36 limits allowed by this section, the court shall particularly consider
37 the following:

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

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

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

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

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

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

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

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

20 (b) If the person's alcohol concentration was at least 0.15:

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

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

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

27 (c) If by reason of the person's refusal to take a test offered
28 under RCW 46.20.308, there is no test result indicating the person's
29 alcohol concentration:

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

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

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

36 The department shall grant credit on a day-for-day basis for any
37 portion of a suspension, revocation, or denial already served under

1 this subsection for a suspension, revocation, or denial imposed under
2 RCW 46.20.3101 arising out of the same incident.

3 For purposes of this subsection (8), the department shall refer to
4 the driver's record maintained under RCW 46.52.120 when determining the
5 existence of prior offenses.

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

10 (10)(a) In addition to any nonsuspendable and nondeferrable jail
11 sentence required by this section, whenever the court imposes less than
12 one year in jail, the court shall also suspend but shall not defer a
13 period of confinement for a period not exceeding five years. The court
14 shall impose conditions of probation that include: (i) Not driving a
15 motor vehicle within this state without a valid license to drive and
16 proof of financial responsibility for the future; (ii) not driving a
17 motor vehicle within this state while having an alcohol concentration
18 of 0.08 or more within two hours after driving; and (iii) not refusing
19 to submit to a test of his or her breath or blood to determine alcohol
20 concentration upon request of a law enforcement officer who has
21 reasonable grounds to believe the person was driving or was in actual
22 physical control of a motor vehicle within this state while under the
23 influence of intoxicating liquor. The court may impose conditions of
24 probation that include nonrepetition, installation of an ignition
25 interlock device on the probationer's motor vehicle, alcohol or drug
26 treatment, supervised probation, or other conditions that may be
27 appropriate. The sentence may be imposed in whole or in part upon
28 violation of a condition of probation during the suspension period.

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

33 (c) For each incident involving a violation of a mandatory
34 condition of probation imposed under this subsection, the license,
35 permit, or privilege to drive of the person shall be suspended by the
36 court for thirty days or, if such license, permit, or privilege to
37 drive already is suspended, revoked, or denied at the time the finding
38 of probation violation is made, the suspension, revocation, or denial

1 then in effect shall be extended by thirty days. The court shall
2 notify the department of any suspension, revocation, or denial or any
3 extension of a suspension, revocation, or denial imposed under this
4 subsection.

5 (11) A court may waive the electronic home monitoring requirements
6 of this chapter when:

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

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

10 (c) The court determines that there is reason to believe that the
11 offender would violate the conditions of the electronic home monitoring
12 penalty.

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

19 Whenever the combination of jail time and electronic home
20 monitoring or alternative sentence would exceed three hundred sixty-
21 five days, the offender shall serve the jail portion of the sentence
22 first, and the electronic home monitoring or alternative portion of the
23 sentence shall be reduced so that the combination does not exceed three
24 hundred sixty-five days.

25 (12) An offender serving a sentence under this section, whether or
26 not a mandatory minimum term has expired, may be granted an
27 extraordinary medical placement by the jail administrator subject to
28 the standards and limitations set forth in RCW 9.94A.728(4).

29 (13) For purposes of this section and RCW 46.61.502 and 46.61.504:

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

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

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

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

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

1 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
2 9A.36.050 or an equivalent local ordinance, if the conviction is the
3 result of a charge that was originally filed as a violation of RCW
4 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
5 46.61.520 or 46.61.522;

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

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

12 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
13 prosecution for a violation of RCW 46.61.5249, or an equivalent local
14 ordinance, if the charge under which the deferred prosecution was
15 granted was originally filed as a violation of RCW 46.61.502 or
16 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
17 46.61.522; and

18 (b) "Within seven years" means that the arrest for a prior offense
19 occurred within seven years of the arrest for the current offense.

20 **Sec. 4.** RCW 9.94A.525 and 2006 c 128 s 6 and 2006 c 73 s 7 are
21 each reenacted and amended to read as follows:

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

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

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

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

33 (b) Class B prior felony convictions other than sex offenses shall
34 not be included in the offender score, if since the last date of
35 release from confinement (including full-time residential treatment)
36 pursuant to a felony conviction, if any, or entry of judgment and

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

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

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

16 (e) If the present conviction is felony driving while under the
17 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
18 felony physical control of a vehicle while under the influence of
19 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions
20 of felony driving while under the influence of intoxicating liquor or
21 any drug, felony physical control of a vehicle while under the
22 influence of intoxicating liquor or any drug, and serious traffic
23 offenses shall be included in the offender score if: (i) The prior
24 convictions were committed within five years since the last date of
25 release from confinement (including full-time residential treatment) or
26 entry of judgment and sentence; or (ii) the prior convictions would be
27 considered "~~ten~~ seven years" as those terms
28 are defined in RCW 46.61.5055.

29 (f) This subsection applies to both adult and juvenile prior
30 convictions.

31 (3) Out-of-state convictions for offenses shall be classified
32 according to the comparable offense definitions and sentences provided
33 by Washington law. Federal convictions for offenses shall be
34 classified according to the comparable offense definitions and
35 sentences provided by Washington law. If there is no clearly
36 comparable offense under Washington law or the offense is one that is
37 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.

1 When these convictions are used as criminal history, score them the
2 same as a completed crime.

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

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

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

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

24 (11) If the present conviction is for a felony traffic offense
25 count two points for each adult or juvenile prior conviction for
26 Vehicular Homicide or Vehicular Assault; for each felony offense count
27 one point for each adult and 1/2 point for each juvenile prior
28 conviction; for each serious traffic offense, other than those used for
29 an 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 manufacture of
32 methamphetamine count three points for each adult prior manufacture of
33 methamphetamine conviction and two points for each juvenile manufacture
34 of methamphetamine offense. If the present conviction is for a drug
35 offense and the offender has a criminal history that includes a sex
36 offense or serious violent offense, count three points for each adult
37 prior felony drug offense conviction and two points for each juvenile
38 drug offense. All other adult and juvenile felonies are scored as in

1 subsection (8) of this section if the current drug offense is violent,
2 or as in subsection (7) of this section if the current drug offense is
3 nonviolent.

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

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

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

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

20 (17) If the present conviction is for failure to register as a sex
21 offender under RCW 9A.44.130(10), count priors as in subsections (7)
22 through (15) of this section; however count three points for each adult
23 and juvenile prior sex offense conviction, excluding prior convictions
24 for failure to register as a sex offender under RCW 9A.44.130(10),
25 which shall count as one point.

26 (18) If the present conviction is for an offense committed while
27 the offender was under community placement, add one point.

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

1 **Sec. 5.** RCW 9.94A.640 and 2006 c 73 s 8 are each amended to read
2 as follows:

3 (1) Every offender who has been discharged under RCW 9.94A.637 may
4 apply to the sentencing court for a vacation of the offender's record
5 of conviction. If the court finds the offender meets the tests
6 prescribed in subsection (2) of this section, the court may clear the
7 record of conviction by: (a) Permitting the offender to withdraw the
8 offender's plea of guilty and to enter a plea of not guilty; or (b) if
9 the offender has been convicted after a plea of not guilty, by the
10 court setting aside the verdict of guilty; and (c) by the court
11 dismissing the information or indictment against the offender.

12 (2) An offender may not have the record of conviction cleared if:
13 (a) There are any criminal charges against the offender pending in any
14 court of this state or another state, or in any federal court; (b) the
15 offense was a violent offense as defined in RCW 9.94A.030; (c) the
16 offense was a crime against persons as defined in RCW 43.43.830; (d)
17 the offender has been convicted of a new crime in this state, another
18 state, or federal court since the date of the offender's discharge
19 under RCW 9.94A.637; (e) the offense is a class B felony and less than
20 ten years have passed since the date the applicant was discharged under
21 RCW 9.94A.637; (f) the offense was a class C felony, other than a class
22 C felony described in RCW 46.61.502(6) or 46.61.504(6), and less than
23 five years have passed since the date the applicant was discharged
24 under RCW 9.94A.637; or (g) the offense was a class C felony described
25 in RCW 46.61.502(6) or 46.61.504(6) and less than (~~ten~~) seven years
26 have passed since the applicant was discharged under RCW 9.94A.637.

27 (3) Once the court vacates a record of conviction under subsection
28 (1) of this section, the fact that the offender has been convicted of
29 the offense shall not be included in the offender's criminal history
30 for purposes of determining a sentence in any subsequent conviction,
31 and the offender shall be released from all penalties and disabilities
32 resulting from the offense. For all purposes, including responding to
33 questions on employment applications, an offender whose conviction has
34 been vacated may state that the offender has never been convicted of
35 that crime. Nothing in this section affects or prevents the use of an
36 offender's prior conviction in a later criminal prosecution.

1 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 July 1, 2007.

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