
HOUSE BILL 1451

State of Washington

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By Representatives Ahern, O'Brien, Tom, Lovick, Roach, Walsh, Holmquist, Rodne, Orcutt, Kretz, Campbell, Strow, McCune, McDonald, Serben, Condotta, Williams, Chase, Hasegawa, Haler, Pettigrew, Newhouse, P. Sullivan, Morrell and Sells

Read first time 01/25/2005. 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 46.61.502, 46.61.504, 46.61.5055, 46.61.5151, 9.94A.640, 9.94A.030,
4 9.94A.525, and 9.94A.650; reenacting and amending RCW 9.94A.515;
5 prescribing penalties; providing an effective date; and declaring an
6 emergency.

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (a) And the person has, within two hours after being in actual

1 physical control of the vehicle, an alcohol concentration of 0.08 or
2 higher as shown by analysis of the person's breath or blood made under
3 RCW 46.61.506; or

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

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

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

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

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

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

35 (6) A violation of this section by a person who has two or more
36 prior offenses within seven years is punishable as a class C felony
37 according to chapter 9A.20 RCW. For the purposes of this subsection,

1 the definitions of "prior offense" and "within seven years" contained
2 in RCW 46.61.5055 apply.

3 **Sec. 3.** RCW 46.61.5055 and 2004 c 95 s 13 are each amended to read
4 as follows:

5 (1) A person who is convicted of a violation of RCW 46.61.502 or
6 46.61.504 and who has no prior offense within seven years shall be
7 punished as follows:

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

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

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

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

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

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

21 (2) A person who is convicted of a violation of RCW 46.61.502 or
22 46.61.504 and who has one prior offense within seven years shall be
23 punished as follows:

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

28 (i) By imprisonment for not less than thirty days nor more than one
29 year and sixty days of electronic home monitoring. The offender shall
30 pay for the cost of the electronic monitoring. The county or
31 municipality where the penalty is being imposed shall determine the
32 cost. The court may also require the offender's electronic home
33 monitoring device include an alcohol detection breathalyzer, and may
34 restrict the amount of alcohol the offender may consume during the time
35 the offender is on electronic home monitoring. Thirty days of
36 imprisonment and sixty days of electronic home monitoring may not be
37 suspended or deferred unless the court finds that the imposition of
38 this mandatory minimum sentence would impose a substantial risk to the

1 offender's physical or mental well-being. Whenever the mandatory
2 minimum sentence is suspended or deferred, the court shall state in
3 writing the reason for granting the suspension or deferral and the
4 facts upon which the suspension or deferral is based; and

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

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

13 (i) By imprisonment for not less than forty-five days nor more than
14 one year and ninety days of electronic home monitoring. The offender
15 shall pay for the cost of the electronic monitoring. The county or
16 municipality where the penalty is being imposed shall determine the
17 cost. The court may also require the offender's electronic home
18 monitoring device include an alcohol detection breathalyzer, and may
19 restrict the amount of alcohol the offender may consume during the time
20 the offender is on electronic home monitoring. Forty-five days of
21 imprisonment and ninety days of electronic home monitoring 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; and

28 (ii) By a fine of not less than seven hundred fifty dollars nor
29 more than five thousand dollars. Seven hundred fifty dollars of the
30 fine may not be suspended or deferred unless the court finds the
31 offender to be indigent.

32 (3) A person who is convicted of a violation of RCW 46.61.502 or
33 46.61.504 and who has two or more prior offenses within seven years
34 shall be punished (~~as follows:~~

35 ~~(a) In the case of a person whose alcohol concentration was less~~
36 ~~than 0.15, or for whom for reasons other than the person's refusal to~~
37 ~~take a 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 ninety days nor more than one~~
2 ~~year and one hundred twenty days of electronic home monitoring. The~~
3 ~~offender shall pay for the cost of the electronic monitoring. The~~
4 ~~county or municipality where the penalty is being imposed shall~~
5 ~~determine the cost. The court may also require the offender's~~
6 ~~electronic home monitoring device include an alcohol detection~~
7 ~~breathalyzer, and may restrict the amount of alcohol the offender may~~
8 ~~consume during the time the offender is on electronic home monitoring.~~
9 ~~Ninety days of imprisonment and one hundred twenty days of electronic~~
10 ~~home monitoring may not be suspended or deferred unless the court finds~~
11 ~~that the imposition of this mandatory minimum sentence would impose a~~
12 ~~substantial risk to the offender's physical or mental well-being.~~
13 ~~Whenever the mandatory minimum sentence is suspended or deferred, the~~
14 ~~court shall state in writing the reason for granting the suspension or~~
15 ~~deferral and the facts upon which the suspension or deferral is based;~~
16 ~~and~~

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

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

25 ~~(i) By imprisonment for not less than one hundred twenty days nor~~
26 ~~more than one year and one hundred fifty days of electronic home~~
27 ~~monitoring. The offender shall pay for the cost of the electronic~~
28 ~~monitoring. The county or municipality where the penalty is being~~
29 ~~imposed shall determine the cost. The court may also require the~~
30 ~~offender's electronic home monitoring device include an alcohol~~
31 ~~detection breathalyzer, and may restrict the amount of alcohol the~~
32 ~~offender may consume during the time the offender is on electronic home~~
33 ~~monitoring. One hundred twenty days of imprisonment and one hundred~~
34 ~~fifty days of electronic home monitoring may not be suspended or~~
35 ~~deferred unless the court finds that the imposition of this mandatory~~
36 ~~minimum sentence would impose a substantial risk to the offender's~~
37 ~~physical or mental well-being. Whenever the mandatory minimum sentence~~

1 ~~is suspended or deferred, the court shall state in writing the reason~~
2 ~~for granting the suspension or deferral and the facts upon which the~~
3 ~~suspension or deferral is based; and~~

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

8 (4) If a person who is convicted of a violation of RCW 46.61.502 or
9 46.61.504 committed the offense while a passenger under the age of
10 sixteen was in the vehicle, the court shall:

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

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

19 (5) In exercising its discretion in setting nonfelony penalties
20 within the limits allowed by this section, the court shall particularly
21 consider the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (9)(a) In addition to any nonsuspendable and nondeferrable jail
31 sentence required by this section, whenever the court imposes less than
32 one year in jail, the court shall also suspend but shall not defer a
33 period of confinement for a period not exceeding five years. The court
34 shall impose conditions of probation that include: (i) Not driving a
35 motor vehicle within this state without a valid license to drive and
36 proof of financial responsibility for the future; (ii) not driving a
37 motor vehicle within this state while having an alcohol concentration
38 of 0.08 or more within two hours after driving; and (iii) not refusing

1 to submit to a test of his or her breath or blood to determine alcohol
2 concentration upon request of a law enforcement officer who has
3 reasonable grounds to believe the person was driving or was in actual
4 physical control of a motor vehicle within this state while under the
5 influence of intoxicating liquor. The court may impose conditions of
6 probation that include nonrepetition, installation of an ignition
7 interlock device on the probationer's motor vehicle, alcohol or drug
8 treatment, supervised probation, or other conditions that may be
9 appropriate. The sentence may be imposed in whole or in part upon
10 violation of a condition of probation during the suspension period.

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

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

25 (10) A court may waive the electronic home monitoring requirements
26 of this chapter when:

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

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

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

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

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

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

11 (12) For purposes of this section:

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

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

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

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

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

21 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
22 9A.36.050 or an equivalent local ordinance, if the conviction is the
23 result of a charge that was originally filed as a violation of RCW
24 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
25 46.61.520 or 46.61.522;

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

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

32 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
33 prosecution for a violation of RCW 46.61.5249, or an equivalent local
34 ordinance, if the charge under which the deferred prosecution was
35 granted was originally filed as a violation of RCW 46.61.502 or
36 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
37 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. 4.** 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.

13 **Sec. 5.** RCW 9.94A.640 and 1987 c 486 s 7 are each amended to read
14 as follows:

15 (1) Every offender who has been discharged under RCW 9.94A.637 may
16 apply to the sentencing court for a vacation of the offender's record
17 of conviction. If the court finds the offender meets the tests
18 prescribed in subsection (2) of this section, the court may clear the
19 record of conviction by: (a) Permitting the offender to withdraw the
20 offender's plea of guilty and to enter a plea of not guilty; or (b) if
21 the offender has been convicted after a plea of not guilty, by the
22 court setting aside the verdict of guilty; and (c) by the court
23 dismissing the information or indictment against the offender.

24 (2) An offender may not have the record of conviction cleared if:
25 (a) There are any criminal charges against the offender pending in any
26 court of this state or another state, or in any federal court; (b) the
27 offense was a violent offense as defined in RCW 9.94A.030; (c) the
28 offense was a crime against persons as defined in RCW 43.43.830; (d)
29 the offender has been convicted of a new crime in this state, another
30 state, or federal court since the date of the offender's discharge
31 under RCW 9.94A.637; (e) the offense is a class B felony and less than
32 ten years have passed since the date the applicant was discharged under
33 RCW 9.94A.637; (~~and~~) (f) the offense was a class C felony, other than
34 a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and
35 less than five years have passed since the date the applicant was

1 discharged under RCW 9.94A.637; or (g) the offense was a class C felony
2 described in RCW 46.61.502(6) or 46.61.504(6) and less than seven years
3 have passed since the applicant was discharged under RCW 9.94A.637.

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

14 **Sec. 6.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
15 as follows:

16 Unless the context clearly requires otherwise, the definitions in
17 this section apply throughout this chapter.

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

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

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

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

33 (5) "Community custody" means that portion of an offender's
34 sentence of confinement in lieu of earned release time or imposed
35 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
36 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
37 community subject to controls placed on the offender's movement and

1 activities by the department. For offenders placed on community
2 custody for crimes committed on or after July 1, 2000, the department
3 shall assess the offender's risk of reoffense and may establish and
4 modify conditions of community custody, in addition to those imposed by
5 the court, based upon the risk to community safety.

6 (6) "Community custody range" means the minimum and maximum period
7 of community custody included as part of a sentence under RCW
8 9.94A.715, as established by the commission or the legislature under
9 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

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

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

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

31 (11) "Conviction" means an adjudication of guilt pursuant to Titles
32 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
33 acceptance of a plea of guilty.

34 (12) "Crime-related prohibition" means an order of a court
35 prohibiting conduct that directly relates to the circumstances of the
36 crime for which the offender has been convicted, and shall not be
37 construed to mean orders directing an offender affirmatively to

1 participate in rehabilitative programs or to otherwise perform
2 affirmative conduct. However, affirmative acts necessary to monitor
3 compliance with the order of a court may be required by the department.

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

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

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

15 (c) The determination of a defendant's criminal history is distinct
16 from the determination of an offender score. A prior conviction that
17 was not included in an offender score calculated pursuant to a former
18 version of the sentencing reform act remains part of the defendant's
19 criminal history.

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

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

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

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

1 (18) "Disposable earnings" means that part of the earnings of an
2 offender remaining after the deduction from those earnings of any
3 amount required by law to be withheld. For the purposes of this
4 definition, "earnings" means compensation paid or payable for personal
5 services, whether denominated as wages, salary, commission, bonuses, or
6 otherwise, and, notwithstanding any other provision of law making the
7 payments exempt from garnishment, attachment, or other process to
8 satisfy a court-ordered legal financial obligation, specifically
9 includes periodic payments pursuant to pension or retirement programs,
10 or insurance policies of any type, but does not include payments made
11 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
12 or Title 74 RCW.

13 (19) "Drug offender sentencing alternative" is a sentencing option
14 available to persons convicted of a felony offense other than a violent
15 offense or a sex offense and who are eligible for the option under RCW
16 9.94A.660.

17 (20) "Drug offense" means:

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

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

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

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

29 (22) "Escape" means:

30 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
31 first degree (RCW 9A.76.110), escape in the second degree (RCW
32 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
33 willful failure to return from work release (RCW 72.65.070), or willful
34 failure to be available for supervision by the department while in
35 community custody (RCW 72.09.310); or

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

1 (23) "Felony traffic offense" means:

2 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
3 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
4 and-run injury-accident (RCW 46.52.020(4)), felony driving while under
5 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
6 felony physical control of a vehicle while under the influence of
7 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

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

20 (27) "Legal financial obligation" means a sum of money that is
21 ordered by a superior court of the state of Washington for legal
22 financial obligations which may include restitution to the victim,
23 statutorily imposed crime victims' compensation fees as assessed
24 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
25 court-appointed attorneys' fees, and costs of defense, fines, and any
26 other financial obligation that is assessed to the offender as a result
27 of a felony conviction. Upon conviction for vehicular assault while
28 under the influence of intoxicating liquor or any drug, RCW
29 46.61.522(1)(b), or vehicular homicide while under the influence of
30 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
31 obligations may also include payment to a public agency of the expense
32 of an emergency response to the incident resulting in the conviction,
33 subject to RCW 38.52.430.

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

36 (a) Any felony defined under any law as a class A felony or
37 criminal solicitation of or criminal conspiracy to commit a class A
38 felony;

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

1 (ii) A prior conviction for indecent liberties under RCW
2 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
3 if: (A) The crime was committed against a child under the age of
4 fourteen; or (B) the relationship between the victim and perpetrator is
5 included in the definition of indecent liberties under RCW
6 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
7 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
8 through July 27, 1997.

9 (29) "Nonviolent offense" means an offense which is not a violent
10 offense.

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

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

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

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

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

37 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
38 of a child in the first degree, child molestation in the first degree,

1 rape in the second degree, rape of a child in the second degree, or
2 indecent liberties by forcible compulsion; (B) any of the following
3 offenses with a finding of sexual motivation: Murder in the first
4 degree, murder in the second degree, homicide by abuse, kidnapping in
5 the first degree, kidnapping in the second degree, assault in the first
6 degree, assault in the second degree, assault of a child in the first
7 degree, or burglary in the first degree; or (C) an attempt to commit
8 any crime listed in this subsection (32)(b)(i); and

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

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

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

27 (35) "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 (36) "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

1 while under the influence of intoxicating liquor or any drug (RCW
2 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
3 attended vehicle (RCW 46.52.020(5)); or

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

7 (37) "Serious violent offense" is a subcategory of violent offense
8 and means:

- 9 (a)(i) Murder in the first degree;
10 (ii) Homicide by abuse;
11 (iii) Murder in the second degree;
12 (iv) Manslaughter in the first degree;
13 (v) Assault in the first degree;
14 (vi) Kidnapping in the first degree;
15 (vii) Rape in the first degree;
16 (viii) Assault of a child in the first degree; or
17 (ix) An attempt, criminal solicitation, or criminal conspiracy to
18 commit one of these felonies; or

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

22 (38) "Sex offense" means:

- 23 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
24 RCW 9A.44.130(11);
25 (ii) A violation of RCW 9A.64.020;
26 (iii) A felony that is a violation of chapter 9.68A RCW other than
27 RCW 9.68A.070 or 9.68A.080; or
28 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
29 criminal solicitation, or criminal conspiracy to commit such crimes;

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

33 (c) A felony with a finding of sexual motivation under RCW
34 9.94A.835 or 13.40.135; or

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

1 (39) "Sexual motivation" means that one of the purposes for which
2 the defendant committed the crime was for the purpose of his or her
3 sexual gratification.

4 (40) "Standard sentence range" means the sentencing court's
5 discretionary range in imposing a nonappealable sentence.

6 (41) "Statutory maximum sentence" means the maximum length of time
7 for which an offender may be confined as punishment for a crime as
8 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
9 crime, or other statute defining the maximum penalty for a crime.

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

14 (43) "Transition training" means written and verbal instructions
15 and assistance provided by the department to the offender during the
16 two weeks prior to the offender's successful completion of the work
17 ethic camp program. The transition training shall include instructions
18 in the offender's requirements and obligations during the offender's
19 period of community custody.

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

23 (45) "Violent offense" means:

24 (a) Any of the following felonies:

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

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

29 (iii) Manslaughter in the first degree;

30 (iv) Manslaughter in the second degree;

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

32 (vi) Kidnapping in the second degree;

33 (vii) Arson in the second degree;

34 (viii) Assault in the second degree;

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

36 (x) Extortion in the first degree;

37 (xi) Robbery in the second degree;

38 (xii) Drive-by shooting;

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

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

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

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

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

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

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

28 **Sec. 7.** RCW 9.94A.515 and 2004 c 176 s 2 and 2004 c 94 s 3 are
29 each reenacted and amended to read as follows:
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TABLE 2	
CRIMES INCLUDED WITHIN	
EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)

1 XV Homicide by abuse (RCW 9A.32.055)
2 Malicious explosion 1 (RCW
3 70.74.280(1))
4 Murder 1 (RCW 9A.32.030)
5 XIV Murder 2 (RCW 9A.32.050)
6 Trafficking 1 (RCW 9A.40.100(1))
7 XIII Malicious explosion 2 (RCW
8 70.74.280(2))
9 Malicious placement of an explosive 1
10 (RCW 70.74.270(1))
11 XII Assault 1 (RCW 9A.36.011)
12 Assault of a Child 1 (RCW 9A.36.120)
13 Malicious placement of an imitation
14 device 1 (RCW 70.74.272(1)(a))
15 Rape 1 (RCW 9A.44.040)
16 Rape of a Child 1 (RCW 9A.44.073)
17 Trafficking 2 (RCW 9A.40.100(2))
18 XI Manslaughter 1 (RCW 9A.32.060)
19 Rape 2 (RCW 9A.44.050)
20 Rape of a Child 2 (RCW 9A.44.076)
21 X Child Molestation 1 (RCW 9A.44.083)
22 Indecent Liberties (with forcible
23 compulsion) (RCW
24 9A.44.100(1)(a))
25 Kidnapping 1 (RCW 9A.40.020)
26 Leading Organized Crime (RCW
27 9A.82.060(1)(a))
28 Malicious explosion 3 (RCW
29 70.74.280(3))
30 Sexually Violent Predator Escape
31 (RCW 9A.76.115)
32 IX Assault of a Child 2 (RCW 9A.36.130)
33 Explosive devices prohibited (RCW
34 70.74.180)
35 Hit and Run--Death (RCW
36 46.52.020(4)(a))

1 Homicide by Watercraft, by being
2 under the influence of intoxicating
3 liquor or any drug (RCW
4 79A.60.050)
5 Inciting Criminal Profiteering (RCW
6 9A.82.060(1)(b))
7 Malicious placement of an explosive 2
8 (RCW 70.74.270(2))
9 Robbery 1 (RCW 9A.56.200)
10 Sexual Exploitation (RCW 9.68A.040)
11 Vehicular Homicide, by being under
12 the influence of intoxicating
13 liquor or any drug (RCW
14 46.61.520)
15 VIII Arson 1 (RCW 9A.48.020)
16 Homicide by Watercraft, by the
17 operation of any vessel in a
18 reckless manner (RCW
19 79A.60.050)
20 Manslaughter 2 (RCW 9A.32.070)
21 Promoting Prostitution 1 (RCW
22 9A.88.070)
23 Theft of Ammonia (RCW 69.55.010)
24 Vehicular Homicide, by the operation
25 of any vehicle in a reckless
26 manner (RCW 46.61.520)
27 VII Burglary 1 (RCW 9A.52.020)
28 Child Molestation 2 (RCW 9A.44.086)
29 Civil Disorder Training (RCW
30 9A.48.120)
31 Dealing in depictions of minor
32 engaged in sexually explicit
33 conduct (RCW 9.68A.050)
34 Drive-by Shooting (RCW 9A.36.045)
35 Homicide by Watercraft, by disregard
36 for the safety of others (RCW
37 79A.60.050)

1 Indecent Liberties (without forcible
2 compulsion) (RCW 9A.44.100(1)
3 (b) and (c))
4 Introducing Contraband 1 (RCW
5 9A.76.140)
6 Malicious placement of an explosive 3
7 (RCW 70.74.270(3))
8 Sending, bringing into state depictions
9 of minor engaged in sexually
10 explicit conduct (RCW
11 9.68A.060)
12 Unlawful Possession of a Firearm in
13 the first degree (RCW
14 9.41.040(1))
15 Use of a Machine Gun in Commission
16 of a Felony (RCW 9.41.225)
17 Vehicular Homicide, by disregard for
18 the safety of others (RCW
19 46.61.520)
20 VI Bail Jumping with Murder 1 (RCW
21 9A.76.170(3)(a))
22 Bribery (RCW 9A.68.010)
23 Incest 1 (RCW 9A.64.020(1))
24 Intimidating a Judge (RCW
25 9A.72.160)
26 Intimidating a Juror/Witness (RCW
27 9A.72.110, 9A.72.130)
28 Malicious placement of an imitation
29 device 2 (RCW 70.74.272(1)(b))
30 Rape of a Child 3 (RCW 9A.44.079)
31 Theft of a Firearm (RCW 9A.56.300)
32 Unlawful Storage of Ammonia (RCW
33 69.55.020)
34 V Abandonment of dependent person 1
35 (RCW 9A.42.060)

1 Advancing money or property for
2 extortionate extension of credit
3 (RCW 9A.82.030)
4 Bail Jumping with class A Felony
5 (RCW 9A.76.170(3)(b))
6 Child Molestation 3 (RCW 9A.44.089)
7 Criminal Mistreatment 1 (RCW
8 9A.42.020)
9 Custodial Sexual Misconduct 1 (RCW
10 9A.44.160)
11 Domestic Violence Court Order
12 Violation (RCW 10.99.040,
13 10.99.050, 26.09.300, 26.10.220,
14 26.26.138, 26.50.110, 26.52.070,
15 or 74.34.145)
16 Driving While Under the Influence
17 (RCW 46.61.502(6))
18 Extortion 1 (RCW 9A.56.120)
19 Extortionate Extension of Credit
20 (RCW 9A.82.020)
21 Extortionate Means to Collect
22 Extensions of Credit (RCW
23 9A.82.040)
24 Incest 2 (RCW 9A.64.020(2))
25 Kidnapping 2 (RCW 9A.40.030)
26 Perjury 1 (RCW 9A.72.020)
27 Persistent prison misbehavior (RCW
28 9.94.070)
29 Physical Control of a Vehicle While
30 Under the Influence (RCW
31 46.61.504(6))
32 Possession of a Stolen Firearm (RCW
33 9A.56.310)
34 Rape 3 (RCW 9A.44.060)
35 Rendering Criminal Assistance 1
36 (RCW 9A.76.070)

1 Sexual Misconduct with a Minor 1
2 (RCW 9A.44.093)
3 Sexually Violating Human Remains
4 (RCW 9A.44.105)
5 Stalking (RCW 9A.46.110)
6 Taking Motor Vehicle Without
7 Permission 1 (RCW 9A.56.070)
8 IV Arson 2 (RCW 9A.48.030)
9 Assault 2 (RCW 9A.36.021)
10 Assault by Watercraft (RCW
11 79A.60.060)
12 Bribing a Witness/Bribe Received by
13 Witness (RCW 9A.72.090,
14 9A.72.100)
15 Cheating 1 (RCW 9.46.1961)
16 Commercial Bribery (RCW
17 9A.68.060)
18 Counterfeiting (RCW 9.16.035(4))
19 Endangerment with a Controlled
20 Substance (RCW 9A.42.100)
21 Escape 1 (RCW 9A.76.110)
22 Hit and Run--Injury (RCW
23 46.52.020(4)(b))
24 Hit and Run with Vessel--Injury
25 Accident (RCW 79A.60.200(3))
26 Identity Theft 1 (RCW 9.35.020(2))
27 Indecent Exposure to Person Under
28 Age Fourteen (subsequent sex
29 offense) (RCW 9A.88.010)
30 Influencing Outcome of Sporting
31 Event (RCW 9A.82.070)
32 Malicious Harassment (RCW
33 9A.36.080)
34 Residential Burglary (RCW
35 9A.52.025)
36 Robbery 2 (RCW 9A.56.210)
37 Theft of Livestock 1 (RCW 9A.56.080)

1 Threats to Bomb (RCW 9.61.160)
2 Trafficking in Stolen Property 1 (RCW
3 9A.82.050)
4 Unlawful factoring of a credit card or
5 payment card transaction (RCW
6 9A.56.290(4)(b))
7 Unlawful transaction of health
8 coverage as a health care service
9 contractor (RCW 48.44.016(3))
10 Unlawful transaction of health
11 coverage as a health maintenance
12 organization (RCW 48.46.033(3))
13 Unlawful transaction of insurance
14 business (RCW 48.15.023(3))
15 Unlicensed practice as an insurance
16 professional (RCW 48.17.063(3))
17 Use of Proceeds of Criminal
18 Profiteering (RCW 9A.82.080 (1)
19 and (2))
20 Vehicular Assault, by being under the
21 influence of intoxicating liquor or
22 any drug, or by the operation or
23 driving of a vehicle in a reckless
24 manner (RCW 46.61.522)
25 Willful Failure to Return from
26 Furlough (RCW 72.66.060)
27 III Abandonment of dependent person 2
28 (RCW 9A.42.070)
29 Assault 3 (RCW 9A.36.031)
30 Assault of a Child 3 (RCW 9A.36.140)
31 Bail Jumping with class B or C Felony
32 (RCW 9A.76.170(3)(c))
33 Burglary 2 (RCW 9A.52.030)
34 Communication with a Minor for
35 Immoral Purposes (RCW
36 9.68A.090)

1 Criminal Gang Intimidation (RCW
2 9A.46.120)
3 Criminal Mistreatment 2 (RCW
4 9A.42.030)
5 Custodial Assault (RCW 9A.36.100)
6 Cyberstalking (subsequent conviction
7 or threat of death) (RCW
8 9.61.260(3))
9 Escape 2 (RCW 9A.76.120)
10 Extortion 2 (RCW 9A.56.130)
11 Harassment (RCW 9A.46.020)
12 Intimidating a Public Servant (RCW
13 9A.76.180)
14 Introducing Contraband 2 (RCW
15 9A.76.150)
16 Malicious Injury to Railroad Property
17 (RCW 81.60.070)
18 Patronizing a Juvenile Prostitute
19 (RCW 9.68A.100)
20 Perjury 2 (RCW 9A.72.030)
21 Possession of Incendiary Device (RCW
22 9.40.120)
23 Possession of Machine Gun or Short-
24 Barreled Shotgun or Rifle (RCW
25 9.41.190)
26 Promoting Prostitution 2 (RCW
27 9A.88.080)
28 Securities Act violation (RCW
29 21.20.400)
30 Tampering with a Witness (RCW
31 9A.72.120)
32 Telephone Harassment (subsequent
33 conviction or threat of death)
34 (RCW 9.61.230(2))
35 Theft of Livestock 2 (RCW 9A.56.083)
36 Trafficking in Stolen Property 2 (RCW
37 9A.82.055)

1 Unlawful Imprisonment (RCW
2 9A.40.040)
3 Unlawful possession of firearm in the
4 second degree (RCW 9.41.040(2))
5 Vehicular Assault, by the operation or
6 driving of a vehicle with disregard
7 for the safety of others (RCW
8 46.61.522)
9 Willful Failure to Return from Work
10 Release (RCW 72.65.070)
11 II Computer Trespass 1 (RCW
12 9A.52.110)
13 Counterfeiting (RCW 9.16.035(3))
14 Escape from Community Custody
15 (RCW 72.09.310)
16 Health Care False Claims (RCW
17 48.80.030)
18 Identity Theft 2 (RCW 9.35.020(3))
19 Improperly Obtaining Financial
20 Information (RCW 9.35.010)
21 Malicious Mischief 1 (RCW
22 9A.48.070)
23 Possession of Stolen Property 1 (RCW
24 9A.56.150)
25 Theft 1 (RCW 9A.56.030)
26 Theft of Rental, Leased, or Lease-
27 purchased Property (valued at one
28 thousand five hundred dollars or
29 more) (RCW 9A.56.096(5)(a))
30 Trafficking in Insurance Claims (RCW
31 48.30A.015)
32 Unlawful factoring of a credit card or
33 payment card transaction (RCW
34 9A.56.290(4)(a))
35 Unlawful Practice of Law (RCW
36 2.48.180)

1 Unlicensed Practice of a Profession or
2 Business (RCW 18.130.190(7))
3 I Attempting to Elude a Pursuing Police
4 Vehicle (RCW 46.61.024)
5 False Verification for Welfare (RCW
6 74.08.055)
7 Forgery (RCW 9A.60.020)
8 Fraudulent Creation or Revocation of a
9 Mental Health Advance Directive
10 (RCW 9A.60.060)
11 Malicious Mischief 2 (RCW
12 9A.48.080)
13 Mineral Trespass (RCW 78.44.330)
14 Possession of Stolen Property 2 (RCW
15 9A.56.160)
16 Reckless Burning 1 (RCW 9A.48.040)
17 Taking Motor Vehicle Without
18 Permission 2 (RCW 9A.56.075)
19 Theft 2 (RCW 9A.56.040)
20 Theft of Rental, Leased, or Lease-
21 purchased Property (valued at two
22 hundred fifty dollars or more but
23 less than one thousand five
24 hundred dollars) (RCW
25 9A.56.096(5)(b))
26 Transaction of insurance business
27 beyond the scope of licensure
28 (RCW 48.17.063(4))
29 Unlawful Issuance of Checks or Drafts
30 (RCW 9A.56.060)
31 Unlawful Possession of Fictitious
32 Identification (RCW 9A.56.320)
33 Unlawful Possession of Instruments of
34 Financial Fraud (RCW
35 9A.56.320)
36 Unlawful Possession of Payment
37 Instruments (RCW 9A.56.320)

1 Unlawful Possession of a Personal
2 Identification Device (RCW
3 9A.56.320)
4 Unlawful Production of Payment
5 Instruments (RCW 9A.56.320)
6 Unlawful Trafficking in Food Stamps
7 (RCW 9.91.142)
8 Unlawful Use of Food Stamps (RCW
9 9.91.144)
10 Vehicle Prowl 1 (RCW 9A.52.095)

11 **Sec. 8.** RCW 9.94A.525 and 2002 c 290 s 3 are each amended to read
12 as follows:

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

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

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

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

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

31 (c) Prior class C ((~~prior~~)) felony convictions other than sex
32 offenses and other than felony traffic offenses under RCW 46.61.502(6)
33 and 46.61.504(6) shall not be included in the offender score if, since
34 the last date of release from confinement (including full-time
35 residential treatment) pursuant to a felony conviction, if any, or
36 entry of judgment and sentence, the offender had spent five consecutive

1 years in the community without committing any crime that subsequently
2 results in a conviction.

3 (d) Prior class C felony traffic convictions under RCW 46.61.502(6)
4 and 46.61.504(6) and prior serious traffic convictions shall not be
5 included in the offender score if((7)): (i) Since the last date of
6 release from confinement (including full-time residential treatment)
7 pursuant to a felony conviction, if any, or entry of judgment and
8 sentence, the offender spent five years in the community without
9 committing any crime that subsequently results in a conviction; and
10 (ii) if the present conviction is a felony traffic offense under RCW
11 46.61.502(6) and 46.61.504(6), the prior traffic or serious traffic
12 conviction is no longer a prior offense "within seven years" for
13 purposes of RCW 46.61.5055. This subsection applies to both adult and
14 juvenile prior convictions.

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

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

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

30 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
31 encompass the same criminal conduct, shall be counted as one offense,
32 the offense that yields the highest offender score. The current
33 sentencing court shall determine with respect to other prior adult
34 offenses for which sentences were served concurrently or prior juvenile
35 offenses for which sentences were served consecutively, whether those
36 offenses shall be counted as one offense or as separate offenses using
37 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
38 if the court finds that they shall be counted as one offense, then the

1 offense that yields the highest offender score shall be used. The
2 current sentencing court may presume that such other prior offenses
3 were not the same criminal conduct from sentences imposed on separate
4 dates, or in separate counties or jurisdictions, or in separate
5 complaints, indictments, or informations;

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

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

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

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

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

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

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

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

13 (12) If the present conviction is for manufacture of
14 methamphetamine count three points for each adult prior manufacture of
15 methamphetamine conviction and two points for each juvenile manufacture
16 of methamphetamine offense. If the present conviction is for a drug
17 offense and the offender has a criminal history that includes a sex
18 offense or serious violent offense, count three points for each adult
19 prior felony drug offense conviction and two points for each juvenile
20 drug offense. All other adult and juvenile felonies are scored as in
21 subsection (8) of this section if the current drug offense is violent,
22 or as in subsection (7) of this section if the current drug offense is
23 nonviolent.

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

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

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

37 (16) If the present conviction is for a sex offense, count priors

1 as in subsections (7) through (15) of this section; however count three
2 points for each adult and juvenile prior sex offense conviction.

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

5 (18) The fact that a prior conviction was not included in an
6 offender's offender score or criminal history at a previous sentencing
7 shall have no bearing on whether it is included in the criminal history
8 or offender score for the current offense. Accordingly, prior
9 convictions that were not counted in the offender score or included in
10 criminal history under repealed or previous versions of the sentencing
11 reform act shall be included in criminal history and shall count in the
12 offender score if the current version of the sentencing reform act
13 requires including or counting those convictions.

14 **Sec. 9.** RCW 9.94A.650 and 2002 c 175 s 9 are each amended to read
15 as follows:

16 (1) This section applies to offenders who have never been
17 previously convicted of a felony in this state, federal court, or
18 another state, and who have never participated in a program of deferred
19 prosecution for a felony, and who are convicted of a felony that is
20 not:

21 (a) Classified as a violent offense or a sex offense under this
22 chapter;

23 (b) Manufacture, delivery, or possession with intent to manufacture
24 or deliver a controlled substance classified in Schedule I or II that
25 is a narcotic drug or flunitrazepam classified in Schedule IV;

26 (c) Manufacture, delivery, or possession with intent to deliver a
27 methamphetamine, its salts, isomers, and salts of its isomers as
28 defined in RCW 69.50.206(d)(2); (~~(e)~~)

29 (d) The selling for profit of any controlled substance or
30 counterfeit substance classified in Schedule I, RCW 69.50.204, except
31 leaves and flowering tops of marihuana; or

32 (e) Driving while under the influence of intoxicating liquor or any
33 drug or physical control of a vehicle while under the influence of
34 intoxicating liquor or any drug.

35 (2) In sentencing a first-time offender the court may waive the
36 imposition of a sentence within the standard sentence range and impose
37 a sentence which may include up to ninety days of confinement in a

1 facility operated or utilized under contract by the county and a
2 requirement that the offender refrain from committing new offenses.
3 The sentence may also include a term of community supervision or
4 community custody as specified in subsection (3) of this section,
5 which, in addition to crime-related prohibitions, may include
6 requirements that the offender perform any one or more of the
7 following:

- 8 (a) Devote time to a specific employment or occupation;
- 9 (b) Undergo available outpatient treatment for up to the period
10 specified in subsection (3) of this section, or inpatient treatment not
11 to exceed the standard range of confinement for that offense;
- 12 (c) Pursue a prescribed, secular course of study or vocational
13 training;
- 14 (d) Remain within prescribed geographical boundaries and notify the
15 community corrections officer prior to any change in the offender's
16 address or employment;
- 17 (e) Report as directed to a community corrections officer; or
- 18 (f) Pay all court-ordered legal financial obligations as provided
19 in RCW 9.94A.030 and/or perform community restitution work.

20 (3) The terms and statuses applicable to sentences under subsection
21 (2) of this section are:

22 (a) For sentences imposed on or after July 25, 1999, for crimes
23 committed before July 1, 2000, up to one year of community supervision.
24 If treatment is ordered, the period of community supervision may
25 include up to the period of treatment, but shall not exceed two years;
26 and

27 (b) For crimes committed on or after July 1, 2000, up to one year
28 of community custody unless treatment is ordered, in which case the
29 period of community custody may include up to the period of treatment,
30 but shall not exceed two years. Any term of community custody imposed
31 under this section is subject to conditions and sanctions as authorized
32 in this section and in RCW 9.94A.715 (2) and (3).

33 (4) The department shall discharge from community supervision any
34 offender sentenced under this section before July 25, 1999, who has
35 served at least one year of community supervision and has completed any
36 treatment ordered by the court.

1 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 July 1, 2005.

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