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SUBSTITUTE SENATE BILL 6371

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State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Kline, McCaslin, Haugen, Esser, Johnson, Rasmussen, Oke, Fairley, Keiser, Murray, Roach, Shin and Eide)

READ FIRST TIME 02/09/04.

1       AN ACT Relating to driving while under the influence of alcohol or  
2 any drug; amending RCW 46.61.502, 46.61.504, 46.61.5055, 46.61.524, and  
3 9.94A.030; reenacting and amending RCW 9.94A.515 and 9.94A.525;  
4 prescribing penalties; and providing an effective date.

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

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

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

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

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

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

18           (2) The fact that a person charged with a violation of this section

1 is or has been entitled to use a drug under the laws of this state  
2 shall not constitute a defense against a charge of violating this  
3 section.

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

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

22 (5)(a) A violation of this section is a gross misdemeanor except  
23 when (b) of this subsection applies.

24 (b) A person is guilty of a class C felony punishable under chapter  
25 9A.20 RCW if the person drives while under the influence of  
26 intoxicating liquor or any drug as defined by this section and has  
27 previously been convicted of driving or being in physical control of a  
28 motor vehicle while under the influence of intoxicating liquor or any  
29 drug on two or more prior occasions within a five-year period, or the  
30 person has a previous conviction of felony driving or being in actual  
31 physical control while under the influence of intoxicating liquor or  
32 any drug, vehicular assault (RCW 46.61.522), or vehicular homicide (RCW  
33 46.61.520).

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

36 (1) A person is guilty of being in actual physical control of a

1 motor vehicle while under the influence of intoxicating liquor or any  
2 drug if the person has actual physical control of a vehicle within this  
3 state:

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

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

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

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

18 (3) 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 sufficient  
21 quantity of alcohol after the time of being in actual physical control  
22 of the vehicle and before the administration of an analysis of the  
23 person's breath or blood to cause the defendant's alcohol concentration  
24 to be 0.08 or more within two hours after being in such control. The  
25 court shall not admit evidence of this defense unless the defendant  
26 notifies the prosecution prior to the omnibus or pretrial hearing in  
27 the case of the defendant's intent to assert the affirmative defense.

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

37 (5)(a) A violation of this section is a gross misdemeanor except  
38 when (b) of this subsection applies.

1       (b) A person is guilty of a class C felony punishable under chapter  
2 9A.20 RCW if the person is in actual physical control of a motor  
3 vehicle while under the influence of intoxicating liquor or any drug as  
4 defined by this section and has been previously convicted of being in  
5 physical control of a motor vehicle or driving a motor vehicle while  
6 under the influence of intoxicating liquor or any drug on two or more  
7 occasions within a five-year period, or the person has a previous  
8 conviction of felony driving or being in actual physical control while  
9 under the influence of intoxicating liquor or any drug, vehicular  
10 assault (RCW 46.61.522), or vehicular homicide (RCW 46.61.520).

11       **Sec. 3.** RCW 46.61.5055 and 2003 c 103 s 1 are each amended to read  
12 as follows:

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

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

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

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

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

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

30               (2) A person who is convicted of a violation of RCW 46.61.502 or  
31 46.61.504 and who has one prior offense within seven years shall be  
32 punished as follows:

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

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

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

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

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

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

23 (i) By imprisonment for not less than forty-five days nor more than  
24 one year and ninety days of electronic home monitoring. The offender  
25 shall pay for the cost of the electronic monitoring. The county or  
26 municipality where the penalty is being imposed shall determine the  
27 cost. The court may also require the offender's electronic home  
28 monitoring device include an alcohol detection breathalyzer, and may  
29 restrict the amount of alcohol the offender may consume during the time  
30 the offender is on electronic home monitoring. Forty-five days of  
31 imprisonment and ninety days of electronic home monitoring 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; and

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

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

6           (3) A person who is convicted of a violation of RCW 46.61.502 or  
7 46.61.504 and who has two or more prior offenses within seven years  
8 shall be punished as follows except when subsection (4) of this section  
9 applies:

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

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

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

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

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

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

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

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

22           (4) A person who is convicted of a class C felony violation of RCW  
23 46.61.502(5)(b) or 46.61.504(5)(b) shall be punished in accordance with  
24 chapter 9.94A RCW.

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

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

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

36           ((+5))) (6) In exercising its discretion in setting penalties  
37 within the limits allowed by this section, the court shall particularly  
38 consider the following:

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

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

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

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

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

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

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

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

20      (b) If the person's alcohol concentration was at least 0.15, or if  
21 by reason of the person's refusal to take a test offered under RCW  
22 46.20.308 there is no test result indicating the person's alcohol  
23 concentration:

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

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

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

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

33       ((+8))) (9) After expiration of any period of suspension,  
34 revocation, or denial of the offender's license, permit, or privilege  
35 to drive required by this section, the department shall place the  
36 offender's driving privilege in probationary status pursuant to RCW  
37 46.20.355.

1       ((+9)) (10)(a) In addition to any nonsuspendable and nondeferrable  
2 jail sentence required by this section, whenever the court imposes less  
3 than one year in jail, the court shall also suspend but shall not defer  
4 a period of confinement for a period not exceeding five years. The  
5 court shall impose conditions of probation that include: (i) Not  
6 driving a motor vehicle within this state without a valid license to  
7 drive and proof of financial responsibility for the future; (ii) not  
8 driving a motor vehicle within this state while having an alcohol  
9 concentration of 0.08 or more within two hours after driving; and (iii)  
10 not refusing to submit to a test of his or her breath or blood to  
11 determine alcohol concentration upon request of a law enforcement  
12 officer who has reasonable grounds to believe the person was driving or  
13 was in actual physical control of a motor vehicle within this state  
14 while under the influence of intoxicating liquor. The court may impose  
15 conditions of probation that include nonrepetition, installation of an  
16 ignition interlock or other biological or technical device on the  
17 probationer's motor vehicle, alcohol or drug treatment, supervised  
18 probation, or other conditions that may be appropriate. The sentence  
19 may be imposed in whole or in part upon violation of a condition of  
20 probation during the suspension period.

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

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

35       ((+10)) (11) A court may waive the electronic home monitoring  
36 requirements of this chapter when:

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

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

2           (c) The court determines that there is reason to believe that the  
3 offender would violate the conditions of the electronic home monitoring  
4 penalty.

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

11          Whenever the combination of jail time and electronic home  
12 monitoring or alternative sentence would exceed three hundred sixty-  
13 five days, the offender shall serve the jail portion of the sentence  
14 first, and the electronic home monitoring or alternative portion of the  
15 sentence shall be reduced so that the combination does not exceed three  
16 hundred sixty-five days.

17          ((+11)) (12) An offender serving a sentence under this section,  
18 whether or not a mandatory minimum term has expired, may be granted an  
19 extraordinary medical placement by the jail administrator subject to  
20 the standards and limitations set forth in RCW 9.94A.728(4).

21          ((+12)) (13) For purposes of this section:

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

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

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

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

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

31           (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
32 9A.36.050 or an equivalent local ordinance, if the conviction is the  
33 result of a charge that was originally filed as a violation of RCW  
34 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
35 46.61.520 or 46.61.522;

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

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

4       (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
5 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
6 ordinance, if the charge under which the deferred prosecution was  
7 granted was originally filed as a violation of RCW 46.61.502 or  
8 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
9 46.61.522; and

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

12      **Sec. 4.** RCW 46.61.524 and 2001 c 64 s 7 are each amended to read  
13 as follows:

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

36      (2) As provided for under RCW 46.20.285, the department shall  
37 revoke the license, permit to drive, or a nonresident privilege of a

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

9       **Sec. 5.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read  
10 as follows:

11       Unless the context clearly requires otherwise, the definitions in  
12 this section apply throughout this chapter.

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

15       (2) "Collect," or any derivative thereof, "collect and remit," or  
16 "collect and deliver," when used with reference to the department,  
17 means that the department, either directly or through a collection  
18 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
19 and enforcing the offender's sentence with regard to the legal  
20 financial obligation, receiving payment thereof from the offender, and,  
21 consistent with current law, delivering daily the entire payment to the  
22 superior court clerk without depositing it in a departmental account.

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

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

28       (5) "Community custody" means that portion of an offender's  
29 sentence of confinement in lieu of earned release time or imposed  
30 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
31 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
32 community subject to controls placed on the offender's movement and  
33 activities by the department. For offenders placed on community  
34 custody for crimes committed on or after July 1, 2000, the department  
35 shall assess the offender's risk of reoffense and may establish and  
36 modify conditions of community custody, in addition to those imposed by  
37 the court, based upon the risk to community safety.

1       (6) "Community custody range" means the minimum and maximum period  
2 of community custody included as part of a sentence under RCW  
3 9.94A.715, as established by the commission or the legislature under  
4 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

5       (7) "Community placement" means that period during which the  
6 offender is subject to the conditions of community custody and/or  
7 postrelease supervision, which begins either upon completion of the  
8 term of confinement (postrelease supervision) or at such time as the  
9 offender is transferred to community custody in lieu of earned release.  
10 Community placement may consist of entirely community custody, entirely  
11 postrelease supervision, or a combination of the two.

12      (8) "Community restitution" means compulsory service, without  
13 compensation, performed for the benefit of the community by the  
14 offender.

15      (9) "Community supervision" means a period of time during which a  
16 convicted offender is subject to crime-related prohibitions and other  
17 sentence conditions imposed by a court pursuant to this chapter or RCW  
18 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
19 a chemical dependency that has contributed to his or her offense, the  
20 conditions of supervision may, subject to available resources, include  
21 treatment. For purposes of the interstate compact for out-of-state  
22 supervision of parolees and probationers, RCW 9.95.270, community  
23 supervision is the functional equivalent of probation and should be  
24 considered the same as probation by other states.

25      (10) "Confinement" means total or partial confinement.

26      (11) "Conviction" means an adjudication of guilt pursuant to Titles  
27 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
28 acceptance of a plea of guilty.

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

36      (13) "Criminal history" means the list of a defendant's prior  
37 convictions and juvenile adjudications, whether in this state, in  
38 federal court, or elsewhere.

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

5       (b) A conviction may be removed from a defendant's criminal history  
6 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
7 a similar out-of-state statute, or if the conviction has been vacated  
8 pursuant to a governor's pardon.

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

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

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

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

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

32       (18) "Disposable earnings" means that part of the earnings of an  
33 offender remaining after the deduction from those earnings of any  
34 amount required by law to be withheld. For the purposes of this  
35 definition, "earnings" means compensation paid or payable for personal  
36 services, whether denominated as wages, salary, commission, bonuses, or  
37 otherwise, and, notwithstanding any other provision of law making the  
38 payments exempt from garnishment, attachment, or other process to

1 satisfy a court-ordered legal financial obligation, specifically  
2 includes periodic payments pursuant to pension or retirement programs,  
3 or insurance policies of any type, but does not include payments made  
4 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
5 or Title 74 RCW.

6 (19) "Drug offender sentencing alternative" is a sentencing option  
7 available to persons convicted of a felony offense other than a violent  
8 offense or a sex offense and who are eligible for the option under RCW  
9 9.94A.660.

10 (20) "Drug offense" means:

11 (a) Any felony violation of chapter 69.50 RCW except possession of  
12 a controlled substance (RCW 69.50.4013) or forged prescription for a  
13 controlled substance (RCW 69.50.403);

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

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

20 (21) "Earned release" means earned release from confinement as  
21 provided in RCW 9.94A.728.

22 (22) "Escape" means:

23 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
24 first degree (RCW 9A.76.110), escape in the second degree (RCW  
25 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
26 willful failure to return from work release (RCW 72.65.070), or willful  
27 failure to be available for supervision by the department while in  
28 community custody (RCW 72.09.310); or

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

32 (23) "Felony traffic offense" means:

33 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
34 46.61.522), eluding a police officer (RCW 46.61.024), ((or)) felony  
35 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while  
36 under the influence of intoxicating liquor or any drug (RCW  
37 46.61.502(5)(b)), or felony actual physical control of a motor vehicle

1       while under the influence of intoxicating liquor or any drug (RCW  
2       46.61.504(5)(b)); or

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

6           (24) "Fine" means a specific sum of money ordered by the sentencing  
7       court to be paid by the offender to the court over a specific period of  
8       time.

9           (25) "First-time offender" means any person who has no prior  
10      convictions for a felony and is eligible for the first-time offender  
11      waiver under RCW 9.94A.650.

12          (26) "Home detention" means a program of partial confinement  
13       available to offenders wherein the offender is confined in a private  
14       residence subject to electronic surveillance.

15          (27) "Legal financial obligation" means a sum of money that is  
16       ordered by a superior court of the state of Washington for legal  
17       financial obligations which may include restitution to the victim,  
18       statutorily imposed crime victims' compensation fees as assessed  
19       pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,  
20       court-appointed attorneys' fees, and costs of defense, fines, and any  
21       other financial obligation that is assessed to the offender as a result  
22       of a felony conviction. Upon conviction for vehicular assault while  
23       under the influence of intoxicating liquor or any drug, RCW  
24       46.61.522(1)(b), or vehicular homicide while under the influence of  
25       intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial  
26       obligations may also include payment to a public agency of the expense  
27       of an emergency response to the incident resulting in the conviction,  
28       subject to RCW 38.52.430.

29          (28) "Most serious offense" means any of the following felonies or  
30       a felony attempt to commit any of the following felonies:

31           (a) Any felony defined under any law as a class A felony or  
32       criminal solicitation of or criminal conspiracy to commit a class A  
33       felony;

34           (b) Assault in the second degree;

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

36           (d) Child molestation in the second degree;

37           (e) Controlled substance homicide;

38           (f) Extortion in the first degree;

- 1                         (g) Incest when committed against a child under age fourteen;  
2                         (h) Indecent liberties;  
3                         (i) Kidnapping in the second degree;  
4                         (j) Leading organized crime;  
5                         (k) Manslaughter in the first degree;  
6                         (l) Manslaughter in the second degree;  
7                         (m) Promoting prostitution in the first degree;  
8                         (n) Rape in the third degree;  
9                         (o) Robbery in the second degree;  
10                         (p) Sexual exploitation;  
11                         (q) Vehicular assault, when caused by the operation or driving of  
12                         a vehicle by a person while under the influence of intoxicating liquor  
13                         or any drug or by the operation or driving of a vehicle in a reckless  
14                         manner;  
15                         (r) Vehicular homicide, when proximately caused by the driving of  
16                         any vehicle by any person while under the influence of intoxicating  
17                         liquor or any drug as defined by RCW 46.61.502, or by the operation of  
18                         any vehicle in a reckless manner;  
19                         (s) Any other class B felony offense with a finding of sexual  
20                         motivation;  
21                         (t) Any other felony with a deadly weapon verdict under RCW  
22                         9.94A.602;  
23                         (u) Any felony offense in effect at any time prior to December 2,  
24                         1993, that is comparable to a most serious offense under this  
25                         subsection, or any federal or out-of-state conviction for an offense  
26                         that under the laws of this state would be a felony classified as a  
27                         most serious offense under this subsection;  
28                         (v)(i) A prior conviction for indecent liberties under RCW  
29                         9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
30                         as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
31                         it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
32                         (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;  
33                         (ii) A prior conviction for indecent liberties under RCW  
34                         9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
35                         if: (A) The crime was committed against a child under the age of  
36                         fourteen; or (B) the relationship between the victim and perpetrator is  
37                         included in the definition of indecent liberties under RCW

1 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
2 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
3 through July 27, 1997.

4 (29) "Nonviolent offense" means an offense which is not a violent  
5 offense.

6 (30) "Offender" means a person who has committed a felony  
7 established by state law and is eighteen years of age or older or is  
8 less than eighteen years of age but whose case is under superior court  
9 jurisdiction under RCW 13.04.030 or has been transferred by the  
10 appropriate juvenile court to a criminal court pursuant to RCW  
11 13.40.110. Throughout this chapter, the terms "offender" and  
12 "defendant" are used interchangeably.

13 (31) "Partial confinement" means confinement for no more than one  
14 year in a facility or institution operated or utilized under contract  
15 by the state or any other unit of government, or, if home detention or  
16 work crew has been ordered by the court, in an approved residence, for  
17 a substantial portion of each day with the balance of the day spent in  
18 the community. Partial confinement includes work release, home  
19 detention, work crew, and a combination of work crew and home  
20 detention.

21 (32) "Persistent offender" is an offender who:

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

24 (ii) Has, before the commission of the offense under (a) of this  
25 subsection, been convicted as an offender on at least two separate  
26 occasions, whether in this state or elsewhere, of felonies that under  
27 the laws of this state would be considered most serious offenses and  
28 would be included in the offender score under RCW 9.94A.525; provided  
29 that of the two or more previous convictions, at least one conviction  
30 must have occurred before the commission of any of the other most  
31 serious offenses for which the offender was previously convicted; or

32 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
33 of a child in the first degree, child molestation in the first degree,  
34 rape in the second degree, rape of a child in the second degree, or  
35 indecent liberties by forcible compulsion; (B) any of the following  
36 offenses with a finding of sexual motivation: Murder in the first  
37 degree, murder in the second degree, homicide by abuse, kidnapping in  
38 the first degree, kidnapping in the second degree, assault in the first

1 degree, assault in the second degree, assault of a child in the first  
2 degree, or burglary in the first degree; or (C) an attempt to commit  
3 any crime listed in this subsection (32)(b)(i); and

4       (ii) Has, before the commission of the offense under (b)(i) of this  
5 subsection, been convicted as an offender on at least one occasion,  
6 whether in this state or elsewhere, of an offense listed in (b)(i) of  
7 this subsection or any federal or out-of-state offense or offense under  
8 prior Washington law that is comparable to the offenses listed in  
9 (b)(i) of this subsection. A conviction for rape of a child in the  
10 first degree constitutes a conviction under (b)(i) of this subsection  
11 only when the offender was sixteen years of age or older when the  
12 offender committed the offense. A conviction for rape of a child in  
13 the second degree constitutes a conviction under (b)(i) of this  
14 subsection only when the offender was eighteen years of age or older  
15 when the offender committed the offense.

16       (33) "Postrelease supervision" is that portion of an offender's  
17 community placement that is not community custody.

18       (34) "Restitution" means a specific sum of money ordered by the  
19 sentencing court to be paid by the offender to the court over a  
20 specified period of time as payment of damages. The sum may include  
21 both public and private costs.

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

30       (36) "Serious traffic offense" means:

31           (a) Nonfelony driving while under the influence of intoxicating  
32 liquor or any drug (RCW 46.61.502(5)(a)), nonfelony actual physical  
33 control while under the influence of intoxicating liquor or any drug  
34 (RCW 46.61.504(5)(a)), reckless driving (RCW 46.61.500), or hit-and-run  
35 an attended vehicle (RCW 46.52.020(5)); or

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

1       (37) "Serious violent offense" is a subcategory of violent offense  
2 and means:

- 3           (a)(i) Murder in the first degree;
- 4           (ii) Homicide by abuse;
- 5           (iii) Murder in the second degree;
- 6           (iv) Manslaughter in the first degree;
- 7           (v) Assault in the first degree;
- 8           (vi) Kidnapping in the first degree;
- 9           (vii) Rape in the first degree;
- 10          (viii) Assault of a child in the first degree; or
- 11          (ix) An attempt, criminal solicitation, or criminal conspiracy to  
12 commit one of these felonies; or
- 13          (b) 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 serious  
15 violent offense under (a) of this subsection.

16       (38) "Sex offense" means:

- 17           (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
18 RCW 9A.44.130(11);
- 19           (ii) A violation of RCW 9A.64.020;
- 20           (iii) A felony that is a violation of chapter 9.68A RCW other than  
21 RCW 9.68A.070 or 9.68A.080; or
- 22           (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
23 criminal 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.835 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       (39) "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       (40) "Standard sentence range" means the sentencing court's  
36 discretionary range in imposing a nonappealable sentence.

37       (41) "Statutory maximum sentence" means the maximum length of time

1 for which an offender may be confined as punishment for a crime as  
2 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
3 crime, or other statute defining the maximum penalty for a crime.

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

8 (43) "Transition training" means written and verbal instructions  
9 and assistance provided by the department to the offender during the  
10 two weeks prior to the offender's successful completion of the work  
11 ethic camp program. The transition training shall include instructions  
12 in the offender's requirements and obligations during the offender's  
13 period of community custody.

14 (44) "Victim" means any person who has sustained emotional,  
15 psychological, physical, or financial injury to person or property as  
16 a direct result of the crime charged.

17 (45) "Violent offense" means:

18 (a) Any of the following felonies:

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

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

23 (iii) Manslaughter in the first degree;

24 (iv) Manslaughter in the second degree;

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

26 (vi) Kidnapping in the second degree;

27 (vii) Arson in the second degree;

28 (viii) Assault in the second degree;

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

30 (x) Extortion in the first degree;

31 (xi) Robbery in the second degree;

32 (xii) Drive-by shooting;

33 (xiii) Vehicular assault, when caused by the operation or driving  
34 of a vehicle by a person while under the influence of intoxicating  
35 liquor or any drug or by the operation or driving of a vehicle in a  
36 reckless manner; and

37 (xiv) Vehicular homicide, when proximately caused by the driving of

1 any vehicle by any person while under the influence of intoxicating  
2 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
3 any vehicle in a reckless manner;

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

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

10 (46) "Work crew" means a program of partial confinement consisting  
11 of civic improvement tasks for the benefit of the community that  
12 complies with RCW 9.94A.725.

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

20 (48) "Work release" means a program of partial confinement  
21 available to offenders who are employed or engaged as a student in a  
22 regular course of study at school.

23 **Sec. 6.** RCW 9.94A.515 and 2003 c 335 s 5, 2003 c 283 s 33, 2003 c  
24 267 s 3, 2003 c 250 s 14, 2003 c 119 s 8, 2003 c 53 s 56, and 2003 c 52  
25 s 4 are each reenacted and amended to read as follows:

TABLE 2	
CRIMES INCLUDED WITHIN	
EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)

1 Trafficking 1 (RCW 9A.40.100(1))  
2 XIII Malicious explosion 2 (RCW  
3 70.74.280(2))  
4 Malicious placement of an explosive 1  
5 (RCW 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  
9 device 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 Trafficking 2 (RCW 9A.40.100(2))  
13 XI Manslaughter 1 (RCW 9A.32.060)  
14 Rape 2 (RCW 9A.44.050)  
15 Rape of a Child 2 (RCW 9A.44.076)  
16 X Child Molestation 1 (RCW 9A.44.083)  
17 Indecent Liberties (with forcible  
18 compulsion) (RCW  
19 9A.44.100(1)(a))  
20 Kidnapping 1 (RCW 9A.40.020)  
21 Leading Organized Crime (RCW  
22 9A.82.060(1)(a))  
23 Malicious explosion 3 (RCW  
24 70.74.280(3))  
25 Sexually Violent Predator Escape  
26 (RCW 9A.76.115)  
27 IX Assault of a Child 2 (RCW 9A.36.130)  
28 Explosive devices prohibited (RCW  
29 70.74.180)  
30 Hit and Run--Death (RCW  
31 46.52.020(4)(a))  
32 Homicide by Watercraft, by being  
33 under the influence of intoxicating  
34 liquor or any drug (RCW  
35 79A.60.050)  
36 Inciting Criminal Profiteering (RCW  
37 9A.82.060(1)(b))

1 Malicious placement of an explosive 2  
2 (RCW 70.74.270(2))  
3 Robbery 1 (RCW 9A.56.200)  
4 Sexual Exploitation (RCW 9.68A.040)  
5 Vehicular Homicide, by being under  
6 the influence of intoxicating  
7 liquor or any drug (RCW  
8 46.61.520)  
9 VIII Arson 1 (RCW 9A.48.020)  
10 Homicide by Watercraft, by the  
11 operation of any vessel in a  
12 reckless manner (RCW  
13 79A.60.050)  
14 Manslaughter 2 (RCW 9A.32.070)  
15 Promoting Prostitution 1 (RCW  
16 9A.88.070)  
17 Theft of Ammonia (RCW 69.55.010)  
18 Vehicular Homicide, by the operation  
19 of any vehicle in a reckless  
20 manner (RCW 46.61.520)  
21 VII Burglary 1 (RCW 9A.52.020)  
22 Child Molestation 2 (RCW 9A.44.086)  
23 Civil Disorder Training (RCW  
24 9A.48.120)  
25 Dealing in depictions of minor  
26 engaged in sexually explicit  
27 conduct (RCW 9.68A.050)  
28 Drive-by Shooting (RCW 9A.36.045)  
29 Homicide by Watercraft, by disregard  
30 for the safety of others (RCW  
31 79A.60.050)  
32 Indecent Liberties (without forcible  
33 compulsion) (RCW 9A.44.100(1)  
34 (b) and (c))  
35 Introducing Contraband 1 (RCW  
36 9A.76.140)

1 Malicious placement of an explosive 3  
2 (RCW 70.74.270(3))  
3 Sending, bringing into state depictions  
4 of minor engaged in sexually  
5 explicit conduct (RCW  
6 9.68A.060)  
7 Unlawful Possession of a Firearm in  
8 the first degree (RCW  
9 9.41.040(1))  
10 Use of a Machine Gun in Commission  
11 of a Felony (RCW 9.41.225)  
12 Vehicular Homicide, by disregard for  
13 the safety of others (RCW  
14 46.61.520)  
15 VI Bail Jumping with Murder 1 (RCW  
16 9A.76.170(3)(a))  
17 Bribery (RCW 9A.68.010)  
18 Incest 1 (RCW 9A.64.020(1))  
19 Intimidating a Judge (RCW  
20 9A.72.160)  
21 Intimidating a Juror/Witness (RCW  
22 9A.72.110, 9A.72.130)  
23 Malicious placement of an imitation  
24 device 2 (RCW 70.74.272(1)(b))  
25 Rape of a Child 3 (RCW 9A.44.079)  
26 Theft of a Firearm (RCW 9A.56.300)  
27 Unlawful Storage of Ammonia (RCW  
28 69.55.020)  
29 V Abandonment of dependent person 1  
30 (RCW 9A.42.060)  
31 Advancing money or property for  
32 extortionate extension of credit  
33 (RCW 9A.82.030)  
34 Bail Jumping with class A Felony  
35 (RCW 9A.76.170(3)(b))  
36 Child Molestation 3 (RCW 9A.44.089)

- Criminal Mistreatment 1 (RCW 9A.42.020)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Felony driving or physical control of a motor vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.502(5)(b) or 46.61.504(5)(b))
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)

1                          IV    Arson 2 (RCW 9A.48.030)  
2                          Assault 2 (RCW 9A.36.021)  
3                          Assault by Watercraft (RCW  
4                          79A.60.060)  
5                          Bribing a Witness/Bribe Received by  
6                          Witness (RCW 9A.72.090,  
7                          9A.72.100)  
8                          Cheating 1 (RCW 9.46.1961)  
9                          Commercial Bribery (RCW  
10                         9A.68.060)  
11                         Counterfeiting (RCW 9.16.035(4))  
12                         Endangerment with a Controlled  
13                         Substance (RCW 9A.42.100)  
14                         Escape 1 (RCW 9A.76.110)  
15                         Hit and Run--Injury (RCW  
16                         46.52.020(4)(b))  
17                         Hit and Run with Vessel--Injury  
18                         Accident (RCW 79A.60.200(3))  
19                         Identity Theft 1 (RCW 9.35.020(2))  
20                         Indecent Exposure to Person Under  
21                         Age Fourteen (subsequent sex  
22                         offense) (RCW 9A.88.010)  
23                         Influencing Outcome of Sporting  
24                         Event (RCW 9A.82.070)  
25                         Malicious Harassment (RCW  
26                         9A.36.080)  
27                         Residential Burglary (RCW  
28                         9A.52.025)  
29                         Robbery 2 (RCW 9A.56.210)  
30                         Theft of Livestock 1 (RCW 9A.56.080)  
31                         Threats to Bomb (RCW 9.61.160)  
32                         Trafficking in Stolen Property 1 (RCW  
33                         9A.82.050)  
34                         Unlawful factoring of a credit card or  
35                         payment card transaction (RCW  
36                         9A.56.290(4)(b))

1 Unlawful transaction of health  
2 coverage as a health care service  
3 contractor (RCW 48.44.016(3))  
4 Unlawful transaction of health  
5 coverage as a health maintenance  
6 organization (RCW 48.46.033(3))  
7 Unlawful transaction of insurance  
8 business (RCW 48.15.023(3))  
9 Unlicensed practice as an insurance  
10 professional (RCW 48.17.063(3))  
11 Use of Proceeds of Criminal  
12 Profiteering (RCW 9A.82.080 (1)  
13 and (2))  
14 Vehicular Assault, by being under the  
15 influence of intoxicating liquor or  
16 any drug, or by the operation or  
17 driving of a vehicle in a reckless  
18 manner (RCW 46.61.522)  
19 Willful Failure to Return from  
20 Furlough (RCW 72.66.060)  
21 III Abandonment of dependent person 2  
22 (RCW 9A.42.070)  
23 Assault 3 (RCW 9A.36.031)  
24 Assault of a Child 3 (RCW 9A.36.140)  
25 Bail Jumping with class B or C Felony  
26 (RCW 9A.76.170(3)(c))  
27 Burglary 2 (RCW 9A.52.030)  
28 Communication with a Minor for  
29 Immoral Purposes (RCW  
30 9.68A.090)  
31 Criminal Gang Intimidation (RCW  
32 9A.46.120)  
33 Criminal Mistreatment 2 (RCW  
34 9A.42.030)  
35 Custodial Assault (RCW 9A.36.100)  
36 Escape 2 (RCW 9A.76.120)  
37 Extortion 2 (RCW 9A.56.130)

1 Harassment (RCW 9A.46.020)  
2 Intimidating a Public Servant (RCW  
3 9A.76.180)  
4 Introducing Contraband 2 (RCW  
5 9A.76.150)  
6 Malicious Injury to Railroad Property  
7 (RCW 81.60.070)  
8 Patronizing a Juvenile Prostitute  
9 (RCW 9.68A.100)  
10 Perjury 2 (RCW 9A.72.030)  
11 Possession of Incendiary Device (RCW  
12 9.40.120)  
13 Possession of Machine Gun or Short-  
14 Barreled Shotgun or Rifle (RCW  
15 9.41.190)  
16 Promoting Prostitution 2 (RCW  
17 9A.88.080)  
18 Securities Act violation (RCW  
19 21.20.400)  
20 Tampering with a Witness (RCW  
21 9A.72.120)  
22 Telephone Harassment (subsequent  
23 conviction or threat of death)  
24 (RCW 9.61.230(2))  
25 Theft of Livestock 2 (RCW 9A.56.083)  
26 Trafficking in Stolen Property 2 (RCW  
27 9A.82.055)  
28 Unlawful Imprisonment (RCW  
29 9A.40.040)  
30 Unlawful possession of firearm in the  
31 second degree (RCW 9.41.040(2))  
32 Vehicular Assault, by the operation or  
33 driving of a vehicle with disregard  
34 for the safety of others (RCW  
35 46.61.522)  
36 Willful Failure to Return from Work  
37 Release (RCW 72.65.070)

1                   II Computer Trespass 1 (RCW  
2                   9A.52.110)  
3                   Counterfeiting (RCW 9.16.035(3))  
4                   Escape from Community Custody  
5                   (RCW 72.09.310)  
6                   Health Care False Claims (RCW  
7                   48.80.030)  
8                   Identity Theft 2 (RCW 9.35.020(3))  
9                   Improperly Obtaining Financial  
10                  Information (RCW 9.35.010)  
11                  Malicious Mischief 1 (RCW  
12                  9A.48.070)  
13                  Possession of Stolen Property 1 (RCW  
14                  9A.56.150)  
15                  Theft 1 (RCW 9A.56.030)  
16                  Theft of Rental, Leased, or Lease-  
17                  purchased Property (valued at one  
18                  thousand five hundred dollars or  
19                  more) (RCW 9A.56.096(5)(a))  
20                  Trafficking in Insurance Claims (RCW  
21                  48.30A.015)  
22                  Unlawful factoring of a credit card or  
23                  payment card transaction (RCW  
24                  9A.56.290(4)(a))  
25                  Unlawful Practice of Law (RCW  
26                  2.48.180)  
27                  Unlicensed Practice of a Profession or  
28                  Business (RCW 18.130.190(7))  
29                  I Attempting to Elude a Pursuing Police  
30                  Vehicle (RCW 46.61.024)  
31                  False Verification for Welfare (RCW  
32                  74.08.055)  
33                  Forgery (RCW 9A.60.020)  
34                  Fraudulent Creation or Revocation of a  
35                  Mental Health Advance Directive  
36                  (RCW 9A.60.060)

1 Malicious Mischief 2 (RCW  
2 9A.48.080)  
3 Mineral Trespass (RCW 78.44.330)  
4 Possession of Stolen Property 2 (RCW  
5 9A.56.160)  
6 Reckless Burning 1 (RCW 9A.48.040)  
7 Taking Motor Vehicle Without  
8 Permission 2 (RCW 9A.56.075)  
9 Theft 2 (RCW 9A.56.040)  
10 Theft of Rental, Leased, or Lease-  
11 purchased Property (valued at two  
12 hundred fifty dollars or more but  
13 less than one thousand five  
14 hundred dollars) (RCW  
15 9A.56.096(5)(b))  
16 Transaction of insurance business  
17 beyond the scope of licensure  
18 (RCW 48.17.063(4))  
19 Unlawful Issuance of Checks or Drafts  
20 (RCW 9A.56.060)  
21 Unlawful Possession of Fictitious  
22 Identification (RCW 9A.56.320)  
23 Unlawful Possession of Instruments of  
24 Financial Fraud (RCW  
25 9A.56.320)  
26 Unlawful Possession of Payment  
27 Instruments (RCW 9A.56.320)  
28 Unlawful Possession of a Personal  
29 Identification Device (RCW  
30 9A.56.320)  
31 Unlawful Production of Payment  
32 Instruments (RCW 9A.56.320)  
33 Unlawful Trafficking in Food Stamps  
34 (RCW 9.91.142)  
35 Unlawful Use of Food Stamps (RCW  
36 9.91.144)  
37 Vehicle Prowl 1 (RCW 9A.52.095)

1       **Sec. 7.** RCW 9.94A.525 and 2002 c 290 s 3 and 2002 c 107 s 3 are  
2 each reenacted and amended to read as follows:

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

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

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

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

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

1 usually considered subject to exclusive federal jurisdiction, the  
2 offense shall be scored as a class C felony equivalent if it was a  
3 felony under the relevant federal statute.

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

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

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

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

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

36 (6) If the present conviction is one of the anticipatory offenses  
37 of criminal attempt, solicitation, or conspiracy, count each prior

conviction as if the present conviction were for a completed offense. When these convictions are used as criminal history, score them the same as a completed crime.

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

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

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

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

(11) If the present conviction is for a felony traffic offense, count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense, count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, including those used to elevate a conviction of RCW 46.61.502 or 46.61.504 to a felony pursuant to RCW 46.61.502(5)(b) or 46.61.504(5)(b), other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction.

(12) If the present conviction is for manufacture of methamphetamine count three points for each adult prior manufacture of methamphetamine conviction and two points for each juvenile manufacture of methamphetamine offense. If the present conviction is for a drug offense and the offender has a criminal history that includes a sex

1 offense or serious violent offense, count three points for each adult  
2 prior felony drug offense conviction and two points for each juvenile  
3 drug offense. All other adult and juvenile felonies are scored as in  
4 subsection (8) of this section if the current drug offense is violent,  
5 or as in subsection (7) of this section if the current drug offense is  
6 nonviolent.

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

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

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

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

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

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

34 NEW SECTION. **Sec. 8.** This act takes effect July 1, 2004.

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