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**SENATE BILL 5299**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Padden, Frockt, Kuderer, and Wagoner

Read first time 01/17/19. Referred to Committee on Law & Justice.

1 AN ACT Relating to impaired driving; amending RCW 46.61.502,  
2 46.61.5055, 46.61.504, and 9.94A.525; and prescribing penalties.

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

4 **Sec. 1.** RCW 46.61.502 and 2017 c 335 s 1 are each amended to  
5 read as follows:

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

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

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

15 (c) While the person is under the influence of or affected by  
16 intoxicating liquor, marijuana, or any drug; or

17 (d) While the person is under the combined influence of or  
18 affected by intoxicating liquor, marijuana, and any drug.

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

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

3 (3) (a) It is an affirmative defense to a violation of subsection  
4 (1)(a) of this section, which the defendant must prove by a  
5 preponderance of the evidence, that the defendant consumed a  
6 sufficient quantity of alcohol after the time of driving and before  
7 the administration of an analysis of the person's breath or blood to  
8 cause the defendant's alcohol concentration to be 0.08 or more within  
9 two 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 (b) It is an affirmative defense to a violation of subsection  
14 (1)(b) of this section, which the defendant must prove by a  
15 preponderance of the evidence, that the defendant consumed a  
16 sufficient quantity of marijuana after the time of driving and before  
17 the administration of an analysis of the person's blood to cause the  
18 defendant's THC concentration to be 5.00 or more within two hours  
19 after driving. The court shall not admit evidence of this defense  
20 unless the defendant notifies the prosecution prior to the omnibus or  
21 pretrial hearing in the case of the defendant's intent to assert the  
22 affirmative defense.

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

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

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

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

3 (a) The person has three or more prior offenses within ~~((ten))~~  
4 twenty-five years as defined in RCW 46.61.5055; or

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

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

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

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

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

13 **Sec. 2.** RCW 46.61.5055 and 2018 c 201 s 9009 are each amended to  
14 read as follows:

15 (1) **No prior offenses in seven years.** Except as provided in RCW  
16 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
17 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense  
18 within seven years shall be punished as follows:

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

24 (i) By imprisonment for not less than one day nor more than three  
25 hundred sixty-four days. Twenty-four consecutive hours of the  
26 imprisonment may not be suspended unless the court finds that the  
27 imposition of this mandatory minimum sentence would impose a  
28 substantial risk to the offender's physical or mental well-being.  
29 Whenever the mandatory minimum sentence is suspended, the court shall  
30 state in writing the reason for granting the suspension and the facts  
31 upon which the suspension is based. In lieu of the mandatory minimum  
32 term of imprisonment required under this subsection (1)(a)(i), the  
33 court may order not less than fifteen days of electronic home  
34 monitoring or a ninety-day period of 24/7 sobriety program  
35 monitoring. The court may consider the offender's pretrial 24/7  
36 sobriety program monitoring as fulfilling a portion of posttrial  
37 sentencing. The offender shall pay the cost of electronic home  
38 monitoring. The county or municipality in which the penalty is being  
39 imposed shall determine the cost. The court may also require the

1 offender's electronic home monitoring device or other separate  
2 alcohol monitoring device to include an alcohol detection  
3 breathalyzer, and the court may restrict the amount of alcohol the  
4 offender may consume during the time the offender is on electronic  
5 home monitoring; and

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

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

15 (i) By imprisonment for not less than two days nor more than  
16 three hundred sixty-four days. Forty-eight consecutive hours of the  
17 imprisonment may not be suspended unless the court finds that the  
18 imposition of this mandatory minimum sentence would impose a  
19 substantial risk to the offender's physical or mental well-being.  
20 Whenever the mandatory minimum sentence is suspended, the court shall  
21 state in writing the reason for granting the suspension and the facts  
22 upon which the suspension is based. In lieu of the mandatory minimum  
23 term of imprisonment required under this subsection (1)(b)(i), the  
24 court may order not less than thirty days of electronic home  
25 monitoring or a one hundred twenty day period of 24/7 sobriety  
26 program monitoring. The court may consider the offender's pretrial  
27 24/7 sobriety program testing as fulfilling a portion of posttrial  
28 sentencing. The offender shall pay the cost of electronic home  
29 monitoring. The county or municipality in which the penalty is being  
30 imposed shall determine the cost. The court may also require the  
31 offender's electronic home monitoring device to include an alcohol  
32 detection breathalyzer or other separate alcohol monitoring device,  
33 and the court may restrict the amount of alcohol the offender may  
34 consume during the time the offender is on electronic home  
35 monitoring; and

36 (ii) By a fine of not less than five hundred dollars nor more  
37 than five thousand dollars. Five hundred dollars of the fine may not  
38 be suspended unless the court finds the offender to be indigent.

39 (2) **One prior offense in seven years.** Except as provided in RCW  
40 46.61.502(6) or 46.61.504(6), a person who is convicted of a

1 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense  
2 within seven years shall be punished as follows:

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

8 (i) By imprisonment for not less than thirty days nor more than  
9 three hundred sixty-four days and sixty days of electronic home  
10 monitoring. In lieu of the mandatory term of imprisonment and  
11 electronic home monitoring under this subsection (2)(a)(i), the court  
12 may order a minimum of four days in jail and either one hundred  
13 eighty days of electronic home monitoring or a one hundred twenty-day  
14 period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300  
15 through 36.28A.390. The court may consider the offender's pretrial  
16 24/7 sobriety program monitoring as fulfilling a portion of posttrial  
17 sentencing. The court shall order an expanded alcohol assessment and  
18 treatment, if deemed appropriate by the assessment. The offender  
19 shall pay for the cost of the electronic monitoring. The county or  
20 municipality where the penalty is being imposed shall determine the  
21 cost. The court may also require the offender's electronic home  
22 monitoring device include an alcohol detection breathalyzer or other  
23 separate alcohol monitoring device, and may restrict the amount of  
24 alcohol the offender may consume during the time the offender is on  
25 electronic home monitoring. Thirty days of imprisonment and sixty  
26 days of electronic home monitoring may not be suspended unless the  
27 court finds that the imposition of this mandatory minimum sentence  
28 would impose a substantial risk to the offender's physical or mental  
29 well-being. Whenever the mandatory minimum sentence is suspended, the  
30 court shall state in writing the reason for granting the suspension  
31 and the facts upon which the suspension is based; and

32 (ii) By a fine of not less than five hundred dollars nor more  
33 than five thousand dollars. Five hundred dollars of the fine may not  
34 be suspended unless the court finds the offender to be indigent; or

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

1 (i) By imprisonment for not less than forty-five days nor more  
2 than three hundred sixty-four days and ninety days of electronic home  
3 monitoring. In lieu of the mandatory minimum term of imprisonment and  
4 electronic home monitoring under this subsection (2)(b)(i), the court  
5 may order a minimum of six days in jail and either six months of  
6 electronic home monitoring or a one hundred twenty-day period of 24/7  
7 sobriety program monitoring pursuant to RCW 36.28A.300 through  
8 36.28A.390. The court may consider the offender's pretrial 24/7  
9 sobriety program monitoring as fulfilling a portion of posttrial  
10 sentencing. The court shall order an expanded alcohol assessment and  
11 treatment, if deemed appropriate by the assessment. The offender  
12 shall pay for the cost of the electronic monitoring. The county or  
13 municipality where the penalty is being imposed shall determine the  
14 cost. The court may also require the offender's electronic home  
15 monitoring device include an alcohol detection breathalyzer or other  
16 separate alcohol monitoring device, and may restrict the amount of  
17 alcohol the offender may consume during the time the offender is on  
18 electronic home monitoring. Forty-five days of imprisonment and  
19 ninety days of electronic home monitoring may not be suspended unless  
20 the court finds that the imposition of this mandatory minimum  
21 sentence would impose a substantial risk to the offender's physical  
22 or mental well-being. Whenever the mandatory minimum sentence is  
23 suspended, the court shall state in writing the reason for granting  
24 the suspension and the facts upon which the suspension is based; and

25 (ii) By a fine of not less than seven hundred fifty dollars nor  
26 more than five thousand dollars. Seven hundred fifty dollars of the  
27 fine may not be suspended unless the court finds the offender to be  
28 indigent.

29 (3) **Two prior offenses in seven years.** Except as provided in RCW  
30 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
31 violation of RCW 46.61.502 or 46.61.504 and who has two prior  
32 offenses within seven years shall be punished as follows:

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

38 (i) By imprisonment for not less than ninety days nor more than  
39 three hundred sixty-four days, if available in that county or city, a  
40 six-month period of 24/7 sobriety program monitoring pursuant to RCW

1 36.28A.300 through 36.28A.390, and one hundred twenty days of  
2 electronic home monitoring. In lieu of the mandatory minimum term of  
3 one hundred twenty days of electronic home monitoring, the court may  
4 order at least an additional eight days in jail. The court shall  
5 order an expanded alcohol assessment and treatment, if deemed  
6 appropriate by the assessment. The offender shall pay for the cost of  
7 the electronic monitoring. The county or municipality where the  
8 penalty is being imposed shall determine the cost. The court may also  
9 require the offender's electronic home monitoring device include an  
10 alcohol detection breathalyzer or other separate alcohol monitoring  
11 device, and may restrict the amount of alcohol the offender may  
12 consume during the time the offender is on electronic home  
13 monitoring. Ninety days of imprisonment and one hundred twenty days  
14 of electronic home monitoring may not be suspended unless the court  
15 finds that the imposition of this mandatory minimum sentence would  
16 impose a substantial risk to the offender's physical or mental well-  
17 being. Whenever the mandatory minimum sentence is suspended, the  
18 court shall state in writing the reason for granting the suspension  
19 and the facts upon which the suspension is based; and

20 (ii) By a fine of not less than one thousand dollars nor more  
21 than five thousand dollars. One thousand dollars of the fine may not  
22 be suspended unless the court finds the offender to be indigent; or

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

28 (i) By imprisonment for not less than one hundred twenty days nor  
29 more than three hundred sixty-four days, if available in that county  
30 or city, a six-month period of 24/7 sobriety program monitoring  
31 pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty  
32 days of electronic home monitoring. In lieu of the mandatory minimum  
33 term of one hundred fifty days of electronic home monitoring, the  
34 court may order at least an additional ten days in jail. The offender  
35 shall pay for the cost of the electronic monitoring. The court shall  
36 order an expanded alcohol assessment and treatment, if deemed  
37 appropriate by the assessment. The county or municipality where the  
38 penalty is being imposed shall determine the cost. The court may also  
39 require the offender's electronic home monitoring device include an  
40 alcohol detection breathalyzer or other separate alcohol monitoring

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

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

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

17 (a) The person has three or more prior offenses within ((ten))  
18 twenty-five years; or

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

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

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

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

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

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

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



1 municipality where the penalty is being imposed shall determine the  
2 cost.

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

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

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

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

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

20 (a) Order the use of an ignition interlock or other device for an  
21 additional six months;

22 (b) In any case in which the person has no prior offenses within  
23 seven years, and except as provided in RCW 46.61.502(6) or  
24 46.61.504(6), order an additional twenty-four hours of imprisonment  
25 and a fine of not less than one thousand dollars and not more than  
26 five thousand dollars. One thousand dollars of the fine may not be  
27 suspended unless the court finds the offender to be indigent;

28 (c) In any case in which the person has one prior offense within  
29 seven years, and except as provided in RCW 46.61.502(6) or  
30 46.61.504(6), order an additional five days of imprisonment and a  
31 fine of not less than two thousand dollars and not more than five  
32 thousand dollars. One thousand dollars of the fine may not be  
33 suspended unless the court finds the offender to be indigent;

34 (d) In any case in which the person has two prior offense within  
35 seven years, and except as provided in RCW 46.61.502(6) or  
36 46.61.504(6), order an additional ten days of imprisonment and a fine  
37 of not less than three thousand dollars and not more than ten  
38 thousand dollars. One thousand dollars of the fine may not be  
39 suspended unless the court finds the offender to be indigent.

1           (7) **Other items courts must consider while setting penalties.** In  
2 exercising its discretion in setting penalties within the limits  
3 allowed by this section, the court shall particularly consider the  
4 following:

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

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

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

13           (d) Whether a child passenger under the age of sixteen was an  
14 occupant in the driver's vehicle.

15           (8) **Treatment and information school.** An offender punishable  
16 under this section is subject to the alcohol assessment and treatment  
17 provisions of RCW 46.61.5056.

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

22           (a) **Penalty for alcohol concentration less than 0.15.** If the  
23 person's alcohol concentration was less than 0.15, or if for reasons  
24 other than the person's refusal to take a test offered under RCW  
25 46.20.308 there is no test result indicating the person's alcohol  
26 concentration:

27           (i) Where there has been no prior offense within seven years, be  
28 suspended or denied by the department for ninety days or until the  
29 person is evaluated by an alcoholism agency or probation department  
30 pursuant to RCW 46.20.311 and the person completes or is enrolled in  
31 a ninety-day period of 24/7 sobriety program monitoring. In no  
32 circumstances shall the license suspension be for fewer than two  
33 days;

34           (ii) Where there has been one prior offense within seven years,  
35 be revoked or denied by the department for two years or until the  
36 person is evaluated by an alcoholism agency or probation department  
37 pursuant to RCW 46.20.311 and the person completes or is enrolled in  
38 a six-month period of 24/7 sobriety program monitoring. In no  
39 circumstances shall the license suspension be for less than one year;  
40 or

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

3 (b) **Penalty for alcohol concentration at least 0.15.** If the  
4 person's alcohol concentration was at least 0.15:

5 (i) Where there has been no prior offense within seven years, be  
6 revoked or denied by the department for one year or until the person  
7 is evaluated by an alcoholism agency or probation department pursuant  
8 to RCW 46.20.311 and the person completes or is enrolled in a one  
9 hundred twenty day period of 24/7 sobriety program monitoring. In no  
10 circumstances shall the license revocation be for fewer than four  
11 days;

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

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

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

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

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

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

26 The department shall grant credit on a day-for-day basis for any  
27 portion of a suspension, revocation, or denial already served under  
28 this subsection for a suspension, revocation, or denial imposed under  
29 RCW 46.20.3101 arising out of the same incident.

30 Upon receipt of a notice from the court under RCW 36.28A.390 that  
31 a participant has been removed from a 24/7 sobriety program, the  
32 department must resume any suspension, revocation, or denial that had  
33 been terminated early under this subsection due to participation in  
34 the program, granting credit on a day-for-day basis for any portion  
35 of a suspension, revocation, or denial already served under RCW  
36 46.20.3101 or this section arising out of the same incident.

37 Upon its own motion or upon motion by a person, a court may find,  
38 on the record, that notice to the department under RCW 46.20.270 has  
39 been delayed for three years or more as a result of a clerical or  
40 court error. If so, the court may order that the person's license,

1 permit, or nonresident privilege shall not be revoked, suspended, or  
2 denied for that offense. The court shall send notice of the finding  
3 and order to the department and to the person. Upon receipt of the  
4 notice from the court, the department shall not revoke, suspend, or  
5 deny the license, permit, or nonresident privilege of the person for  
6 that offense.

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

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

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

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

3 (b) For each violation of mandatory conditions of probation under  
4 (a)(i), (ii), (iii), (iv), or (v) of this subsection, the court shall  
5 order the convicted person to be confined for thirty days, which  
6 shall 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  
12 finding of probation violation is made, the suspension, revocation,  
13 or denial then in effect shall be extended by thirty days. The court  
14 shall notify the department of any suspension, revocation, or denial  
15 or any extension of a suspension, revocation, or denial imposed under  
16 this subsection.

17 (12) **Waiver of electronic home monitoring.** A court may waive the  
18 electronic home monitoring requirements 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 However, if a court determines that an alcohol monitoring device  
22 utilizing wireless reporting technology is reasonably available, the  
23 court may require the person to obtain such a device during the  
24 period of required electronic home monitoring;

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

26 (c) The court determines that there is reason to believe that the  
27 offender would violate the conditions of the electronic home  
28 monitoring penalty.

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

36 Whenever the combination of jail time and electronic home  
37 monitoring or alternative sentence would exceed three hundred sixty-  
38 four days, the offender shall serve the jail portion of the sentence  
39 first, and the electronic home monitoring or alternative portion of

1 the sentence shall be reduced so that the combination does not exceed  
2 three hundred sixty-four days.

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

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

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

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

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

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

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

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

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

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

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

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

35 (x) A conviction for a violation of RCW 46.61.520 committed while  
36 under the influence of intoxicating liquor or any drug, or a  
37 conviction for a violation of RCW 46.61.520 committed in a reckless  
38 manner or with the disregard for the safety of others if the  
39 conviction is the result of a charge that was originally filed as a

1 violation of RCW 46.61.520 committed while under the influence of  
2 intoxicating liquor or any drug;

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

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

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

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

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

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

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

39 If a deferred prosecution is revoked based on a subsequent  
40 conviction for an offense listed in this subsection (14)(a), the

1 subsequent conviction shall not be treated as a prior offense of the  
2 revoked deferred prosecution for the purposes of sentencing;

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

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

8 (d) "Within (~~ten~~) twenty-five years" means that the arrest for  
9 a prior offense occurred within (~~ten~~) twenty-five years before or  
10 after the arrest for the current offense.

11 (15) All fines imposed by this section apply to adult offenders  
12 only.

13 **Sec. 3.** RCW 46.61.504 and 2017 c 335 s 2 are each amended to  
14 read as follows:

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

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

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

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

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

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



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

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

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

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

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

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

5 (a) The person has three or more prior offenses within ~~((ten))~~  
6 twenty-five years as defined in RCW 46.61.5055; or

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

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

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

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

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

15 **Sec. 4.** RCW 9.94A.525 and 2017 c 272 s 3 are each amended to  
16 read as follows:

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

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

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

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

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

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

1 felony conviction, if any, or entry of judgment and sentence, the  
2 offender had spent five consecutive years in the community without  
3 committing any crime that subsequently results in a conviction.

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

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

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

29 (g) 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  
33 provided 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  
38 offense shall be scored as a class C felony equivalent if it was a  
39 felony under the relevant federal statute.

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

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

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

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

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

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

39 (7) If the present conviction is for a nonviolent offense and not  
40 covered by subsection (11), (12), or (13) of this section, count one

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

4 (8) If the present conviction is for a violent offense and not  
5 covered in subsection (9), (10), (11), (12), or (13) of this section,  
6 count two points for each prior adult and juvenile violent felony  
7 conviction, one point for each prior adult nonviolent felony  
8 conviction, and 1/2 point for each prior juvenile nonviolent felony  
9 conviction.

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

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

21 (11) If the present conviction is for a felony traffic offense  
22 count two points for each adult or juvenile prior conviction for  
23 Vehicular Homicide or Vehicular Assault; for each felony offense  
24 count one point for each adult and 1/2 point for each juvenile prior  
25 conviction; for each serious traffic offense, other than those used  
26 for an enhancement pursuant to RCW 46.61.520(2), count one point for  
27 each adult and 1/2 point for each juvenile prior conviction; count  
28 one point for each adult and 1/2 point for each juvenile prior  
29 conviction for operation of a vessel while under the influence of  
30 intoxicating liquor or any drug.

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (d) Count one point for each adult prior conviction for a  
39 repetitive domestic violence offense as defined in RCW 9.94A.030,

1 where domestic violence as defined in RCW 9.94A.030, was pleaded and  
2 proven after August 1, 2011.

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

--- END ---