
HOUSE BILL 3101

State of Washington**56th Legislature****2000 Regular Session**

By Representatives Lovick, McDonald, Conway, Edwards, Dickerson, Ruderman, O'Brien, Kenney, Ogden, Lambert, Erickson, Barlean, Fortunato, Esser, Rockefeller and Hurst

Read first time 01/31/2000. Referred to Committee on Judiciary.

1 AN ACT Relating to driving or physical control of a vehicle while
2 under the influence of intoxicating liquor or any drug; amending RCW
3 9.94A.185, 9.94A.230, 46.20.720, 46.61.502, 46.61.504, and 46.61.5151;
4 reenacting and amending RCW 9.94A.030, 9.94A.320, 9.94A.360, and
5 46.61.5055; and prescribing penalties.

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

7 **Sec. 1.** RCW 9.94A.030 and 1999 c 352 s 8, 1999 c 197 s 1, and 1999
8 c 196 s 2 are each reenacted and amended to read as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Collect," or any derivative thereof, "collect and remit," or
12 "collect and deliver," when used with reference to the department of
13 corrections, means that the department, either directly or through a
14 collection agreement authorized by RCW 9.94A.145, is responsible for
15 monitoring and enforcing the offender's sentence with regard to the
16 legal financial obligation, receiving payment thereof from the
17 offender, and, consistent with current law, delivering daily the entire
18 payment to the superior court clerk without depositing it in a
19 departmental account.

1 (2) "Commission" means the sentencing guidelines commission.

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

6 (4) "Community custody" means that portion of an offender's
7 sentence of confinement in lieu of earned release time or imposed
8 pursuant to RCW 9.94A.120 (5), (6), (7), (8), (10), or (11), or RCW
9 9.94A.383, served in the community subject to controls placed on the
10 offender's movement and activities by the department of corrections.
11 For offenders placed on community custody for crimes committed on or
12 after July 1, 2000, the department shall assess the offender's risk of
13 reoffense and may establish and modify conditions of community custody,
14 in addition to those imposed by the court, based upon the risk to
15 community safety.

16 (5) "Community custody range" means the minimum and maximum period
17 of community custody included as part of a sentence under RCW
18 9.94A.120(11), as established by the sentencing guidelines commission
19 or the legislature under RCW 9.94A.040, for crimes committed on or
20 after July 1, 2000.

21 (6) "Community placement" means that period during which the
22 offender is subject to the conditions of community custody and/or
23 postrelease supervision, which begins either upon completion of the
24 term of confinement (postrelease supervision) or at such time as the
25 offender is transferred to community custody in lieu of earned release.
26 Community placement may consist of entirely community custody, entirely
27 postrelease supervision, or a combination of the two.

28 (7) "Community service" means compulsory service, without
29 compensation, performed for the benefit of the community by the
30 offender.

31 (8) "Community supervision" means a period of time during which a
32 convicted offender is subject to crime-related prohibitions and other
33 sentence conditions imposed by a court pursuant to this chapter or RCW
34 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
35 may include crime-related prohibitions and other conditions imposed
36 pursuant to RCW 9.94A.120(5). Where the court finds that any offender
37 has a chemical dependency that has contributed to his or her offense,
38 the conditions of supervision may, subject to available resources,
39 include treatment. For purposes of the interstate compact for out-of-

1 state supervision of parolees and probationers, RCW 9.95.270, community
2 supervision is the functional equivalent of probation and should be
3 considered the same as probation by other states.

4 (9) "Confinement" means total or partial confinement as defined in
5 this section.

6 (10) "Conviction" means an adjudication of guilt pursuant to Titles
7 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
8 acceptance of a plea of guilty.

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

23 (12) "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 department.

30 (13) "Criminal history" means the list of a defendant's prior
31 convictions and juvenile adjudications, whether in this state, in
32 federal court, or elsewhere. The history shall include, where known,
33 for each conviction (a) whether the defendant has been placed on
34 probation and the length and terms thereof; and (b) whether the
35 defendant has been incarcerated and the length of incarceration.

36 (14) "Day fine" means a fine imposed by the sentencing judge that
37 equals the difference between the offender's net daily income and the
38 reasonable obligations that the offender has for the support of the
39 offender and any dependents.

1 (15) "Day reporting" means a program of enhanced supervision
2 designed to monitor the defendant's daily activities and compliance
3 with sentence conditions, and in which the defendant is required to
4 report daily to a specific location designated by the department or the
5 sentencing judge.

6 (16) "Department" means the department of corrections.

7 (17) "Determinate sentence" means a sentence that states with
8 exactitude the number of actual years, months, or days of total
9 confinement, of partial confinement, of community supervision, the
10 number of actual hours or days of community service work, or dollars or
11 terms of a legal financial obligation. The fact that an offender
12 through "earned release" can reduce the actual period of confinement
13 shall not affect the classification of the sentence as a determinate
14 sentence.

15 (18) "Disposable earnings" means that part of the earnings of an
16 individual remaining after the deduction from those earnings of any
17 amount required by law to be withheld. For the purposes of this
18 definition, "earnings" means compensation paid or payable for personal
19 services, whether denominated as wages, salary, commission, bonuses, or
20 otherwise, and, notwithstanding any other provision of law making the
21 payments exempt from garnishment, attachment, or other process to
22 satisfy a court-ordered legal financial obligation, specifically
23 includes periodic payments pursuant to pension or retirement programs,
24 or insurance policies of any type, but does not include payments made
25 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
26 or Title 74 RCW.

27 (19) "Drug offense" means:

28 (a) Any felony violation of chapter 69.50 RCW except possession of
29 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
30 controlled substance (RCW 69.50.403);

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

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

37 (20) "Escape" means:

38 (a) Escape in the first degree (RCW 9A.76.110), escape in the
39 second degree (RCW 9A.76.120), willful failure to return from furlough

1 (RCW 72.66.060), willful failure to return from work release (RCW
2 72.65.070), or willful failure to be available for supervision by the
3 department while in community custody (RCW 72.09.310); or

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

7 (21) "Felony traffic offense" means:

8 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
9 46.61.522), eluding a police officer (RCW 46.61.024), ((or)) felony
10 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while
11 under the influence of intoxicating liquor or any drug (RCW
12 46.61.502(6)), or felony physical control of a vehicle while under the
13 influence of intoxicating liquor or any drug (RCW 46.61.504(6)); 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 a felony
16 traffic offense under (a) of this subsection.

17 (22) "Fines" means the requirement that the offender pay a specific
18 sum of money over a specific period of time to the court.

19 (23) "First-time offender" means any person who is convicted of a
20 felony (a) not classified as a violent offense or a sex offense under
21 this chapter, ((or)) (b) that is not the manufacture, delivery, or
22 possession with intent to manufacture or deliver a controlled substance
23 classified in Schedule I or II that is a narcotic drug or flunitrazepam
24 classified in Schedule IV, nor the manufacture, delivery, or possession
25 with intent to deliver methamphetamine, its salts, isomers, and salts
26 of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for
27 profit of any controlled substance or counterfeit substance classified
28 in Schedule I, RCW 69.50.204, except leaves and flowering tops of
29 marihuana, or (c) that is not driving while under the influence of
30 intoxicating liquor or any drug or physical control of a vehicle while
31 under the influence of intoxicating liquor or any drug, who previously
32 has never been convicted of a felony in this state, federal court, or
33 another state, and who has never participated in a program of deferred
34 prosecution for a felony offense.

35 (24) "Home detention" means a program of partial confinement
36 available to offenders wherein the offender is confined in a private
37 residence subject to electronic surveillance.

1 (25) "Most serious offense" means any of the following felonies or
2 a felony attempt to commit any of the following felonies, as now
3 existing or hereafter amended:

4 (a) Any felony defined under any law as a class A felony or
5 criminal solicitation of or criminal conspiracy to commit a class A
6 felony;

7 (b) Assault in the second degree;

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

9 (d) Child molestation in the second degree;

10 (e) Controlled substance homicide;

11 (f) Extortion in the first degree;

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

13 (h) Indecent liberties;

14 (i) Kidnapping in the second degree;

15 (j) Leading organized crime;

16 (k) Manslaughter in the first degree;

17 (l) Manslaughter in the second degree;

18 (m) Promoting prostitution in the first degree;

19 (n) Rape in the third degree;

20 (o) Robbery in the second degree;

21 (p) Sexual exploitation;

22 (q) Vehicular assault;

23 (r) Vehicular homicide, when proximately caused by the driving of
24 any vehicle by any person while under the influence of intoxicating
25 liquor or any drug as defined by RCW 46.61.502, or by the operation of
26 any vehicle in a reckless manner;

27 (s) Any other class B felony offense with a finding of sexual
28 motivation, as "sexual motivation" is defined under this section;

29 (t) Any other felony with a deadly weapon verdict under RCW
30 9.94A.125;

31 (u) Any felony offense in effect at any time prior to December 2,
32 1993, that is comparable to a most serious offense under this
33 subsection, or any federal or out-of-state conviction for an offense
34 that under the laws of this state would be a felony classified as a
35 most serious offense under this subsection;

36 (v)(i) A prior conviction for indecent liberties under RCW
37 ((9A.88.100)) 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975
38 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a),
39 (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and

1 RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
2 until July 1, 1988;

3 (ii) A prior conviction for indecent liberties under RCW
4 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
5 if: (A) The crime was committed against a child under the age of
6 fourteen; or (B) the relationship between the victim and perpetrator is
7 included in the definition of indecent liberties under RCW
8 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
9 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
10 through July 27, 1997.

11 (26) "Nonviolent offense" means an offense which is not a violent
12 offense.

13 (27) "Offender" means a person who has committed a felony
14 established by state law and is eighteen years of age or older or is
15 less than eighteen years of age but whose case is under superior court
16 jurisdiction under RCW 13.04.030 or has been transferred by the
17 appropriate juvenile court to a criminal court pursuant to RCW
18 13.40.110. Throughout this chapter, the terms "offender" and
19 "defendant" are used interchangeably.

20 (28) "Partial confinement" means confinement for no more than one
21 year in a facility or institution operated or utilized under contract
22 by the state or any other unit of government, or, if home detention or
23 work crew has been ordered by the court, in an approved residence, for
24 a substantial portion of each day with the balance of the day spent in
25 the community. Partial confinement includes work release, home
26 detention, work crew, and a combination of work crew and home detention
27 as defined in this section.

28 (29) "Persistent offender" is an offender who:

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

31 (ii) Has, before the commission of the offense under (a) of this
32 subsection, been convicted as an offender on at least two separate
33 occasions, whether in this state or elsewhere, of felonies that under
34 the laws of this state would be considered most serious offenses and
35 would be included in the offender score under RCW 9.94A.360; provided
36 that of the two or more previous convictions, at least one conviction
37 must have occurred before the commission of any of the other most
38 serious offenses for which the offender was previously convicted; or

1 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
2 of a child in the first degree, child molestation in the first degree,
3 rape in the second degree, rape of a child in the second degree, or
4 indecent liberties by forcible compulsion; (B) murder in the first
5 degree, murder in the second degree, homicide by abuse, kidnapping in
6 the first degree, kidnapping in the second degree, assault in the first
7 degree, assault in the second degree, assault of a child in the first
8 degree, or burglary in the first degree, with a finding of sexual
9 motivation; or (C) an attempt to commit any crime listed in this
10 subsection (29)(b)(i); and

11 (ii) Has, before the commission of the offense under (b)(i) of this
12 subsection, been convicted as an offender on at least one occasion,
13 whether in this state or elsewhere, of an offense listed in (b)(i) of
14 this subsection. A conviction for rape of a child in the first degree
15 constitutes a conviction under subsection (29)(b)(i) only when the
16 offender was sixteen years of age or older when the offender committed
17 the offense. A conviction for rape of a child in the second degree
18 constitutes a conviction under subsection (29)(b)(i) only when the
19 offender was eighteen years of age or older when the offender committed
20 the offense.

21 (30) "Postrelease supervision" is that portion of an offender's
22 community placement that is not community custody.

23 (31) "Restitution" means the requirement that the offender pay a
24 specific sum of money over a specific period of time to the court as
25 payment of damages. The sum may include both public and private costs.
26 The imposition of a restitution order does not preclude civil redress.

27 (32) "Risk assessment" means the application of an objective
28 instrument supported by research and adopted by the department for the
29 purpose of assessing an offender's risk of reoffense, taking into
30 consideration the nature of the harm done by the offender, place and
31 circumstances of the offender related to risk, the offender's
32 relationship to any victim, and any information provided to the
33 department by victims. The results of a risk assessment shall not be
34 based on unconfirmed or unconfirmable allegations.

35 (33) "Serious traffic offense" means:

36 (a) Nonfelony driving while under the influence of intoxicating
37 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
38 while under the influence of intoxicating liquor or any drug (RCW

1 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
2 attended vehicle (RCW 46.52.020(5)); or

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

6 (34) "Serious violent offense" is a subcategory of violent offense
7 and means:

8 (a) Murder in the first degree, homicide by abuse, murder in the
9 second degree, manslaughter in the first degree, assault in the first
10 degree, kidnapping in the first degree, or rape in the first degree,
11 assault of a child in the first degree, or an attempt, criminal
12 solicitation, or criminal conspiracy to commit one of these felonies;
13 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 a serious
16 violent offense under (a) of this subsection.

17 (35) "Sentence range" means the sentencing court's discretionary
18 range in imposing a nonappealable sentence.

19 (36) "Sex offense" means:

20 (a) A felony that is a violation of chapter 9A.44 RCW, other than
21 RCW 9A.44.130((+10)) (11), or RCW 9A.64.020 or 9.68A.090 or a felony
22 that is, under chapter 9A.28 RCW, a criminal attempt, criminal
23 solicitation, or criminal conspiracy to commit such crimes;

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

27 (c) A felony with a finding of sexual motivation under RCW
28 9.94A.127 or 13.40.135; or

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

32 (37) "Sexual motivation" means that one of the purposes for which
33 the defendant committed the crime was for the purpose of his or her
34 sexual gratification.

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

1 (39) "Transition training" means written and verbal instructions
2 and assistance provided by the department to the offender during the
3 two weeks prior to the offender's successful completion of the work
4 ethic camp program. The transition training shall include instructions
5 in the offender's requirements and obligations during the offender's
6 period of community custody.

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

10 (41) "Violent offense" means:

11 (a) Any of the following felonies, as now existing or hereafter
12 amended: Any felony defined under any law as a class A felony or an
13 attempt to commit a class A felony, criminal solicitation of or
14 criminal conspiracy to commit a class A felony, manslaughter in the
15 first degree, manslaughter in the second degree, indecent liberties if
16 committed by forcible compulsion, kidnapping in the second degree,
17 arson in the second degree, assault in the second degree, assault of a
18 child in the second degree, extortion in the first degree, robbery in
19 the second degree, drive-by shooting, vehicular assault, and vehicular
20 homicide, when proximately caused by the driving of any vehicle by any
21 person while under the influence of intoxicating liquor or any drug as
22 defined by RCW 46.61.502, or by the operation of any vehicle in a
23 reckless manner;

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

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

30 (42) "Work crew" means a program of partial confinement consisting
31 of civic improvement tasks for the benefit of the community of not less
32 than thirty-five hours per week that complies with RCW 9.94A.135. The
33 civic improvement tasks shall have minimal negative impact on existing
34 private industries or the labor force in the county where the service
35 or labor is performed. The civic improvement tasks shall not affect
36 employment opportunities for people with developmental disabilities
37 contracted through sheltered workshops as defined in RCW 82.04.385.
38 Only those offenders sentenced to a facility operated or utilized under
39 contract by a county or the state, or sanctioned under RCW 9.94A.205,

1 are eligible to participate on a work crew. Offenders sentenced for a
2 sex offense as defined in subsection (36) of this section are not
3 eligible for the work crew program.

4 (43) "Work ethic camp" means an alternative incarceration program
5 designed to reduce recidivism and lower the cost of corrections by
6 requiring offenders to complete a comprehensive array of real-world job
7 and vocational experiences, character-building work ethics training,
8 life management skills development, substance abuse rehabilitation,
9 counseling, literacy training, and basic adult education.

10 (44) "Work release" means a program of partial confinement
11 available to offenders who are employed or engaged as a student in a
12 regular course of study at school. Participation in work release shall
13 be conditioned upon the offender attending work or school at regularly
14 defined hours and abiding by the rules of the work release facility.

15 **Sec. 2.** RCW 9.94A.185 and 1995 c 108 s 2 are each amended to read
16 as follows:

17 (1) Home detention may not be imposed for offenders convicted of a
18 violent offense, any sex offense, any drug offense, reckless burning in
19 the first or second degree as defined in RCW 9A.48.040 or 9A.48.050,
20 assault in the third degree as defined in RCW 9A.36.031, assault of a
21 child in the third degree, unlawful imprisonment as defined in RCW
22 9A.40.040, or harassment as defined in RCW 9A.46.020.

23 (2) Home detention may be imposed for:

24 (a) Offenders convicted of possession of a controlled substance
25 under RCW 69.50.401(d) or forged prescription for a controlled
26 substance under RCW 69.50.403 if the offender fulfills the
27 participation conditions set forth in this subsection [section] and is
28 monitored for drug use by a treatment alternatives to street crime
29 program or a comparable court or agency-referred program((.));

30 ((1) Home detention may be imposed for)) (b) Offenders convicted
31 of burglary in the second degree as defined in RCW 9A.52.030 or
32 residential burglary conditioned upon the offender: ((a)) (i)
33 Successfully completing twenty-one days in a work release program,
34 ((b)) (ii) having no convictions for burglary in the second degree or
35 residential burglary during the preceding two years and not more than
36 two prior convictions for burglary or residential burglary, ((c))
37 (iii) having no convictions for a violent felony offense during the
38 preceding two years and not more than two prior convictions for a

1 violent felony offense, ((d)) (iv) having no prior charges of escape,
2 and ((e)) (v) fulfilling the other conditions of the home detention
3 program();

4 ((2) Participation in a home detention program shall be
5 conditioned upon: (a) The offender obtaining or maintaining current
6 employment or attending a regular course of school study at regularly
7 defined hours, or the offender performing parental duties to offspring
8 or minors normally in the custody of the offender, (b) abiding by the
9 rules of the home detention program, and (c) compliance with court-
10 ordered legal financial obligations. The home detention program may
11 also be made available to))

12 (c) Offenders whose charges and convictions do not otherwise
13 disqualify them if medical or health-related conditions, concerns or
14 treatment would be better addressed under the home detention program,
15 or where the health and welfare of the offender, other inmates, or
16 staff would be jeopardized by the offender's incarceration.
17 Participation in the home detention program for medical or health-
18 related reasons is conditioned on the offender abiding by the rules of
19 the home detention program and complying with court-ordered
20 restitution; and

21 (d) Offenders convicted of felony driving while under the influence
22 of intoxicating liquor or any drug as defined in RCW 46.61.502(6) or
23 felony physical control of a vehicle while under the influence of
24 intoxicating liquor or any drug as defined in RCW 46.61.504(6).

25 (3) Participation in a home detention program shall be conditioned
26 upon: (a) The offender obtaining or maintaining current employment or
27 attending a regular course of school study at regularly defined hours,
28 or the offender performing parental duties to offspring or minors
29 normally in the custody of the offender, (b) abiding by the rules of
30 the home detention program, and (c) compliance with court-ordered legal
31 financial obligations.

32 **Sec. 3.** RCW 9.94A.230 and 1987 c 486 s 7 are each amended to read
33 as follows:

34 (1) Every offender who has been discharged under RCW 9.94A.220 may
35 apply to the sentencing court for a vacation of the offender's record
36 of conviction. If the court finds the offender meets the tests
37 prescribed in subsection (2) of this section, the court may clear the
38 record of conviction by: (a) Permitting the offender to withdraw the

1 offender's plea of guilty and to enter a plea of not guilty; or (b) if
2 the offender has been convicted after a plea of not guilty, by the
3 court setting aside the verdict of guilty; and (c) by the court
4 dismissing the information or indictment against the offender.

(2) An offender may not have the record of conviction cleared if:

(a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court; (b) the offense was a violent offense as defined in RCW 9.94A.030; (c) the offense was a crime against persons as defined in RCW 43.43.830; (d) the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge under RCW 9.94A.220; (e) the offense is a class B felony and less than ten years have passed since the date the applicant was discharged under RCW 9.94A.220; ((and)) (f) the offense was a class C felony, other than a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and less than five years have passed since the date the applicant was discharged under RCW 9.94A.220; or (g) the offense was a class C felony described in RCW 46.61.502(6) or 46.61.504(6) and less than seven years have passed since the applicant was discharged under RCW 9.94A.220.

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

Sec. 4. RCW 9.94A.320 and 1999 c 352 s 3, 1999 c 322 s 5, and 1999 c 45 s 4 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

34 XVI Aggravated Murder 1 (RCW 10.95.020)

35 XV Homicide by abuse (RCW 9A.32.055)

36 Malicious explosion 1 (RCW 70.74.280(1))

1 Murder 1 (RCW 9A.32.030)

2 XIV Murder 2 (RCW 9A.32.050)

3 XIII Malicious explosion 2 (RCW 70.74.280(2))

4 Malicious placement of an explosive 1 (RCW

5 70.74.270(1))

6 XII Assault 1 (RCW 9A.36.011)

7 Assault of a Child 1 (RCW 9A.36.120)

8 Malicious placement of an imitation device

9 1 (RCW 70.74.272(1)(a))

10 Rape 1 (RCW 9A.44.040)

11 Rape of a Child 1 (RCW 9A.44.073)

12 XI Manslaughter 1 (RCW 9A.32.060)

13 Rape 2 (RCW 9A.44.050)

14 Rape of a Child 2 (RCW 9A.44.076)

15 X Child Molestation 1 (RCW 9A.44.083)

16 Indecent Liberties (with forcible

17 compulsion) (RCW 9A.44.100(1)(a))

18 Kidnapping 1 (RCW 9A.40.020)

19 Leading Organized Crime (RCW

20 9A.82.060(1)(a))

21 Malicious explosion 3 (RCW 70.74.280(3))

22 Manufacture of methamphetamine (RCW

23 69.50.401(a)(1)(ii))

24 Over 18 and deliver heroin,

25 methamphetamine, a narcotic from

26 Schedule I or II, or flunitrazepam

27 from Schedule IV to someone under 18

28 (RCW 69.50.406)

29 IX Assault of a Child 2 (RCW 9A.36.130)

30 Controlled Substance Homicide (RCW

31 69.50.415)

32 Explosive devices prohibited (RCW

33 70.74.180)

34 Homicide by Watercraft, by being under the

35 influence of intoxicating liquor or

1 any drug (RCW ((88.12.029))
2 79A.60.050)
3 Inciting Criminal Profiteering (RCW
4 9A.82.060(1)(b))
5 Malicious placement of an explosive 2 (RCW
6 70.74.270(2))
7 Over 18 and deliver narcotic from Schedule
8 III, IV, or V or a nonnarcotic, except
9 flunitrazepam or methamphetamine, from
10 Schedule I-V to someone under 18 and 3
11 years junior (RCW 69.50.406)
12 Robbery 1 (RCW 9A.56.200)
13 Sexual Exploitation (RCW 9.68A.040)
14 Vehicular Homicide, by being under the
15 influence of intoxicating liquor or
16 any drug (RCW 46.61.520)

17 VIII Arson 1 (RCW 9A.48.020)
18 Deliver or possess with intent to deliver
19 methamphetamine (RCW
20 69.50.401(a)(1)(ii))
21 Homicide by Watercraft, by the operation of
22 any vessel in a reckless manner (RCW
23 ((88.12.029)) 79A.60.050)
24 Manslaughter 2 (RCW 9A.32.070)
25 Manufacture, deliver, or possess with
26 intent to deliver amphetamine (RCW
27 69.50.401(a)(1)(ii))
28 Manufacture, deliver, or possess with
29 intent to deliver heroin or cocaine
30 (RCW 69.50.401(a)(1)(i))
31 Possession of ephedrine or pseudoephedrine
32 with intent to manufacture
33 methamphetamine (RCW 69.50.440)
34 Promoting Prostitution 1 (RCW 9A.88.070)
35 Selling for profit (controlled or
36 counterfeit) any controlled substance
37 (RCW 69.50.410)

1 Vehicular Homicide, by the operation of any
2 vehicle in a reckless manner (RCW
3 46.61.520)

4 VII Burglary 1 (RCW 9A.52.020)
5 Child Molestation 2 (RCW 9A.44.086)
6 Dealing in depictions of minor engaged in
7 sexually explicit conduct (RCW
8 9.68A.050)

9 Drive-by Shooting (RCW 9A.36.045)
10 Homicide by Watercraft, by disregard for
11 the safety of others (RCW
12 ((88.12.029)) 79A.60.050)

13 Indecent Liberties (without forcible
14 compulsion) (RCW 9A.44.100(1) (b) and
15 (c))

16 Introducing Contraband 1 (RCW 9A.76.140)
17 Involving a minor in drug dealing (RCW
18 69.50.401(f))

19 Malicious placement of an explosive 3 (RCW
20 70.74.270(3))

21 Sending, bringing into state depictions of
22 minor engaged in sexually explicit
23 conduct (RCW 9.68A.060)

24 Unlawful Possession of a Firearm in the
25 first degree (RCW 9.41.040(1)(a))

26 Use of a Machine Gun in Commission of a
27 Felony (RCW 9.41.225)

28 Vehicular Homicide, by disregard for the
29 safety of others (RCW 46.61.520)

30 VI Bail Jumping with Murder 1 (RCW
31 9A.76.170(2)(a))

32 Bribery (RCW 9A.68.010)

33 Incest 1 (RCW 9A.64.020(1))

34 Intimidating a Judge (RCW 9A.72.160)

35 Intimidating a Juror/Witness (RCW
36 9A.72.110, 9A.72.130)

37 Malicious placement of an imitation device
38 2 (RCW 70.74.272(1)(b))

1 Manufacture, deliver, or possess with
2 intent to deliver narcotics from
3 Schedule I or II (except heroin or
4 cocaine) or flunitrazepam from
5 Schedule IV (RCW 69.50.401(a)(1)(i))
6 Rape of a Child 3 (RCW 9A.44.079)
7 Theft of a Firearm (RCW 9A.56.300)

8 V Abandonment of dependent person 1 (RCW
9 9A.42.060)
10 Advancing money or property for
11 extortionate extension of credit (RCW
12 9A.82.030)
13 Bail Jumping with class A Felony (RCW
14 9A.76.170(2)(b))
15 Child Molestation 3 (RCW 9A.44.089)
16 Criminal Mistreatment 1 (RCW 9A.42.020)
17 Custodial Sexual Misconduct 1 (RCW
18 9A.44.160)
19 Delivery of imitation controlled substance
20 by person eighteen or over to person
21 under eighteen (RCW 69.52.030(2))
22 Extortion 1 (RCW 9A.56.120)
23 Extortionate Extension of Credit (RCW
24 9A.82.020)
25 Extortionate Means to Collect Extensions of
26 Credit (RCW 9A.82.040)
27 Incest 2 (RCW 9A.64.020(2))
28 Kidnapping 2 (RCW 9A.40.030)
29 On and after July 1, 2000: No-Contact
30 Order Violation: Domestic Violence
31 Pretrial Condition (RCW 10.99.040(4)
32 (b) and (c))
33 On and after July 1, 2000: No-Contact
34 Order Violation: Domestic Violence
35 Sentence Condition (RCW 10.99.050(2))

1 On and after July 1, 2000: Protection
2 Order Violation: Domestic Violence
3 Civil Action (RCW 26.50.110 (4) and
4 (5))
5 On and after July 1, 2000: Stalking (RCW
6 9A.46.110)
7 Perjury 1 (RCW 9A.72.020)
8 Persistent prison misbehavior (RCW
9 9.94.070)
10 Possession of a Stolen Firearm (RCW
11 9A.56.310)
12 Rape 3 (RCW 9A.44.060)
13 Rendering Criminal Assistance 1 (RCW
14 9A.76.070)
15 Sexual Misconduct with a Minor 1 (RCW
16 9A.44.093)
17 Sexually Violating Human Remains (RCW
18 9A.44.105)

19 IV Arson 2 (RCW 9A.48.030)
20 Assault 2 (RCW 9A.36.021)
21 Assault by Watercraft (RCW ((88.12.032)))
22 79A.60.060)
23 Bribing a Witness/Bribe Received by Witness
24 (RCW 9A.72.090, 9A.72.100)
25 Commercial Bribery (RCW 9A.68.060)
26 Counterfeiting (RCW 9.16.035(4))
27 Driving While Under the Influence (RCW
28 46.61.502(6))
29 Escape 1 (RCW 9A.76.110)
30 Hit and Run--Injury Accident (RCW
31 46.52.020(4))
32 Hit and Run with Vessel--Injury Accident
33 (RCW ((88.12.155(3))) 79A.60.200(3))
34 Indecent Exposure to Person Under Age
35 Fourteen (subsequent sex offense) (RCW
36 9A.88.010)
37 Influencing Outcome of Sporting Event (RCW
38 9A.82.070)

Knowingly Trafficking in Stolen Property
(RCW 9A.82.050(2))

Malicious Harassment (RCW 9A.36.080)

Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or flunitrazepam) (RCW 69.50.401(a)(1)(iii) through (v))

Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))

Residential Burglary (RCW 9A.52.025)

Robbery 2 (RCW 9A.56.210)

Theft of Livestock 1 (RCW 9A.56.080)

Threats to Bomb (RCW 9.61.160)

Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))

Vehicular Assault (RCW 46.61.522)

Willful Failure to Return from Furlough
(RCW 72.66.060)

Assault 3 (RCW 9A.36.031)

Assault of a Child 3 (RCW 9A.36.140)

Bail Jumping with class B or C Felony (RCW
9A.76.170(2)(c))

Burglary 2 (RCW 9A.52.030)

Communication with a Minor for Immoral Purposes (RCW 9.68A.090)

Criminal Gang Intimidation (RCW 9A.46.120)

Criminal Mistreatment 2 (RCW 9A.42.030)

Custodial Assault (RCW 9A.36.100)

Delivery of a material in lieu of a controlled substance (RCW
69.50.401(c))

Escape 2 (RCW 9A.76.120)

Extortion 2 (RCW 9A.56.130)

Harassment (RCW 9A.46.020)

1 II Computer Trespass 1 (RCW 9A.52.110)
2 Counterfeiting (RCW 9.16.035(3))
3 Create, deliver, or possess a counterfeit
4 controlled substance (RCW
5 69.50.401(b))
6 Escape from Community Custody (RCW
7 72.09.310)
8 Health Care False Claims (RCW 48.80.030)
9 Malicious Mischief 1 (RCW 9A.48.070)
10 Possession of controlled substance that is
11 either heroin or narcotics from
12 Schedule I or II or flunitrazepam from
13 Schedule IV (RCW 69.50.401(d))
14 Possession of phencyclidine (PCP) (RCW
15 69.50.401(d))
16 Possession of Stolen Property 1 (RCW
17 9A.56.150)
18 Theft 1 (RCW 9A.56.030)
19 Theft of Rental, Leased, or Lease-purchased
20 Property (valued at one thousand five
21 hundred dollars or more) (RCW
22 9A.56.096(4))
23 Trafficking in Insurance Claims (RCW
24 48.30A.015)
25 Unlawful Practice of Law (RCW 2.48.180)
26 Unlicensed Practice of a Profession or
27 Business (RCW 18.130.190(7))

28 I Attempting to Elude a Pursuing Police
29 Vehicle (RCW 46.61.024)
30 False Verification for Welfare (RCW
31 74.08.055)
32 Forged Prescription (RCW 69.41.020)
33 Forged Prescription for a Controlled
34 Substance (RCW 69.50.403)
35 Forgery (RCW 9A.60.020)
36 Malicious Mischief 2 (RCW 9A.48.080)
37 Possess Controlled Substance that is a
38 Narcotic from Schedule III, IV, or V
39 or Non-narcotic from Schedule I-V

(except phenycyclidine or flunitrazepam) (RCW 69.50.401(d))
Possession of Stolen Property 2 (RCW 9A.56.160)
Reckless Burning 1 (RCW 9A.48.040)
Taking Motor Vehicle Without Permission
(RCW 9A.56.070)
Theft 2 (RCW 9A.56.040)
Theft of Rental, Leased, or Lease-purchased
Property (valued at two hundred fifty
dollars or more but less than one
thousand five hundred dollars) (RCW
9A.56.096(4))
Unlawful Issuance of Checks or Drafts (RCW
9A.56.060)
Unlawful Use of Food Stamps (RCW 9.91.140
(2) and (3))
Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 5. RCW 9.94A.360 and 1999 c 352 s 10 and 1999 c 331 s 1 are each reenacted and amended to read as follows:

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

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

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

(2)(a) Prior class A and prior sex ((prior)) felony convictions shall always be included in the offender score.

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

1 (c) Prior class C ((prior)) felony convictions other than sex
2 offenses and other than felony traffic offenses under RCW 46.61.502(6)
3 and 46.61.504(6) shall not be included in the offender score if, since
4 the last date of release from confinement (including full-time
5 residential treatment) pursuant to a felony conviction, if any, or
6 entry of judgment and sentence, the offender had spent five consecutive
7 years in the community without committing any crime that subsequently
8 results in a conviction.

9 (d) Prior class C felony traffic convictions under RCW 46.61.502(6)
10 and 46.61.504(6) and prior serious traffic convictions shall not be
11 included in the offender score if((‐)): (i) Since the last date of
12 release from confinement (including full-time residential treatment)
13 pursuant to a felony conviction, if any, or entry of judgment and
14 sentence, the offender spent five years in the community without
15 committing any crime that subsequently results in a conviction; and
16 (ii) if the present conviction is a felony traffic offense under RCW
17 46.61.502(6) and 46.61.504(6), the prior traffic or serious traffic
18 conviction is no longer a prior offense "within seven years" for
19 purposes of RCW 46.61.5055. This subsection applies to both adult and
20 juvenile prior convictions.

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

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

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

36 (i) Prior offenses which were found, under RCW 9.94A.400(1)(a), to
37 encompass the same criminal conduct, shall be counted as one offense,
38 the offense that yields the highest offender score. The current
39 sentencing court shall determine with respect to other prior adult

1 offenses for which sentences were served concurrently or prior juvenile
2 offenses for which sentences were served consecutively, whether those
3 offenses shall be counted as one offense or as separate offenses using
4 the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and
5 if the court finds that they shall be counted as one offense, then the
6 offense that yields the highest offender score shall be used. The
7 current sentencing court may presume that such other prior offenses
8 were not the same criminal conduct from sentences imposed on separate
9 dates, or in separate counties or jurisdictions, or in separate
10 complaints, indictments, or informations;

11 (ii) In the case of multiple prior convictions for offenses
12 committed before July 1, 1986, for the purpose of computing the
13 offender score, count all adult convictions served concurrently as one
14 offense, and count all juvenile convictions entered on the same date as
15 one offense. Use the conviction for the offense that yields the
16 highest offender score.

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

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

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

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

36 (9) If the present conviction is for a serious violent offense,
37 count three points for prior adult and juvenile convictions for crimes
38 in this category, two points for each prior adult and juvenile violent
39 conviction (not already counted), one point for each prior adult

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

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

8 (11) If the present conviction is for a felony traffic offense
9 count two points for each adult or juvenile prior conviction for
10 Vehicular Homicide or Vehicular Assault; for each felony offense count
11 one point for each adult and 1/2 point for each juvenile prior
12 conviction; for each serious traffic offense, other than those used for
13 an enhancement pursuant to RCW 46.61.520(2), count one point for each
14 adult and 1/2 point for each juvenile prior conviction.

15 (12) If the present conviction is for a drug offense count three
16 points for each adult prior felony drug offense conviction and two
17 points for each juvenile drug offense. All other adult and juvenile
18 felonies are scored as in subsection (8) of this section if the current
19 drug offense is violent, or as in subsection (7) of this section if the
20 current drug offense is nonviolent.

21 (13) If the present conviction is for Willful Failure to Return
22 from Furlough, RCW 72.66.060, Willful Failure to Return from Work
23 Release, RCW 72.65.070, or Escape from Community Custody, RCW
24 72.09.310, count only prior escape convictions in the offender score.
25 Count adult prior escape convictions as one point and juvenile prior
26 escape convictions as 1/2 point.

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

30 (15) If the present conviction is for Burglary 2 or residential
31 burglary, count priors as in subsection (7) of this section; however,
32 count two points for each adult and juvenile prior Burglary 1
33 conviction, two points for each adult prior Burglary 2 or residential
34 burglary conviction, and one point for each juvenile prior Burglary 2
35 or residential burglary conviction.

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

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

3 **Sec. 6.** RCW 46.20.720 and 1999 c 331 s 3 are each amended to read
4 as follows:

5 (1) The court may order that after a period of suspension,
6 revocation, or denial of driving privileges, and for up to as long as
7 the court has jurisdiction, any person convicted of any offense
8 involving the use, consumption, or possession of alcohol while
9 operating a motor vehicle may drive only a motor vehicle equipped with
10 a functioning ignition interlock or other biological or technical
11 device.

12 (2) If a person is convicted of a violation of RCW 46.61.502 or
13 46.61.504 or an equivalent local ordinance and it is: (a) The person's
14 first conviction or a deferred prosecution under chapter 10.05 RCW and
15 his or her alcohol concentration was at least 0.15, or by reason of the
16 person's refusal to take a test offered pursuant to RCW 46.20.308 there
17 is no test result indicating the person's alcohol concentration; or (b)
18 the person's second or subsequent conviction; or (c) the person's first
19 conviction and the person has a previous deferred prosecution under
20 chapter 10.05 RCW or it is a deferred prosecution under chapter 10.05
21 RCW and the person has a previous conviction, the court shall order
22 that after any applicable period of suspension, revocation, or denial
23 of driving privileges, the person may drive only a motor vehicle
24 equipped with a functioning ignition interlock or other biological or
25 technical device. The court may waive the requirement for the use of
26 such a device if the court makes a specific finding in writing that
27 such devices are not reasonably available in the local area. Nothing
28 in this section may be interpreted as entitling a person to more than
29 one deferred prosecution.

30 (3) The court shall establish a specific calibration setting at
31 which the ignition interlock or other biological or technical device
32 will prevent the motor vehicle from being started and the period of
33 time that the person shall be subject to the restriction. In the case
34 of a person under subsection (2) of this section, the period of time of
35 the restriction will be as follows:

36 (a) For a person (i) who is subject to RCW 46.61.5055 (1)(b), (2),
37 or (3), or who is subject to a deferred prosecution program under

1 chapter 10.05 RCW, and (ii) who has not previously been restricted
2 under this section, a period of not less than one year;

3 (b) For a person who has previously been restricted under (a) of
4 this subsection, a period of not less than five years;

5 (c) For a person who has previously been restricted under (b) of
6 this subsection, a period of not less than ten years.

7 For purposes of this section, "convicted" means being found guilty
8 of an offense or being placed on a deferred prosecution program under
9 chapter 10.05 RCW.

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

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

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

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

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

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

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

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

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

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

8 (6) A violation of this section by a person who has two or more
9 prior offenses within seven years is punishable as a class C felony
10 according to chapter 9A.20 RCW. For the purposes of this subsection,
11 the definitions of "prior offense" and "within seven years" contained
12 in RCW 46.61.5055 apply.

13 **Sec. 8.** RCW 46.61.504 and 1998 c 213 s 5 are each amended to read
14 as follows:

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

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

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

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

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

33 (3) It is an affirmative defense to a violation of subsection
34 (1)(a) of this section which the defendant must prove by a
35 preponderance of the evidence that the defendant consumed a sufficient
36 quantity of alcohol after the time of being in actual physical control
37 of the vehicle and before the administration of an analysis of the
38 person's breath or blood to cause the defendant's alcohol concentration

1 to be 0.08 or more within two hours after being in such control. The
2 court shall not admit evidence of this defense unless the defendant
3 notifies the prosecution prior to the omnibus or pretrial hearing in
4 the case of the defendant's intent to assert the affirmative defense.

5 (4) Analyses of blood or breath samples obtained more than two
6 hours after the alleged being in actual physical control of a vehicle
7 may be used as evidence that within two hours of the alleged being in
8 such control, a person had an alcohol concentration of 0.08 or more in
9 violation of subsection (1)(a) of this section, and in any case in
10 which the analysis shows an alcohol concentration above 0.00 may be
11 used as evidence that a person was under the influence of or affected
12 by intoxicating liquor or any drug in violation of subsection (1)(b) or
13 (c) of this section.

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

16 (6) A violation of this section by a person who has two or more
17 prior offenses within seven years is punishable as a class C felony
18 according to chapter 9A.20 RCW. For the purposes of this subsection,
19 the definitions of "prior offense" and "within seven years" contained
20 in RCW 46.61.5055 apply.

21 **Sec. 9.** RCW 46.61.5055 and 1999 c 324 s 5, 1999 c 274 s 6, and
22 1999 c 5 s 1 are each reenacted and amended to read as follows:

23 (1) A person who is convicted of a violation of RCW 46.61.502 or
24 46.61.504 and who has no prior offense within seven years shall be
25 punished as follows:

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

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

1 (1)(a)(i), the court may order not less than fifteen days of electronic
2 home monitoring. The offender shall pay the cost of electronic home
3 monitoring. The county or municipality in which the penalty is being
4 imposed shall determine the cost. The court may also require the
5 offender's electronic home monitoring device to include an alcohol
6 detection breathalyzer, and the court may restrict the amount of
7 alcohol the offender may consume during the time the offender is on
8 electronic home monitoring; and

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

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

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

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

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

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

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

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

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

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

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

32 (i) By imprisonment for not less than forty-five days nor more than
33 one year and ninety days of electronic home monitoring. The offender
34 shall pay for the cost of the electronic monitoring. The county or
35 municipality where the penalty is being imposed shall determine the
36 cost. The court may also require the offender's electronic home
37 monitoring device include an alcohol detection breathalyzer, and may
38 restrict the amount of alcohol the offender may consume during the time
39 the offender is on electronic home monitoring. Forty-five days of

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

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

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

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

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

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

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

1 (iii) By a court ordered restriction under RCW 46.20.720; or
2 (b) In the case of a person whose alcohol concentration was at
3 least 0.15, or for whom by reason of the person's refusal to take a
4 test offered pursuant to RCW 46.20.308 there is no test result
5 indicating the person's alcohol concentration:

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

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

26 (iii) By a court ordered restriction under RCW 46.20.720)) in
27 accordance with chapter 9.94A RCW. In addition, the court shall impose
28 the restrictions set forth in RCW 46.20.720 and may sentence the
29 offender to a term of home detention, as defined in RCW 9.94A.030. Any
30 term of home detention shall be served consecutively to the term of
31 total confinement.

32 (4) In exercising its discretion in setting nonfelony penalties
33 within the limits allowed by this section, the court shall particularly
34 consider the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (c) The court determines that there is reason to believe that the
34 offender would violate the conditions of the electronic home monitoring
35 penalty.

36 Whenever the mandatory minimum term of electronic home monitoring
37 is waived, the court shall state in writing the reason for granting the
38 waiver and the facts upon which the waiver is based, and shall impose
39 an alternative sentence with similar punitive consequences. The

1 alternative sentence may include, but is not limited to, additional
2 jail time, work crew, or work camp.

3 Whenever the combination of jail time and electronic home
4 monitoring or alternative sentence would exceed three hundred sixty-
5 five days, the offender shall serve the jail portion of the sentence
6 first, and the electronic home monitoring or alternative portion of the
7 sentence shall be reduced so that the combination does not exceed three
8 hundred sixty-five days.

9 (10) An offender serving a sentence under this section, whether or
10 not a mandatory minimum term has expired, may be granted an
11 extraordinary medical placement by the jail administrator subject to
12 the standards and limitations set forth in RCW 9.94A.150(4).

13 (11) For purposes of this section:

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

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

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

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

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

23 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
24 9A.36.050 or an equivalent local ordinance, if the conviction is the
25 result of a charge that was originally filed as a violation of RCW
26 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
27 46.61.520 or 46.61.522;

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

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

34 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
35 prosecution for a violation of RCW 46.61.5249, or an equivalent local
36 ordinance, if the charge under which the deferred prosecution was
37 granted was originally filed as a violation of RCW 46.61.502 or
38 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
39 46.61.522; and

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

3 **Sec. 10.** RCW 46.61.5151 and 1995 c 332 s 15 are each amended to
4 read as follows:

5 A sentencing court may allow ((persons convicted of violating)) a
6 person who is convicted of a nonfelony violation of RCW 46.61.502 or
7 46.61.504 to fulfill the terms of the sentence provided in RCW
8 46.61.5055 in nonconsecutive or intermittent time periods. However, a
9 term of confinement of more than one year shall be served consecutively
10 and any mandatory minimum sentence under RCW 46.61.5055 shall be served
11 consecutively unless suspended or deferred as otherwise provided by
12 law.

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