

SB 5054 - S AMD 944

By Senators Lovick, Padden

ADOPTED 02/09/2022

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A
4 RCW to read as follows:

5 (1) An offender is eligible for the special drug offender
6 sentencing alternative for driving under the influence if the
7 offender:

8 (a) Does not have a prior conviction under RCW 46.61.520,
9 46.61.522, 46.61.502(6), or 46.61.504(6); and either

10 (b) Is convicted of felony driving while under the influence of
11 intoxicating liquor, marijuana, or any drug under RCW
12 46.61.502(6)(a); or

13 (c) Is convicted of felony physical control of a vehicle while
14 under the influence of intoxicating liquor or any drug under RCW
15 46.61.504(6)(a).

16 (2) A motion for a special drug offender sentencing alternative
17 for driving under the influence may be made by the court, the
18 offender, or the state if the midpoint of the standard sentence range
19 is 26 months or less. If an offender has a higher midpoint, a motion
20 for a special drug offender sentencing alternative for driving under
21 the influence can only be made by joint agreement of the state and
22 offender.

23 (3) If the sentencing court determines that the offender is
24 eligible for an alternative sentence under this section and that the
25 alternative sentence is appropriate, the court shall waive imposition
26 of a sentence within the standard sentence range and:

27 (a) Impose a sentence equivalent to a prison-based alternative
28 under RCW 9.94A.662, and subject to the same requirements and
29 restrictions as are established in that section, if the low end of
30 the standard sentence range is greater than 24 months; or

1 (b) Impose a sentence consisting of a residential treatment-based
2 alternative consistent with this section if the low end of the
3 standard sentence range is 24 months or less.

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

8 (b) If the court is considering imposing a sentence under the
9 residential substance use disorder treatment-based alternative, the
10 court may order an examination of the offender by the department. The
11 examination shall, at a minimum, address the following issues:

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

13 (ii) Whether effective treatment for the offender's substance use
14 disorder is available from a provider that has been licensed or
15 certified by the department of health; and

16 (iii) Whether the offender and the community will benefit from
17 the use of the alternative.

18 (5) An offender who is eligible for a residential treatment-based
19 alternative under this section shall be sentenced as follows:

20 (a) If necessary, an indeterminate term of confinement of no more
21 than 30 days in a facility operated, licensed, or utilized under
22 contract, by the county in order to facilitate direct transfer to a
23 residential substance use disorder treatment facility;

24 (b) Treatment in a residential substance use disorder treatment
25 program licensed or certified by the department of health for a
26 period set by the court up to six months with treatment completion
27 and continued care delivered in accordance with rules established by
28 the department of health. In establishing rules pursuant to this
29 subsection, the department of health must consider criteria
30 established by the American society of addiction medicine;

31 (c) Twenty-four months of partial confinement to consist of 12
32 months work release followed by 12 months of home detention with
33 electronic monitoring; and

34 (d) Twelve months of community custody.

35 (6) (a) During any period of partial confinement or community
36 custody, the court shall impose treatment and other conditions as
37 provided in RCW 9.94A.703 or as the court considers appropriate.

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

1 (c) The department shall, within available resources, make
2 substance use disorder assessment and treatment services available to
3 the offender.

4 (d) An offender sentenced to community custody under subsection
5 (3)(a) of this section as part of the prison-based alternative or
6 under subsection (3)(b) of this section as part of the residential
7 treatment-based alternative may be required to pay \$30 per month
8 while on community custody to offset the cost of monitoring for
9 alcohol or controlled substances.

10 (7)(a) If the court imposes a sentence under subsection (3)(b) of
11 this section, the treatment provider must send the treatment plan to
12 the court within 30 days of the offender's arrival to the residential
13 substance use disorder treatment program.

14 (b) Upon receipt of the plan, the court shall schedule a progress
15 hearing during the period of treatment and schedule a treatment
16 termination hearing for three months before the expiration of the
17 term of community custody.

18 (c) Before the progress hearing and treatment termination
19 hearing, the treatment provider and the department shall submit
20 written reports to the court and parties regarding the offender's
21 compliance with treatment and monitoring requirements and
22 recommendations regarding termination from treatment.

23 (8) At a progress hearing or treatment termination hearing, the
24 court may:

25 (a) Authorize the department to terminate the offender's
26 community custody status on the expiration date determined under
27 subsection (7) of this section;

28 (b) Continue the hearing to a date before the expiration date of
29 community custody, with or without modifying the conditions of
30 partial confinement or community custody; or

31 (c) Impose a term of total confinement equal to one-half the
32 midpoint of the standard sentence range, followed by a term of
33 community custody under RCW 9.94A.701.

34 (9)(a) The court may bring any offender sentenced under
35 subsection (3)(a) or (b) of this section back into court at any time
36 on its own initiative to evaluate the offender's progress in
37 treatment or to determine if any violations of the conditions of the
38 sentence have occurred.

39 (b) If the offender is brought back to court, the court may
40 modify the conditions of partial confinement or community custody or

1 order the offender to serve a term of total confinement within the
2 standard sentence range of the offender's current offense at any time
3 during the period of partial confinement or community custody if the
4 offender violates the conditions or requirements of the sentence or
5 if the offender is failing to make satisfactory progress in
6 treatment.

7 (c) An offender ordered to serve a term of total confinement
8 under (b) of this subsection shall receive credit for any time
9 previously served in total confinement or residential treatment under
10 this section and shall receive 50 percent credit for any time
11 previously served in partial confinement or community custody under
12 this section.

13 (10) In serving a term of community custody imposed upon failure
14 to complete, or administrative termination from, the special drug
15 offender sentencing alternative program for driving under the
16 influence under this section, the offender shall receive no credit
17 for time served in community custody prior to termination of the
18 offender's participation in the program.

19 (11) An offender sentenced under this section shall be subject to
20 all rules relating to earned release time with respect to any period
21 served in total or partial confinement.

22 (12) Costs of examinations and preparing the recommended service
23 delivery plans under a special drug offender sentencing alternative
24 for driving under the influence may be paid, at the option of the
25 county, from funds provided to the county from the criminal justice
26 treatment account under RCW 71.24.580.

27 **Sec. 2.** RCW 9.94A.030 and 2021 c 237 s 1 and 2021 c 215 s 97 are
28 each reenacted and amended to read as follows:

29 Unless the context clearly requires otherwise, the definitions in
30 this section apply throughout this chapter.

31 (1) "Board" means the indeterminate sentence review board created
32 under chapter 9.95 RCW.

33 (2) "Collect," or any derivative thereof, "collect and remit," or
34 "collect and deliver," when used with reference to the department,
35 means that the department, either directly or through a collection
36 agreement authorized by RCW 9.94A.760, is responsible for monitoring
37 and enforcing the offender's sentence with regard to the legal
38 financial obligation, receiving payment thereof from the offender,
39 and, consistent with current law, delivering daily the entire payment

1 to the superior court clerk without depositing it in a departmental
2 account.

3 (3) "Commission" means the sentencing guidelines commission.

4 (4) "Community corrections officer" means an employee of the
5 department who is responsible for carrying out specific duties in
6 supervision of sentenced offenders and monitoring of sentence
7 conditions.

8 (5) "Community custody" means that portion of an offender's
9 sentence of confinement in lieu of earned release time or imposed as
10 part of a sentence under this chapter and served in the community
11 subject to controls placed on the offender's movement and activities
12 by the department.

13 (6) "Community protection zone" means the area within eight
14 hundred eighty feet of the facilities and grounds of a public or
15 private school.

16 (7) "Community restitution" means compulsory service, without
17 compensation, performed for the benefit of the community by the
18 offender.

19 (8) "Confinement" means total or partial confinement.

20 (9) "Conviction" means an adjudication of guilt pursuant to Title
21 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,
22 and acceptance of a plea of guilty.

23 (10) "Crime-related prohibition" means an order of a court
24 prohibiting conduct that directly relates to the circumstances of the
25 crime for which the offender has been convicted, and shall not be
26 construed to mean orders directing an offender affirmatively to
27 participate in rehabilitative programs or to otherwise perform
28 affirmative conduct. However, affirmative acts necessary to monitor
29 compliance with the order of a court may be required by the
30 department.

31 (11) "Criminal history" means the list of a defendant's prior
32 convictions and juvenile adjudications, whether in this state, in
33 federal court, or elsewhere, and any issued certificates of
34 restoration of opportunity pursuant to RCW 9.97.020.

35 (a) The history shall include, where known, for each conviction
36 (i) whether the defendant has been placed on probation and the length
37 and terms thereof; and (ii) whether the defendant has been
38 incarcerated and the length of incarceration.

39 (b) A conviction may be removed from a defendant's criminal
40 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,

1 9.95.240, or a similar out-of-state statute, or if the conviction has
2 been vacated pursuant to a governor's pardon. However, when a
3 defendant is charged with a recidivist offense, "criminal history"
4 includes a vacated prior conviction for the sole purpose of
5 establishing that such vacated prior conviction constitutes an
6 element of the present recidivist offense as provided in RCW
7 9.94A.640(4)(b) and 9.96.060(7)(c).

8 (c) The determination of a defendant's criminal history is
9 distinct from the determination of an offender score. A prior
10 conviction that was not included in an offender score calculated
11 pursuant to a former version of the sentencing reform act remains
12 part of the defendant's criminal history.

13 (12) "Criminal street gang" means any ongoing organization,
14 association, or group of three or more persons, whether formal or
15 informal, having a common name or common identifying sign or symbol,
16 having as one of its primary activities the commission of criminal
17 acts, and whose members or associates individually or collectively
18 engage in or have engaged in a pattern of criminal street gang
19 activity. This definition does not apply to employees engaged in
20 concerted activities for their mutual aid and protection, or to the
21 activities of labor and bona fide nonprofit organizations or their
22 members or agents.

23 (13) "Criminal street gang associate or member" means any person
24 who actively participates in any criminal street gang and who
25 intentionally promotes, furthers, or assists in any criminal act by
26 the criminal street gang.

27 (14) "Criminal street gang-related offense" means any felony or
28 misdemeanor offense, whether in this state or elsewhere, that is
29 committed for the benefit of, at the direction of, or in association
30 with any criminal street gang, or is committed with the intent to
31 promote, further, or assist in any criminal conduct by the gang, or
32 is committed for one or more of the following reasons:

33 (a) To gain admission, prestige, or promotion within the gang;

34 (b) To increase or maintain the gang's size, membership,
35 prestige, dominance, or control in any geographical area;

36 (c) To exact revenge or retribution for the gang or any member of
37 the gang;

38 (d) To obstruct justice, or intimidate or eliminate any witness
39 against the gang or any member of the gang;

1 (e) To directly or indirectly cause any benefit, aggrandizement,
2 gain, profit, or other advantage for the gang, its reputation,
3 influence, or membership; or

4 (f) To provide the gang with any advantage in, or any control or
5 dominance over any criminal market sector, including, but not limited
6 to, manufacturing, delivering, or selling any controlled substance
7 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
8 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
9 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
10 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
11 9.68 RCW).

12 (15) "Day fine" means a fine imposed by the sentencing court that
13 equals the difference between the offender's net daily income and the
14 reasonable obligations that the offender has for the support of the
15 offender and any dependents.

16 (16) "Day reporting" means a program of enhanced supervision
17 designed to monitor the offender's daily activities and compliance
18 with sentence conditions, and in which the offender is required to
19 report daily to a specific location designated by the department or
20 the sentencing court.

21 (17) "Department" means the department of corrections.

22 (18) "Determinate sentence" means a sentence that states with
23 exactitude the number of actual years, months, or days of total
24 confinement, of partial confinement, of community custody, the number
25 of actual hours or days of community restitution work, or dollars or
26 terms of a legal financial obligation. The fact that an offender
27 through earned release can reduce the actual period of confinement
28 shall not affect the classification of the sentence as a determinate
29 sentence.

30 (19) "Disposable earnings" means that part of the earnings of an
31 offender remaining after the deduction from those earnings of any
32 amount required by law to be withheld. For the purposes of this
33 definition, "earnings" means compensation paid or payable for
34 personal services, whether denominated as wages, salary, commission,
35 bonuses, or otherwise, and, notwithstanding any other provision of
36 law making the payments exempt from garnishment, attachment, or other
37 process to satisfy a court-ordered legal financial obligation,
38 specifically includes periodic payments pursuant to pension or
39 retirement programs, or insurance policies of any type, but does not

1 include payments made under Title 50 RCW, except as provided in RCW
2 50.40.020 and 50.40.050, or Title 74 RCW.

3 (20) (a) "Domestic violence" has the same meaning as defined in
4 RCW 10.99.020.

5 (b) "Domestic violence" also means: (i) Physical harm, bodily
6 injury, assault, or the infliction of fear of imminent physical harm,
7 bodily injury, or assault, sexual assault, or stalking, as defined in
8 RCW 9A.46.110, of one intimate partner by another intimate partner as
9 defined in RCW 10.99.020; or (ii) physical harm, bodily injury,
10 assault, or the infliction of fear of imminent physical harm, bodily
11 injury, or assault, sexual assault, or stalking, as defined in RCW
12 9A.46.110, of one family or household member by another family or
13 household member as defined in RCW 10.99.020.

14 (21) "Drug offender sentencing alternative" is a sentencing
15 option available to persons convicted of a felony offense who are
16 eligible for the option under RCW 9.94A.660.

17 (22) "Drug offense" means:

18 (a) Any felony violation of chapter 69.50 RCW except possession
19 of a controlled substance (RCW 69.50.4013) or forged prescription for
20 a controlled substance (RCW 69.50.403);

21 (b) Any offense defined as a felony under federal law that
22 relates to the possession, manufacture, distribution, or
23 transportation of a controlled substance; or

24 (c) Any out-of-state conviction for an offense that under the
25 laws of this state would be a felony classified as a drug offense
26 under (a) of this subsection.

27 (23) "Earned release" means earned release from confinement as
28 provided in RCW 9.94A.728.

29 (24) "Electronic monitoring" means tracking the location of an
30 individual through the use of technology that is capable of
31 determining or identifying the monitored individual's presence or
32 absence at a particular location including, but not limited to:

33 (a) Radio frequency signaling technology, which detects if the
34 monitored individual is or is not at an approved location and
35 notifies the monitoring agency of the time that the monitored
36 individual either leaves the approved location or tampers with or
37 removes the monitoring device; or

38 (b) Active or passive global positioning system technology, which
39 detects the location of the monitored individual and notifies the
40 monitoring agency of the monitored individual's location and which

1 may also include electronic monitoring with victim notification
2 technology that is capable of notifying a victim or protected party,
3 either directly or through a monitoring agency, if the monitored
4 individual enters within the restricted distance of a victim or
5 protected party, or within the restricted distance of a designated
6 location.

7 (25) "Escape" means:

8 (a) Sexually violent predator escape (RCW 9A.76.115), escape in
9 the first degree (RCW 9A.76.110), escape in the second degree (RCW
10 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
11 willful failure to return from work release (RCW 72.65.070), or
12 willful failure to be available for supervision by the department
13 while in community custody (RCW 72.09.310); or

14 (b) Any federal or out-of-state conviction for an offense that
15 under the laws of this state would be a felony classified as an
16 escape under (a) of this subsection.

17 (26) "Felony traffic offense" means:

18 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
19 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
20 run injury-accident (RCW 46.52.020(4)), felony driving while under
21 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),
22 or felony physical control of a vehicle while under the influence of
23 intoxicating liquor or any drug (RCW 46.61.504(6)); or

24 (b) Any federal or out-of-state conviction for an offense that
25 under the laws of this state would be a felony classified as a felony
26 traffic offense under (a) of this subsection.

27 (27) "Fine" means a specific sum of money ordered by the
28 sentencing court to be paid by the offender to the court over a
29 specific period of time.

30 (28) "First-time offender" means any person who has no prior
31 convictions for a felony and is eligible for the first-time offender
32 waiver under RCW 9.94A.650.

33 (29) "Home detention" is a subset of electronic monitoring and
34 means a program of partial confinement available to offenders wherein
35 the offender is confined in a private residence twenty-four hours a
36 day, unless an absence from the residence is approved, authorized, or
37 otherwise permitted in the order by the court or other supervising
38 agency that ordered home detention, and the offender is subject to
39 electronic monitoring.

1 (30) "Homelessness" or "homeless" means a condition where an
2 individual lacks a fixed, regular, and adequate nighttime residence
3 and who has a primary nighttime residence that is:

4 (a) A supervised, publicly or privately operated shelter designed
5 to provide temporary living accommodations;

6 (b) A public or private place not designed for, or ordinarily
7 used as, a regular sleeping accommodation for human beings; or

8 (c) A private residence where the individual stays as a transient
9 invitee.

10 (31) "Legal financial obligation" means a sum of money that is
11 ordered by a superior court of the state of Washington for legal
12 financial obligations which may include restitution to the victim,
13 statutorily imposed crime victims' compensation fees as assessed
14 pursuant to RCW 7.68.035, court costs, county or interlocal drug
15 funds, court-appointed attorneys' fees, and costs of defense, fines,
16 and any other financial obligation that is assessed to the offender
17 as a result of a felony conviction. Upon conviction for vehicular
18 assault while under the influence of intoxicating liquor or any drug,
19 RCW 46.61.522(1)(b), or vehicular homicide while under the influence
20 of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal
21 financial obligations may also include payment to a public agency of
22 the expense of an emergency response to the incident resulting in the
23 conviction, subject to RCW 38.52.430.

24 (32) "Most serious offense" means any of the following felonies
25 or a felony attempt to commit any of the following felonies:

26 (a) Any felony defined under any law as a class A felony or
27 criminal solicitation of or criminal conspiracy to commit a class A
28 felony;

29 (b) Assault in the second degree;

30 (c) Assault of a child in the second degree;

31 (d) Child molestation in the second degree;

32 (e) Controlled substance homicide;

33 (f) Extortion in the first degree;

34 (g) Incest when committed against a child under age fourteen;

35 (h) Indecent liberties;

36 (i) Kidnapping in the second degree;

37 (j) Leading organized crime;

38 (k) Manslaughter in the first degree;

39 (l) Manslaughter in the second degree;

40 (m) Promoting prostitution in the first degree;

- 1 (n) Rape in the third degree;
- 2 (o) Sexual exploitation;
- 3 (p) Vehicular assault, when caused by the operation or driving of
- 4 a vehicle by a person while under the influence of intoxicating
- 5 liquor or any drug or by the operation or driving of a vehicle in a
- 6 reckless manner;
- 7 (q) Vehicular homicide, when proximately caused by the driving of
- 8 any vehicle by any person while under the influence of intoxicating
- 9 liquor or any drug as defined by RCW 46.61.502, or by the operation
- 10 of any vehicle in a reckless manner;
- 11 (r) Any other class B felony offense with a finding of sexual
- 12 motivation;
- 13 (s) Any other felony with a deadly weapon verdict under RCW
- 14 9.94A.825;
- 15 (t) Any felony offense in effect at any time prior to December 2,
- 16 1993, that is comparable to a most serious offense under this
- 17 subsection, or any federal or out-of-state conviction for an offense
- 18 that under the laws of this state would be a felony classified as a
- 19 most serious offense under this subsection;
- 20 (u)(i) A prior conviction for indecent liberties under RCW
- 21 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
- 22 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
- 23 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW
- 24 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
- 25 until July 1, 1988;
- 26 (ii) A prior conviction for indecent liberties under RCW
- 27 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
- 28 if: (A) The crime was committed against a child under the age of
- 29 fourteen; or (B) the relationship between the victim and perpetrator
- 30 is included in the definition of indecent liberties under RCW
- 31 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
- 32 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
- 33 1993, through July 27, 1997;
- 34 (v) Any out-of-state conviction for a felony offense with a
- 35 finding of sexual motivation if the minimum sentence imposed was ten
- 36 years or more; provided that the out-of-state felony offense must be
- 37 comparable to a felony offense under this title and Title 9A RCW and
- 38 the out-of-state definition of sexual motivation must be comparable
- 39 to the definition of sexual motivation contained in this section.

1 (33) "Nonviolent offense" means an offense which is not a violent
2 offense.

3 (34) "Offender" means a person who has committed a felony
4 established by state law and is eighteen years of age or older or is
5 less than eighteen years of age but whose case is under superior
6 court jurisdiction under RCW 13.04.030 or has been transferred by the
7 appropriate juvenile court to a criminal court pursuant to RCW
8 13.40.110. In addition, for the purpose of community custody
9 requirements under this chapter, "offender" also means a misdemeanor
10 or gross misdemeanor probationer ordered by a superior court to
11 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and
12 supervised by the department pursuant to RCW 9.94A.501 and
13 9.94A.5011. Throughout this chapter, the terms "offender" and
14 "defendant" are used interchangeably.

15 (35) "Partial confinement" means confinement for no more than one
16 year in a facility or institution operated or utilized under contract
17 by the state or any other unit of government, or, if home detention,
18 electronic monitoring, or work crew has been ordered by the court or
19 home detention has been ordered by the department as part of the
20 parenting program or the graduated reentry program, in an approved
21 residence, for a substantial portion of each day with the balance of
22 the day spent in the community. Partial confinement includes work
23 release, home detention, work crew, electronic monitoring, and a
24 combination of work crew, electronic monitoring, and home detention.

25 (36) "Pattern of criminal street gang activity" means:

26 (a) The commission, attempt, conspiracy, or solicitation of, or
27 any prior juvenile adjudication of or adult conviction of, two or
28 more of the following criminal street gang-related offenses:

29 (i) Any "serious violent" felony offense as defined in this
30 section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a
31 Child 1 (RCW 9A.36.120);

32 (ii) Any "violent" offense as defined by this section, excluding
33 Assault of a Child 2 (RCW 9A.36.130);

34 (iii) Deliver or Possession with Intent to Deliver a Controlled
35 Substance (chapter 69.50 RCW);

36 (iv) Any violation of the firearms and dangerous weapon act
37 (chapter 9.41 RCW);

38 (v) Theft of a Firearm (RCW 9A.56.300);

39 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);

40 (vii) Hate Crime (RCW 9A.36.080);

1 (viii) Harassment where a subsequent violation or deadly threat
2 is made (RCW 9A.46.020(2)(b));

3 (ix) Criminal Gang Intimidation (RCW 9A.46.120);

4 (x) Any felony conviction by a person eighteen years of age or
5 older with a special finding of involving a juvenile in a felony
6 offense under RCW 9.94A.833;

7 (xi) Residential Burglary (RCW 9A.52.025);

8 (xii) Burglary 2 (RCW 9A.52.030);

9 (xiii) Malicious Mischief 1 (RCW 9A.48.070);

10 (xiv) Malicious Mischief 2 (RCW 9A.48.080);

11 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);

12 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

13 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
14 9A.56.070);

15 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
16 9A.56.075);

17 (xix) Extortion 1 (RCW 9A.56.120);

18 (xx) Extortion 2 (RCW 9A.56.130);

19 (XXI) Intimidating a Witness (RCW 9A.72.110);

20 (xxii) Tampering with a Witness (RCW 9A.72.120);

21 (xxiii) Reckless Endangerment (RCW 9A.36.050);

22 (xxiv) Coercion (RCW 9A.36.070);

23 (xxv) Harassment (RCW 9A.46.020); or

24 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

25 (b) That at least one of the offenses listed in (a) of this
26 subsection shall have occurred after July 1, 2008;

27 (c) That the most recent committed offense listed in (a) of this
28 subsection occurred within three years of a prior offense listed in
29 (a) of this subsection; and

30 (d) Of the offenses that were committed in (a) of this
31 subsection, the offenses occurred on separate occasions or were
32 committed by two or more persons.

33 (37) "Persistent offender" is an offender who:

34 (a) (i) Has been convicted in this state of any felony considered
35 a most serious offense; and

36 (ii) Has, before the commission of the offense under (a) of this
37 subsection, been convicted as an offender on at least two separate
38 occasions, whether in this state or elsewhere, of felonies that under
39 the laws of this state would be considered most serious offenses and
40 would be included in the offender score under RCW 9.94A.525; provided

1 that of the two or more previous convictions, at least one conviction
2 must have occurred before the commission of any of the other most
3 serious offenses for which the offender was previously convicted; or

4 (b) (i) Has been convicted of: (A) Rape in the first degree, rape
5 of a child in the first degree, child molestation in the first
6 degree, rape in the second degree, rape of a child in the second
7 degree, or indecent liberties by forcible compulsion; (B) any of the
8 following offenses with a finding of sexual motivation: Murder in the
9 first degree, murder in the second degree, homicide by abuse,
10 kidnapping in the first degree, kidnapping in the second degree,
11 assault in the first degree, assault in the second degree, assault of
12 a child in the first degree, assault of a child in the second degree,
13 or burglary in the first degree; or (C) an attempt to commit any
14 crime listed in this subsection (37) (b) (i); and

15 (ii) Has, before the commission of the offense under (b) (i) of
16 this subsection, been convicted as an offender on at least one
17 occasion, whether in this state or elsewhere, of an offense listed in
18 (b) (i) of this subsection or any federal or out-of-state offense or
19 offense under prior Washington law that is comparable to the offenses
20 listed in (b) (i) of this subsection. A conviction for rape of a child
21 in the first degree constitutes a conviction under (b) (i) of this
22 subsection only when the offender was sixteen years of age or older
23 when the offender committed the offense. A conviction for rape of a
24 child in the second degree constitutes a conviction under (b) (i) of
25 this subsection only when the offender was eighteen years of age or
26 older when the offender committed the offense.

27 (38) "Predatory" means: (a) The perpetrator of the crime was a
28 stranger to the victim, as defined in this section; (b) the
29 perpetrator established or promoted a relationship with the victim
30 prior to the offense and the victimization of the victim was a
31 significant reason the perpetrator established or promoted the
32 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
33 volunteer, or other person in authority in any public or private
34 school and the victim was a student of the school under his or her
35 authority or supervision. For purposes of this subsection, "school"
36 does not include home-based instruction as defined in RCW
37 28A.225.010; (ii) a coach, trainer, volunteer, or other person in
38 authority in any recreational activity and the victim was a
39 participant in the activity under his or her authority or
40 supervision; (iii) a pastor, elder, volunteer, or other person in

1 authority in any church or religious organization, and the victim was
2 a member or participant of the organization under his or her
3 authority; or (iv) a teacher, counselor, volunteer, or other person
4 in authority providing home-based instruction and the victim was a
5 student receiving home-based instruction while under his or her
6 authority or supervision. For purposes of this subsection: (A) "Home-
7 based instruction" has the same meaning as defined in RCW
8 28A.225.010; and (B) "teacher, counselor, volunteer, or other person
9 in authority" does not include the parent or legal guardian of the
10 victim.

11 (39) "Private school" means a school regulated under chapter
12 28A.195 or 28A.205 RCW.

13 (40) "Public school" has the same meaning as in RCW 28A.150.010.

14 (41) "Recidivist offense" means a felony offense where a prior
15 conviction of the same offense or other specified offense is an
16 element of the crime including, but not limited to:

17 (a) Assault in the fourth degree where domestic violence is
18 pleaded and proven, RCW 9A.36.041(3);

19 (b) Cyberstalking, RCW 9.61.260(3)(a);

20 (c) Harassment, RCW 9A.46.020(2)(b)(i);

21 (d) Indecent exposure, RCW 9A.88.010(2)(c);

22 (e) Stalking, RCW 9A.46.110(5)(b)(i) and (iii);

23 (f) Telephone harassment, RCW 9.61.230(2)(a); and

24 (g) Violation of a no-contact or protection order, RCW 7.105.450
25 or former RCW 26.50.110(5).

26 (42) "Repetitive domestic violence offense" means any:

27 (a) (i) Domestic violence assault that is not a felony offense
28 under RCW 9A.36.041;

29 (ii) Domestic violence violation of a no-contact order under
30 chapter 10.99 RCW that is not a felony offense;

31 (iii) Domestic violence violation of a protection order under
32 chapter 26.09, 26.26A, or 26.26B RCW or former chapter 26.50 RCW, or
33 violation of a domestic violence protection order under chapter 7.105
34 RCW, that is not a felony offense;

35 (iv) Domestic violence harassment offense under RCW 9A.46.020
36 that is not a felony offense; or

37 (v) Domestic violence stalking offense under RCW 9A.46.110 that
38 is not a felony offense; or

39 (b) Any federal, out-of-state, tribal court, military, county, or
40 municipal conviction for an offense that under the laws of this state

1 would be classified as a repetitive domestic violence offense under
2 (a) of this subsection.

3 (43) "Restitution" means a specific sum of money ordered by the
4 sentencing court to be paid by the offender to the court over a
5 specified period of time as payment of damages. The sum may include
6 both public and private costs.

7 (44) "Risk assessment" means the application of the risk
8 instrument recommended to the department by the Washington state
9 institute for public policy as having the highest degree of
10 predictive accuracy for assessing an offender's risk of reoffense.

11 (45) "Serious traffic offense" means:

12 (a) Nonfelony driving while under the influence of intoxicating
13 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
14 while under the influence of intoxicating liquor or any drug (RCW
15 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
16 attended vehicle (RCW 46.52.020(5)); or

17 (b) Any federal, out-of-state, county, or municipal conviction
18 for an offense that under the laws of this state would be classified
19 as a serious traffic offense under (a) of this subsection.

20 (46) "Serious violent offense" is a subcategory of violent
21 offense and means:

22 (a) (i) Murder in the first degree;
23 (ii) Homicide by abuse;
24 (iii) Murder in the second degree;
25 (iv) Manslaughter in the first degree;
26 (v) Assault in the first degree;
27 (vi) Kidnapping in the first degree;
28 (vii) Rape in the first degree;
29 (viii) Assault of a child in the first degree; or
30 (ix) An attempt, criminal solicitation, or criminal conspiracy to
31 commit one of these felonies; or

32 (b) Any federal or out-of-state conviction for an offense that
33 under the laws of this state would be a felony classified as a
34 serious violent offense under (a) of this subsection.

35 (47) "Sex offense" means:

36 (a) (i) A felony that is a violation of chapter 9A.44 RCW other
37 than RCW 9A.44.132;
38 (ii) A violation of RCW 9A.64.020;
39 (iii) A felony that is a violation of chapter 9.68A RCW other
40 than RCW 9.68A.080;

1 (iv) A felony that is, under chapter 9A.28 RCW, a criminal
2 attempt, criminal solicitation, or criminal conspiracy to commit such
3 crimes; or

4 (v) A felony violation of RCW 9A.44.132(1) (failure to register
5 as a sex offender) if the person has been convicted of violating RCW
6 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
7 prior to June 10, 2010, on at least one prior occasion;

8 (b) Any conviction for a felony offense in effect at any time
9 prior to July 1, 1976, that is comparable to a felony classified as a
10 sex offense in (a) of this subsection;

11 (c) A felony with a finding of sexual motivation under RCW
12 9.94A.835 or 13.40.135; or

13 (d) Any federal or out-of-state conviction for an offense that
14 under the laws of this state would be a felony classified as a sex
15 offense under (a) of this subsection.

16 (48) "Sexual motivation" means that one of the purposes for which
17 the defendant committed the crime was for the purpose of his or her
18 sexual gratification.

19 (49) "Standard sentence range" means the sentencing court's
20 discretionary range in imposing a nonappealable sentence.

21 (50) "Statutory maximum sentence" means the maximum length of
22 time for which an offender may be confined as punishment for a crime
23 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute
24 defining the crime, or other statute defining the maximum penalty for
25 a crime.

26 (51) "Stranger" means that the victim did not know the offender
27 twenty-four hours before the offense.

28 (52) "Total confinement" means confinement inside the physical
29 boundaries of a facility or institution operated or utilized under
30 contract by the state or any other unit of government for twenty-four
31 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

32 (53) "Transition training" means written and verbal instructions
33 and assistance provided by the department to the offender during the
34 two weeks prior to the offender's successful completion of the work
35 ethic camp program. The transition training shall include
36 instructions in the offender's requirements and obligations during
37 the offender's period of community custody.

38 (54) "Victim" means any person who has sustained emotional,
39 psychological, physical, or financial injury to person or property as
40 a direct result of the crime charged.

1 (55) "Victim of domestic violence" means an intimate partner or
2 household member who has been subjected to the infliction of physical
3 harm or sexual and psychological abuse by an intimate partner or
4 household member as part of a pattern of assaultive, coercive, and
5 controlling behaviors directed at achieving compliance from or
6 control over that intimate partner or household member. Domestic
7 violence includes, but is not limited to, the offenses listed in RCW
8 10.99.020 and 26.50.010 committed by an intimate partner or household
9 member against a victim who is an intimate partner or household
10 member.

11 (56) "Victim of sex trafficking, prostitution, or commercial
12 sexual abuse of a minor" means a person who has been forced or
13 coerced to perform a commercial sex act including, but not limited
14 to, being a victim of offenses defined in RCW 9A.40.100, 9A.88.070,
15 9.68A.101, and the trafficking victims protection act of 2000, 22
16 U.S.C. Sec. 7101 et seq.; or a person who was induced to perform a
17 commercial sex act when they were less than 18 years of age including
18 but not limited to the offenses defined in chapter 9.68A RCW.

19 (57) "Victim of sexual assault" means any person who is a victim
20 of a sexual assault offense, nonconsensual sexual conduct, or
21 nonconsensual sexual penetration and as a result suffers physical,
22 emotional, financial, or psychological impacts. Sexual assault
23 offenses include, but are not limited to, the offenses defined in
24 chapter 9A.44 RCW.

25 (58) "Violent offense" means:

26 (a) Any of the following felonies:

27 (i) Any felony defined under any law as a class A felony or an
28 attempt to commit a class A felony;

29 (ii) Criminal solicitation of or criminal conspiracy to commit a
30 class A felony;

31 (iii) Manslaughter in the first degree;

32 (iv) Manslaughter in the second degree;

33 (v) Indecent liberties if committed by forcible compulsion;

34 (vi) Kidnapping in the second degree;

35 (vii) Arson in the second degree;

36 (viii) Assault in the second degree;

37 (ix) Assault of a child in the second degree;

38 (x) Extortion in the first degree;

39 (xi) Robbery in the second degree;

40 (xii) Drive-by shooting;

1 (xiii) Vehicular assault, when caused by the operation or driving
2 of a vehicle by a person while under the influence of intoxicating
3 liquor or any drug or by the operation or driving of a vehicle in a
4 reckless manner; and

5 (xiv) Vehicular homicide, when proximately caused by the driving
6 of any vehicle by any person while under the influence of
7 intoxicating liquor or any drug as defined by RCW 46.61.502, or by
8 the operation of any vehicle in a reckless manner;

9 (b) Any conviction for a felony offense in effect at any time
10 prior to July 1, 1976, that is comparable to a felony classified as a
11 violent offense in (a) of this subsection; and

12 (c) Any federal or out-of-state conviction for an offense that
13 under the laws of this state would be a felony classified as a
14 violent offense under (a) or (b) of this subsection.

15 (59) "Work crew" means a program of partial confinement
16 consisting of civic improvement tasks for the benefit of the
17 community that complies with RCW 9.94A.725.

18 (60) "Work ethic camp" means an alternative incarceration program
19 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
20 the cost of corrections by requiring offenders to complete a
21 comprehensive array of real-world job and vocational experiences,
22 character-building work ethics training, life management skills
23 development, substance abuse rehabilitation, counseling, literacy
24 training, and basic adult education.

25 (61) "Work release" means a program of partial confinement
26 available to offenders who are employed or engaged as a student in a
27 regular course of study at school.

28 (62) "Drug offender sentencing alternative for driving under the
29 influence" is a sentencing option available to persons convicted of
30 felony driving while under the influence of intoxicating liquor or
31 any drug under RCW 46.61.502(6), or felony physical control of a
32 vehicle while under the influence of intoxicating liquor or any drug
33 under RCW 46.61.504(6) who are eligible under section 1 of this act.

34 **Sec. 3.** RCW 9.94A.190 and 2018 c 166 s 5 are each amended to
35 read as follows:

36 (1) A sentence that includes a term or terms of confinement
37 totaling more than one year shall be served in a facility or
38 institution operated, or utilized under contract, by the state, or in
39 home detention pursuant to RCW 9.94A.6551 or the graduated reentry

1 program under RCW 9.94A.733. Except as provided in subsection (3) or
2 (5) of this section, a sentence of not more than one year of
3 confinement shall be served in a facility operated, licensed, or
4 utilized under contract, by the county, or if home detention or work
5 crew has been ordered by the court, in the residence of either the
6 offender or a member of the offender's immediate family.

7 (2) If a county uses a state partial confinement facility for the
8 partial confinement of a person sentenced to confinement for not more
9 than one year, the county shall reimburse the state for the use of
10 the facility as provided in this subsection. The office of financial
11 management shall set the rate of reimbursement based upon the average
12 per diem cost per offender in the facility. The office of financial
13 management shall determine to what extent, if any, reimbursement
14 shall be reduced or eliminated because of funds provided by the
15 legislature to the department for the purpose of covering the cost of
16 county use of state partial confinement facilities. The office of
17 financial management shall reestablish reimbursement rates each even-
18 numbered year.

19 (3) A person who is sentenced for a felony to a term of not more
20 than one year, and who is committed or returned to incarceration in a
21 state facility on another felony conviction, either under the
22 indeterminate sentencing laws, chapter 9.95 RCW, or under this
23 chapter shall serve all terms of confinement, including a sentence of
24 not more than one year, in a facility or institution operated, or
25 utilized under contract, by the state, consistent with the provisions
26 of RCW 9.94A.589.

27 (4) Notwithstanding any other provision of this section, a
28 sentence imposed pursuant to RCW 9.94A.660 or section 1 of this act
29 which has a standard sentence range of over one year, regardless of
30 length, shall be served in a facility or institution operated, or
31 utilized under contract, by the state.

32 (5) Sentences imposed pursuant to RCW 9.94A.507 shall be served
33 in a facility or institution operated, or utilized under contract, by
34 the state.

35 **Sec. 4.** RCW 9.94A.501 and 2021 c 242 s 2 are each amended to
36 read as follows:

37 (1) The department shall supervise the following offenders who
38 are sentenced to probation in superior court, pursuant to RCW
39 9.92.060, 9.95.204, or 9.95.210:

1 (a) Offenders convicted of:
2 (i) Sexual misconduct with a minor second degree;
3 (ii) Custodial sexual misconduct second degree;
4 (iii) Communication with a minor for immoral purposes; and
5 (iv) Violation of RCW 9A.44.132(2) (failure to register); and
6 (b) Offenders who have:

7 (i) A current conviction for a repetitive domestic violence
8 offense where domestic violence has been pleaded and proven after
9 August 1, 2011; and

10 (ii) A prior conviction for a repetitive domestic violence
11 offense or domestic violence felony offense where domestic violence
12 has been pleaded and proven after August 1, 2011.

13 (2) Misdemeanor and gross misdemeanor offenders supervised by the
14 department pursuant to this section shall be placed on community
15 custody.

16 (3) The department shall supervise every felony offender
17 sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702
18 whose risk assessment classifies the offender as one who is at a high
19 risk to reoffend.

20 (4) Notwithstanding any other provision of this section, the
21 department shall supervise an offender sentenced to community custody
22 regardless of risk classification if the offender:

23 (a) Has a current conviction for a sex offense or a serious
24 violent offense and was sentenced to a term of community custody
25 pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

26 (b) Has been identified by the department as a dangerous mentally
27 ill offender pursuant to RCW 72.09.370;

28 (c) Has an indeterminate sentence and is subject to parole
29 pursuant to RCW 9.95.017;

30 (d) Has a current conviction for violating RCW 9A.44.132(1)
31 (failure to register) and was sentenced to a term of community
32 custody pursuant to RCW 9.94A.701;

33 (e) (i) Has a current conviction for a domestic violence felony
34 offense where domestic violence has been pleaded and proven after
35 August 1, 2011, and a prior conviction for a repetitive domestic
36 violence offense or domestic violence felony offense where domestic
37 violence was pleaded and proven after August 1, 2011. This subsection
38 (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

39 (ii) Has a current conviction for a domestic violence felony
40 offense where domestic violence was pleaded and proven. The state and

1 its officers, agents, and employees shall not be held criminally or
2 civilly liable for its supervision of an offender under this
3 subsection (4)(e)(ii) unless the state and its officers, agents, and
4 employees acted with gross negligence;

5 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660,
6 9.94A.670, 9.94A.711, ((or)) 9.94A.695, or section 1 of this act;

7 (g) Is subject to supervision pursuant to RCW 9.94A.745; or

8 (h) Was convicted and sentenced under RCW 46.61.520 (vehicular
9 homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6)
10 (felony DUI), or RCW 46.61.504(6) (felony physical control).

11 (5) The department shall supervise any offender who is released
12 by the indeterminate sentence review board and who was sentenced to
13 community custody or subject to community custody under the terms of
14 release.

15 (6) The department is not authorized to, and may not, supervise
16 any offender sentenced to a term of community custody or any
17 probationer unless the offender or probationer is one for whom
18 supervision is required under this section or RCW 9.94A.5011.

19 (7) The department shall conduct a risk assessment for every
20 felony offender sentenced to a term of community custody who may be
21 subject to supervision under this section or RCW 9.94A.5011.

22 (8) The period of time the department is authorized to supervise
23 an offender under this section may not exceed the duration of
24 community custody specified under RCW 9.94B.050, 9.94A.701 (1)
25 through (9), or 9.94A.702, except in cases where the court has
26 imposed an exceptional term of community custody under RCW 9.94A.535.

27 (9) The period of time the department is authorized to supervise
28 an offender under this section may be reduced by the earned award of
29 supervision compliance credit pursuant to RCW 9.94A.717.

30 **Sec. 5.** RCW 9.94A.505 and 2021 c 242 s 3 are each amended to
31 read as follows:

32 (1) When a person is convicted of a felony, the court shall
33 impose punishment as provided in this chapter.

34 (2) (a) The court shall impose a sentence as provided in the
35 following sections and as applicable in the case:

36 (i) Unless another term of confinement applies, a sentence within
37 the standard sentence range established in RCW 9.94A.510 or
38 9.94A.517;

39 (ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

1 (iii) RCW 9.94A.570, relating to persistent offenders;
2 (iv) RCW 9.94A.540, relating to mandatory minimum terms;
3 (v) RCW 9.94A.650, relating to the first-time offender waiver;
4 (vi) RCW 9.94A.660, relating to the drug offender sentencing
5 alternative;
6 (vii) Section 1 of this act, relating to the drug offender
7 sentencing alternative for driving under the influence;
8 (viii) RCW 9.94A.670, relating to the special sex offender
9 sentencing alternative;
10 (((viii))) (ix) RCW 9.94A.655, relating to the parenting
11 sentencing alternative;
12 (((ix))) (x) RCW 9.94A.695, relating to the mental health
13 sentencing alternative;
14 (((x))) (xi) RCW 9.94A.507, relating to certain sex offenses;
15 (((xi))) (xii) RCW 9.94A.535, relating to exceptional sentences;
16 (((xii))) (xiii) RCW 9.94A.589, relating to consecutive and
17 concurrent sentences;
18 (((xiii))) (xiv) RCW 9.94A.603, relating to felony driving while
19 under the influence of intoxicating liquor or any drug and felony
20 physical control of a vehicle while under the influence of
21 intoxicating liquor or any drug;
22 (((xiv))) (xv) RCW 9.94A.711, relating to the theft or taking of
23 a motor vehicle.
24 (b) If a standard sentence range has not been established for the
25 offender's crime, the court shall impose a determinate sentence which
26 may include not more than one year of confinement; community
27 restitution work; a term of community custody under RCW 9.94A.702 not
28 to exceed one year; and/or other legal financial obligations. The
29 court may impose a sentence which provides more than one year of
30 confinement and a community custody term under RCW 9.94A.701 if the
31 court finds reasons justifying an exceptional sentence as provided in
32 RCW 9.94A.535.
33 (3) If the court imposes a sentence requiring confinement of
34 thirty days or less, the court may, in its discretion, specify that
35 the sentence be served on consecutive or intermittent days. A
36 sentence requiring more than thirty days of confinement shall be
37 served on consecutive days. Local jail administrators may schedule
38 court-ordered intermittent sentences as space permits.

1 (4) If a sentence imposed includes payment of a legal financial
2 obligation, it shall be imposed as provided in RCW 9.94A.750,
3 9.94A.753, 9.94A.760, and 43.43.7541.

4 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
5 court may not impose a sentence providing for a term of confinement
6 or community custody that exceeds the statutory maximum for the crime
7 as provided in chapter 9A.20 RCW.

8 (6) The sentencing court shall give the offender credit for all
9 confinement time served before the sentencing if that confinement was
10 solely in regard to the offense for which the offender is being
11 sentenced.

12 (7) The sentencing court shall not give the offender credit for
13 any time the offender was required to comply with an electronic
14 monitoring program prior to sentencing if the offender was convicted
15 of one of the following offenses:

16 (a) A violent offense;

17 (b) Any sex offense;

18 (c) Any drug offense;

19 (d) Reckless burning in the first or second degree as defined in
20 RCW 9A.48.040 or 9A.48.050;

21 (e) Assault in the third degree as defined in RCW 9A.36.031;

22 (f) Assault of a child in the third degree;

23 (g) Unlawful imprisonment as defined in RCW 9A.40.040; or

24 (h) Harassment as defined in RCW 9A.46.020.

25 (8) The court shall order restitution as provided in RCW
26 9.94A.750 and 9.94A.753.

27 (9) As a part of any sentence, the court may impose and enforce
28 crime-related prohibitions and affirmative conditions as provided in
29 this chapter. "Crime-related prohibitions" may include a prohibition
30 on the use or possession of alcohol or controlled substances if the
31 court finds that any chemical dependency or substance abuse
32 contributed to the offense.

33 (10) In any sentence of partial confinement, the court may
34 require the offender to serve the partial confinement in work
35 release, in a program of home detention, on work crew, or in a
36 combined program of work crew and home detention.

37 **Sec. 6.** RCW 9.94A.525 and 2021 c 215 s 100 are each amended to
38 read as follows:

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

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

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

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

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

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

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

34 (e) If the present conviction is felony driving while under the
35 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
36 felony physical control of a vehicle while under the influence of
37 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate
38 crimes for the offense as defined by RCW 46.61.5055(14) shall be
39 included in the offender score, and prior convictions for felony
40 driving while under the influence of intoxicating liquor or any drug

1 (RCW 46.61.502(6)) or felony physical control of a vehicle while
2 under the influence of intoxicating liquor or any drug (RCW
3 46.61.504(6)) shall always be included in the offender score. All
4 other convictions of the defendant shall be scored according to this
5 section.

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

12 (g) This subsection applies to both adult and juvenile prior
13 convictions.

14 (3) Out-of-state convictions for offenses shall be classified
15 according to the comparable offense definitions and sentences
16 provided by Washington law. Federal convictions for offenses shall be
17 classified according to the comparable offense definitions and
18 sentences provided by Washington law. If there is no clearly
19 comparable offense under Washington law or the offense is one that is
20 usually considered subject to exclusive federal jurisdiction, the
21 offense shall be scored as a class C felony equivalent if it was a
22 felony under the relevant federal statute.

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

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

29 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a),
30 to encompass the same criminal conduct, shall be counted as one
31 offense, the offense that yields the highest offender score. The
32 current sentencing court shall determine with respect to other prior
33 adult offenses for which sentences were served concurrently or prior
34 juvenile offenses for which sentences were served consecutively,
35 whether those offenses shall be counted as one offense or as separate
36 offenses using the "same criminal conduct" analysis found in RCW
37 9.94A.589(1)(a), and if the court finds that they shall be counted as
38 one offense, then the offense that yields the highest offender score
39 shall be used. The current sentencing court may presume that such
40 other prior offenses were not the same criminal conduct from

1 sentences imposed on separate dates, or in separate counties or
2 jurisdictions, or in separate complaints, indictments, or
3 informations;

4 (ii) In the case of multiple prior convictions for offenses
5 committed before July 1, 1986, for the purpose of computing the
6 offender score, count all adult convictions served concurrently as
7 one offense, and count all juvenile convictions entered on the same
8 date as one offense. Use the conviction for the offense that yields
9 the highest offender score.

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

16 (6) If the present conviction is one of the anticipatory offenses
17 of criminal attempt, solicitation, or conspiracy, count each prior
18 conviction as if the present conviction were for a completed offense.
19 When these convictions are used as criminal history, score them the
20 same as a completed crime.

21 (7) If the present conviction is for a nonviolent offense and not
22 covered by subsection (11), (12), or (13) of this section, count one
23 point for each adult prior felony conviction and one point for each
24 juvenile prior violent felony conviction and 1/2 point for each
25 juvenile prior nonviolent felony conviction.

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

32 (9) If the present conviction is for a serious violent offense,
33 count three points for prior adult and juvenile convictions for
34 crimes in this category, two points for each prior adult and juvenile
35 violent conviction (not already counted), one point for each prior
36 adult nonviolent felony conviction, and 1/2 point for each prior
37 juvenile nonviolent felony conviction.

38 (10) If the present conviction is for Burglary 1, count prior
39 convictions as in subsection (8) of this section; however count two
40 points for each prior adult Burglary 2 or residential burglary

1 conviction, and one point for each prior juvenile Burglary 2 or
2 residential burglary conviction.

3 (11) If the present conviction is for a felony traffic offense
4 count two points for each adult or juvenile prior conviction for
5 Vehicular Homicide or Vehicular Assault; for each felony offense
6 count one point for each adult and 1/2 point for each juvenile prior
7 conviction; for each serious traffic offense, other than those used
8 for an enhancement pursuant to RCW 46.61.520(2), count one point for
9 each adult and 1/2 point for each juvenile prior conviction; count
10 one point for each adult and 1/2 point for each juvenile prior
11 conviction for operation of a vessel while under the influence of
12 intoxicating liquor or any drug.

13 (12) If the present conviction is for homicide by watercraft or
14 assault by watercraft count two points for each adult or juvenile
15 prior conviction for homicide by watercraft or assault by watercraft;
16 for each felony offense count one point for each adult and 1/2 point
17 for each juvenile prior conviction; count one point for each adult
18 and 1/2 point for each juvenile prior conviction for driving under
19 the influence of intoxicating liquor or any drug, actual physical
20 control of a motor vehicle while under the influence of intoxicating
21 liquor or any drug, or operation of a vessel while under the
22 influence of intoxicating liquor or any drug.

23 (13) If the present conviction is for manufacture of
24 methamphetamine count three points for each adult prior manufacture
25 of methamphetamine conviction and two points for each juvenile
26 manufacture of methamphetamine offense. If the present conviction is
27 for a drug offense and the offender has a criminal history that
28 includes a sex offense or serious violent offense, count three points
29 for each adult prior felony drug offense conviction and two points
30 for each juvenile drug offense. All other adult and juvenile felonies
31 are scored as in subsection (8) of this section if the current drug
32 offense is violent, or as in subsection (7) of this section if the
33 current drug offense is nonviolent.

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

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

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

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

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

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

22 (20) If the present conviction is for Theft of a Motor Vehicle,
23 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
24 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
25 priors as in subsections (7) through (18) of this section; however
26 count one point for prior convictions of Vehicle Prowling 2, and
27 three points for each adult and juvenile prior Theft 1 (of a motor
28 vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property
29 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor
30 vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle,
31 Taking a Motor Vehicle Without Permission 1, or Taking a Motor
32 Vehicle Without Permission 2 conviction.

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

37 (a) Count two points for each adult prior conviction where
38 domestic violence as defined in RCW 9.94A.030 was pleaded and proven
39 after August 1, 2011, for any of the following offenses: A felony
40 violation of a no-contact or protection order (RCW 7.105.450 or

1 former RCW 26.50.110), felony Harassment (RCW 9A.46.020(2)(b)),
2 felony Stalking (RCW 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020),
3 Kidnapping 1 (RCW 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful
4 imprisonment (RCW 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2
5 (RCW 9A.56.210), Assault 1 (RCW 9A.36.011), Assault 2 (RCW
6 9A.36.021), Assault 3 (RCW 9A.36.031), Arson 1 (RCW 9A.48.020), or
7 Arson 2 (RCW 9A.48.030);

8 (b) Count two points for each adult prior conviction where
9 domestic violence as defined in RCW 9.94A.030 was pleaded and proven
10 after July 23, 2017, for any of the following offenses: Assault of a
11 child in the first degree, RCW 9A.36.120; Assault of a child in the
12 second degree, RCW 9A.36.130; Assault of a child in the third degree,
13 RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW
14 9A.42.020; or Criminal Mistreatment in the second degree, RCW
15 9A.42.030;

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

20 (d) Count one point for each adult prior conviction for a
21 repetitive domestic violence offense as defined in RCW 9.94A.030,
22 where domestic violence as defined in RCW 9.94A.030, was pleaded and
23 proven after August 1, 2011.

24 (22) The fact that a prior conviction was not included in an
25 offender's offender score or criminal history at a previous
26 sentencing shall have no bearing on whether it is included in the
27 criminal history or offender score for the current offense. Prior
28 convictions that were not counted in the offender score or included
29 in criminal history under repealed or previous versions of the
30 sentencing reform act shall be included in criminal history and shall
31 count in the offender score if the current version of the sentencing
32 reform act requires including or counting those convictions. Prior
33 convictions that were not included in criminal history or in the
34 offender score shall be included upon any resentencing to ensure
35 imposition of an accurate sentence.

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

38 (1) (a) An offender who violates any condition or requirement of a
39 sentence may be sanctioned by the court with up to sixty days'

1 confinement for each violation or by the department with up to thirty
2 days' confinement as provided in RCW 9.94A.737.

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

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

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

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

19 (c) If the offender was sentenced under the drug offender
20 sentencing alternative for driving under the influence set out in
21 section 1 of this act, the offender may be sanctioned in accordance
22 with that section.

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

26 ((d))) (e) If the offender was sentenced under the special sex
27 offender sentencing alternative set out in RCW 9.94A.670, the
28 suspended sentence may be revoked and the offender committed to serve
29 the original sentence of confinement.

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

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

36 ((g))) (h) If a sex offender was sentenced pursuant to RCW
37 9.94A.507, the offender may be transferred to a more restrictive
38 confinement status to serve up to the remaining portion of the
39 sentence, less credit for any period actually spent in community
40 custody or in detention awaiting disposition of an alleged violation.

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

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

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

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

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

18 The procedure for imposing sanctions for violations of sentence
19 conditions or requirements is as follows:

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

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

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

30 ((+3))) (4) If the offender was sentenced under the parenting
31 sentencing alternative, any sanctions shall be imposed by the
32 department or by the court pursuant to RCW 9.94A.655.

33 ((+4))) (5) If the offender was sentenced under the mental health
34 sentencing alternative, any sanctions shall be imposed by the
35 department or the court pursuant to RCW 9.94A.695.

36 ((+5))) (6) If a sex offender was sentenced pursuant to RCW
37 9.94A.507, any sanctions shall be imposed by the board pursuant to
38 RCW 9.95.435.

1 ((+6)) (7) If the offender was released pursuant to RCW
2 9.94A.730, any sanctions shall be imposed by the board pursuant to
3 RCW 9.95.435.

4 ((+7)) (8) If the offender was sentenced pursuant to RCW
5 10.95.030(3) or 10.95.035, any sanctions shall be imposed by the
6 board pursuant to RCW 9.95.435.

7 ((+8)) (9) In any other case, if the offender is being
8 supervised by the department, any sanctions shall be imposed by the
9 department pursuant to RCW 9.94A.737. If a probationer is being
10 supervised by the department pursuant to RCW 9.92.060, 9.95.204, or
11 9.95.210, upon receipt of a violation hearing report from the
12 department, the court retains any authority that those statutes
13 provide to respond to a probationer's violation of conditions.

14 ((+9)) (10) If the offender is not being supervised by the
15 department, any sanctions shall be imposed by the court pursuant to
16 RCW 9.94A.6333.

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

19 (1) An offender is eligible for the special drug offender
20 sentencing alternative if:

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

24 (b) The offender is convicted of a felony that is not a felony
25 driving while under the influence of intoxicating liquor or any drug
26 under RCW 46.61.502(6) or felony physical control of a vehicle while
27 under the influence of intoxicating liquor or any drug under RCW
28 46.61.504(6);

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

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

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

38 (ii) Any other violent offense within ten years before conviction
39 of the current offense;

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

7 (f) The offender has not been found by the United States attorney
8 general to be subject to a deportation detainer or order and does not
9 become subject to a deportation order during the period of the
10 sentence; and

11 (g) The offender has not received a drug offender sentencing
12 alternative under this section, or a drug offender sentencing
13 alternative for driving under the influence under section 1 of this
14 act, more than once in the prior ten years before the current
15 offense.

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

18 (3) If the sentencing court determines that the offender is
19 eligible for an alternative sentence under this section and that the
20 alternative sentence is appropriate, the court shall waive imposition
21 of a sentence within the standard sentence range and impose a
22 sentence consisting of either a prison-based alternative under RCW
23 9.94A.662 or a residential substance use disorder treatment-based
24 alternative under RCW 9.94A.664. The residential substance use
25 disorder treatment-based alternative is only available if the
26 midpoint of the standard sentence range is twenty-six months or less.

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

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

36 (5) If the court is considering imposing a sentence under the
37 residential substance use disorder treatment-based alternative, the
38 court may order an examination of the offender by the department. The
39 examination must be performed by an agency licensed or certified by

1 the department of health to provide substance use disorder services.
2 The examination shall, at a minimum, address the following issues:

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

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

6 (e)) Whether effective treatment for the offender's substance
7 use disorder is available from a provider that has been licensed or
8 certified by the department of health, and where applicable, whether
9 effective domestic violence perpetrator treatment is available from a
10 state-certified domestic violence treatment provider pursuant to RCW
11 43.20A.735; and

12 ((d)) (c) Whether the offender and the community will benefit
13 from the use of the alternative.

14 (6) When a court imposes a sentence of community custody under
15 this section:

16 (a) The court may impose conditions as provided in RCW 9.94A.703
17 and may impose other affirmative conditions as the court considers
18 appropriate. In addition, an offender may be required to pay thirty
19 dollars per month while on community custody to offset the cost of
20 monitoring for alcohol or controlled substances, or in cases of
21 domestic violence for monitoring with global positioning system
22 technology for compliance with a no-contact order.

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

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

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

32 (c) The court may order the offender to serve a term of total
33 confinement within the standard sentence range of the offender's
34 current offense at any time during the period of community custody if
35 the offender violates the conditions or requirements of the sentence
36 or if the offender is failing to make satisfactory progress in
37 treatment.

38 (d) An offender ordered to serve a term of total confinement
39 under (c) of this subsection shall receive credit for time previously
40 served in total or partial confinement and inpatient treatment under

1 this section, and shall receive fifty percent credit for time
2 previously served in community custody under this section.

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

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

11 (10) The Washington state institute for public policy shall
12 submit a report to the governor and the appropriate committees of the
13 legislature by November 1, 2022, analyzing the effectiveness of the
14 drug offender sentencing alternative in reducing recidivism among
15 various offender populations. An additional report is due November 1,
16 2028, and every five years thereafter. The Washington state institute
17 for public policy may coordinate with the department and the caseload
18 forecast council in tracking data and preparing the report.

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

21 (1) If an offender is sentenced to the custody of the department
22 for one of the following crimes, the court shall, in addition to the
23 other terms of the sentence, sentence the offender to community
24 custody for three years:

- 25 (a) A sex offense not sentenced under RCW 9.94A.507; or
26 (b) A serious violent offense.

27 (2) A court shall, in addition to the other terms of the
28 sentence, sentence an offender to community custody for eighteen
29 months when the court sentences the person to the custody of the
30 department for a violent offense that is not considered a serious
31 violent offense.

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

- 35 (a) Any crime against persons under RCW 9.94A.411(2);
36 (b) An offense involving the unlawful possession of a firearm
37 under RCW 9.41.040, where the offender is a criminal street gang
38 member or associate;

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

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

6 (4) If an offender is sentenced under the drug offender
7 sentencing alternative, the court shall impose community custody as
8 provided in:

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

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

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

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

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

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

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

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

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

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

37 **Sec. 11.** RCW 46.61.502 and 2017 c 335 s 1 are each amended to
38 read as follows:

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

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

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

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

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

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

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

28 (b) It is an affirmative defense to a violation of subsection
29 (1)(b) of this section, which the defendant must prove by a
30 preponderance of the evidence, that the defendant consumed a
31 sufficient quantity of marijuana after the time of driving and before
32 the administration of an analysis of the person's blood to cause the
33 defendant's THC concentration to be 5.00 or more within two hours
34 after driving. The court shall not admit evidence of this defense
35 unless the defendant notifies the prosecution prior to the omnibus or
36 pretrial hearing in the case of the defendant's intent to assert the
37 affirmative defense.

38 (4) (a) Analyses of blood or breath samples obtained more than two
39 hours after the alleged driving may be used as evidence that within
40 two hours of the alleged driving, a person had an alcohol

1 concentration of 0.08 or more in violation of subsection (1)(a) of
2 this section, and in any case in which the analysis shows an alcohol
3 concentration above 0.00 may be used as evidence that a person was
4 under the influence of or affected by intoxicating liquor or any drug
5 in violation of subsection (1)(c) or (d) of this section.

6 (b) Analyses of blood samples obtained more than two hours after
7 the alleged driving may be used as evidence that within two hours of
8 the alleged driving, a person had a THC concentration of 5.00 or more
9 in violation of subsection (1)(b) of this section, and in any case in
10 which the analysis shows a THC concentration above 0.00 may be used
11 as evidence that a person was under the influence of or affected by
12 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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 this subsection (6) or RCW 46.61.504(6).

27 **Sec. 12.** RCW 46.61.5055 and 2020 c 330 s 15 are each amended to
28 read as follows:

29 (1) **No 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 no prior offense
32 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 twenty-four consecutive
39 hours nor more than three hundred sixty-four days. In lieu of the

1 mandatory minimum term of imprisonment required under this subsection
2 (1)(a)(i), the court, in its discretion, may order not less than
3 fifteen days of electronic home monitoring or a ninety-day period of
4 24/7 sobriety program monitoring. The court may consider the
5 offender's pretrial 24/7 sobriety program monitoring as fulfilling a
6 portion of posttrial sentencing. The offender shall pay the cost of
7 electronic home monitoring. The county or municipality in which the
8 penalty is being imposed shall determine the cost. The court may also
9 require the offender's electronic home monitoring device or other
10 separate alcohol monitoring device to include an alcohol detection
11 breathalyzer, and the court may restrict the amount of alcohol the
12 offender may consume during the time the offender is on electronic
13 home monitoring; and

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

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

23 (i) By imprisonment for not less than forty-eight consecutive
24 hours nor more than three hundred sixty-four days. In lieu of the
25 mandatory minimum term of imprisonment required under this subsection
26 (1)(b)(i), the court, in its discretion, may order not less than
27 thirty days of electronic home monitoring or a one hundred twenty day
28 period of 24/7 sobriety program monitoring. The court may consider
29 the offender's pretrial 24/7 sobriety program testing as fulfilling a
30 portion of posttrial sentencing. The offender shall pay the cost of
31 electronic home monitoring. The county or municipality in which the
32 penalty is being imposed shall determine the cost. The court may also
33 require the offender's electronic home monitoring device to include
34 an alcohol detection breathalyzer or other separate alcohol
35 monitoring device, and the court may restrict the amount of alcohol
36 the offender may consume during the time the offender is on
37 electronic home monitoring; and

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

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

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

10 (i) By imprisonment for not less than thirty days nor more than
11 three hundred sixty-four days and sixty days of electronic home
12 monitoring. Thirty days of imprisonment and sixty days of electronic
13 home monitoring may not be suspended or converted unless the court
14 finds that the imposition of this mandatory minimum sentence would
15 impose a substantial risk to the offender's physical or mental well-
16 being. If the offender shows that the imposition of this mandatory
17 minimum sentence would impose a substantial risk to the offender's
18 physical or mental well-being, in lieu of the mandatory term of
19 imprisonment and electronic home monitoring under this subsection

20 (2)(a)(i), the court may order a minimum of either one hundred eighty
21 days of electronic home monitoring or a one hundred twenty-day period
22 of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300
23 through 36.28A.390. Whenever the mandatory minimum sentence is
24 suspended or converted, the court shall state in writing the reason
25 for granting the suspension or conversion and the facts upon which
26 the suspension or conversion is based. The court may consider the
27 offender's pretrial 24/7 sobriety program monitoring as fulfilling a
28 portion of posttrial sentencing. The court shall order an expanded
29 substance use disorder assessment and treatment, if deemed
30 appropriate by the assessment. The offender shall pay for the cost of
31 the electronic monitoring. The county or municipality where the
32 penalty is being imposed shall determine the cost. The court may also
33 require the offender's electronic home monitoring device include an
34 alcohol detection breathalyzer or other separate alcohol monitoring
35 device, and may restrict the amount of alcohol the offender may
36 consume during the time the offender is on electronic home
37 monitoring; and

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

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

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

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

38 (3) **Two prior offenses in seven years.** Except as provided in RCW
39 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 two prior
2 offenses 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 ninety days nor more than
9 three hundred sixty-four days, if available in that county or city, a
10 six-month period of 24/7 sobriety program monitoring pursuant to RCW
11 36.28A.300 through 36.28A.390, and one hundred twenty days of
12 electronic home monitoring. Ninety days of imprisonment and one
13 hundred twenty days of electronic home monitoring may not be
14 suspended or converted unless the court finds that the imposition of
15 this mandatory minimum sentence would impose a substantial risk to
16 the offender's physical or mental well-being. If the offender shows
17 that the imposition of this mandatory minimum sentence would impose a
18 substantial risk to the offender's physical or mental well-being, in
19 lieu of the mandatory minimum term of ninety days of imprisonment and
20 one hundred twenty days of electronic home monitoring, the court may
21 order three hundred sixty days of electronic home monitoring or a
22 three hundred sixty-day period of 24/7 sobriety monitoring pursuant
23 to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory minimum
24 sentence is suspended or converted, the court shall state in writing
25 the reason for granting the suspension or conversion and the facts
26 upon which the suspension or conversion is based. The court shall
27 order an expanded substance use disorder assessment and treatment, if
28 deemed appropriate by the assessment. The offender shall pay for the
29 cost of the electronic monitoring. The county or municipality where
30 the penalty is being imposed shall determine the cost. The court may
31 also require the offender's electronic home monitoring device include
32 an alcohol detection breathalyzer or other separate alcohol
33 monitoring device, and may restrict the amount of alcohol the
34 offender may consume during the time the offender is on electronic
35 home monitoring; and

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

39 (b) **Penalty for alcohol concentration at least 0.15.** In the case
40 of a person whose alcohol concentration was at least 0.15, or for

1 whom by reason of the person's refusal to take a test offered
2 pursuant to RCW 46.20.308 there is no test result indicating the
3 person's alcohol concentration:

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

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

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

39 (a) The person has three or more prior offenses within ((ten)) 15
40 years; or

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

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

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

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

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

9 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall

10 require any person convicted of a violation of RCW 46.61.502 or
11 46.61.504 or an equivalent local ordinance to comply with the rules
12 and requirements of the department regarding the installation and use
13 of a functioning ignition interlock device installed on all motor
14 vehicles operated by the person.

15 (b) **Monitoring devices.** If the court orders that a person refrain

16 from consuming any alcohol, the court may order the person to submit
17 to alcohol monitoring through an alcohol detection breathalyzer
18 device, transdermal sensor device, or other technology designed to
19 detect alcohol in a person's system. The person shall pay for the
20 cost of the monitoring, unless the court specifies that the cost of
21 monitoring will be paid with funds that are available from an
22 alternative source identified by the court. The county or
23 municipality where the penalty is being imposed shall determine the
24 cost.

25 (c) **24/7 sobriety program monitoring.** In any county or city where

26 a 24/7 sobriety program is available and verified by the Washington
27 association of sheriffs and police chiefs, the court shall:

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

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

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

38 (6) **Penalty for having a minor passenger in vehicle.** If a person

39 who is convicted of a violation of RCW 46.61.502 or 46.61.504

1 committed the offense while one or more passengers under the age of
2 sixteen were in the vehicle, the court shall:

3 (a) Order the use of an ignition interlock or other device for an
4 additional twelve months for each passenger under the age of sixteen
5 when the person is subject to the penalties under subsection (1)(a),
6 (2)(a), or (3)(a) of this section; and order the use of an ignition
7 interlock device for an additional eighteen months for each passenger
8 under the age of sixteen when the person is subject to the penalties
9 under subsection (1)(b), (2)(b), (3)(b), or (4) of this section;

10 (b) In any case in which the person has no prior offenses within
11 seven years, and except as provided in RCW 46.61.502(6) or
12 46.61.504(6), order an additional twenty-four hours of imprisonment
13 to be served consecutively for each passenger under the age of
14 sixteen, and a fine of not less than one thousand dollars and not
15 more than five thousand dollars for each passenger under the age of
16 sixteen. One thousand dollars of the fine for each passenger under
17 the age of sixteen may not be suspended unless the court finds the
18 offender to be indigent;

19 (c) In any case in which the person has one prior offense within
20 seven years, and except as provided in RCW 46.61.502(6) or
21 46.61.504(6), order an additional five days of imprisonment to be
22 served consecutively for each passenger under the age of sixteen, and
23 a fine of not less than two thousand dollars and not more than five
24 thousand dollars for each passenger under the age of sixteen. One
25 thousand dollars of the fine for each passenger under the age of
26 sixteen may not be suspended unless the court finds the offender to
27 be indigent;

28 (d) In any case in which the person has two prior offenses within
29 seven years, and except as provided in RCW 46.61.502(6) or
30 46.61.504(6), order an additional ten days of imprisonment to be
31 served consecutively for each passenger under the age of sixteen, and
32 a fine of not less than three thousand dollars and not more than ten
33 thousand dollars for each passenger under the age of sixteen. One
34 thousand dollars of the fine for each passenger under the age of
35 sixteen may not be suspended unless the court finds the offender to
36 be indigent.

37 (7) **Other items courts must consider while setting penalties.** In
38 exercising its discretion in setting penalties within the limits
39 allowed by this section, the court shall particularly consider the
40 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;

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

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

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

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

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

18 (i) **Penalty for alcohol concentration less than 0.15.** If the
19 person's alcohol concentration was less than 0.15, or if for reasons
20 other than the person's refusal to take a test offered under RCW
21 46.20.308 there is no test result indicating the person's alcohol
22 concentration:

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

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

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

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

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

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

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

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

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

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

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

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

25 (ii) If a person has already served a suspension, revocation, or
26 denial under RCW 46.20.3101 for a period equal to or greater than the
27 period imposed under this subsection (9), the department shall
28 provide notice of full credit, shall provide for no further
29 suspension or revocation under this subsection provided the person
30 has completed the requirements under RCW 46.20.311 and paid the
31 probationary license fee under RCW 46.20.355 by the date specified in
32 the notice under RCW 46.20.245, and shall impose no additional
33 reissue fees for this credit.

34 (c) Upon receipt of a notice from the court under RCW 36.28A.390
35 that a participant has been removed from a 24/7 sobriety program, the
36 department must resume any suspension, revocation, or denial that had
37 been terminated early under this subsection due to participation in
38 the program, granting credit on a day-for-day basis for any portion
39 of a suspension, revocation, or denial already served under RCW
40 46.20.3101 or this section arising out of the same incident.

1 (d) Upon its own motion or upon motion by a person, a court may
2 find, on the record, that notice to the department under RCW
3 46.20.270 has been delayed for three years or more as a result of a
4 clerical or court error. If so, the court may order that the person's
5 license, permit, or nonresident privilege shall not be revoked,
6 suspended, or denied for that offense. The court shall send notice of
7 the finding and order to the department and to the person. Upon
8 receipt of the notice from the court, the department shall not
9 revoke, suspend, or deny the license, permit, or nonresident
10 privilege of the person for that offense.

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

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

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

1 an ignition interlock device on the probationer's motor vehicle,
2 substance use disorder treatment, supervised probation, or other
3 conditions that may be appropriate. The sentence may be imposed in
4 whole or in part upon violation of a condition of probation during
5 the suspension period.

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

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

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

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

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

29 (c) The court determines that there is reason to believe that the
30 offender would violate the conditions of the electronic home
31 monitoring penalty.

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

39 Whenever the combination of jail time and electronic home
40 monitoring or alternative sentence would exceed three hundred sixty-

1 four days, the offender shall serve the jail portion of the sentence
2 first, and the electronic home monitoring or alternative portion of
3 the sentence shall be reduced so that the combination does not exceed
4 three hundred sixty-four days.

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

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

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

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

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

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

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

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

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

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

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

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

37 (x) A conviction for a violation of RCW 46.61.520 committed while
38 under the influence of intoxicating liquor or any drug, or a
39 conviction for a violation of RCW 46.61.520 committed in a reckless
40 manner or with the disregard for the safety of others if the

conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state does not constitute a defense against any charge of violating this section. No person may be convicted under this section and it is an affirmative defense to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny the privilege to drive if, prior to being

1 pursued by a law enforcement officer, the person has moved the
2 vehicle safely off the roadway.

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 being in actual
7 physical control of the vehicle and before the administration of an
8 analysis of the person's breath or blood to cause the defendant's
9 alcohol concentration to be 0.08 or more within two hours after being
10 in such control. The court shall not admit evidence of this defense
11 unless the defendant notifies the prosecution prior to the omnibus or
12 pretrial hearing in the case of the defendant's intent to assert the
13 affirmative defense.

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

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

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

1 as evidence that a person was under the influence of or affected by
2 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

17 NEW SECTION. **Sec. 14.** Sections 1 through 11 of this act take
18 effect July 1, 2022."

SB 5054 - S AMD 944

By Senators Lovick, Padden

ADOPTED 02/09/2022

19 On page 1, line 1 of the title, after "driving;" strike the
20 remainder of the title and insert "amending RCW 9.94A.190, 9.94A.501,
21 9.94A.505, 9.94A.525, 9.94A.633, 9.94A.6332, 9.94A.660, 9.94A.701,
22 46.61.502, 46.61.5055, and 46.61.504; reenacting and amending RCW
23 9.94A.030; adding a new section to chapter 9.94A RCW; prescribing
24 penalties; and providing an effective date."

EFFECT: Updates sections for changes made to the Revised Code of Washington in 2021. Creates a new drug offender sentencing alternative for individuals convicted of felony impaired driving offenses.

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