
SENATE BILL 6900

State of Washington

59th Legislature

2006 Regular Session

By Senators Esser and Johnson

Read first time . Referred to .

1 AN ACT Relating to making it a felony to drive or be in physical
2 control of a vehicle while under the influence of intoxicating liquor
3 or any drug; amending RCW 46.61.502, 46.61.504, 46.61.5055, 9.94A.030,
4 9.94A.030, 9.94A.640, 9.94A.650, 9.94A.660, 9.94A.690, 13.40.0357,
5 46.20.311, 46.61.524, 46.61.5152, and 46.61.5151; reenacting and
6 amending RCW 9.94A.505, 9.94A.525, 9.94A.515, and 9.94A.411; adding a
7 new section to chapter 9.94A RCW; prescribing penalties; providing an
8 effective date; and providing an expiration date.

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

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

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

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

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

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

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

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

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

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

27 (6) It is a class C felony punishable under chapter 9.94A RCW if:
28 (a) The person has four or more prior offenses as defined in RCW
29 46.61.5055; or (b) the person has ever previously been convicted of
30 vehicular homicide while under the influence of intoxicating liquor or
31 any drug, RCW 46.61.520(1)(a), or vehicular assault while under the
32 influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b).

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

35 (1) A person is guilty of being in actual physical control of a
36 motor vehicle while under the influence of intoxicating liquor or any

1 drug if the person has actual physical control of a vehicle within this
2 state:

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

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

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

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

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

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

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

1 (6) It is a class C felony punishable under chapter 9.94A RCW if:
2 (a) The person has four or more prior offenses as defined in RCW
3 46.61.5055; or (b) the person has ever previously been convicted of
4 vehicular homicide while under the influence of intoxicating liquor or
5 any drug, RCW 46.61.520(1)(a), or vehicular assault while under the
6 influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b).

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

9 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
10 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
11 and who has no prior offense within seven years shall be punished as
12 follows:

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

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

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

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

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

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

25 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
26 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
27 and who has one prior offense within seven years shall be punished as
28 follows:

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

33 (i) By imprisonment for not less than thirty days nor more than one
34 year and sixty days of electronic home monitoring. The offender shall
35 pay for the cost of the electronic monitoring. The county or
36 municipality where the penalty is being imposed shall determine the
37 cost. The court may also require the offender's electronic home
38 monitoring device include an alcohol detection breathalyzer, and may

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

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

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

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

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

37 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a

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

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

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

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

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

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

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

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

14 (4) A person who is convicted of a violation of RCW 46.61.502 or
15 46.61.504 and who has four or more prior offenses, or who has ever
16 previously been convicted of a violation of RCW 46.61.520 committed
17 while under the influence of intoxicating liquor or any drug or RCW
18 46.61.522 committed while under the influence of intoxicating liquor or
19 any drug, shall be punished in accordance with chapter 9.94A RCW.

20 (5) If a person who is convicted of a violation of RCW 46.61.502 or
21 46.61.504 committed the offense while a passenger under the age of
22 sixteen was in the vehicle, the court shall:

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

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

31 ~~((+5))~~ (6) In exercising its discretion in setting penalties
32 within the limits allowed by this section, the court shall particularly
33 consider the following:

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

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

1 (~~(6)~~) (7) An offender punishable under this section is subject to
2 the alcohol assessment and treatment provisions of RCW 46.61.5056.

3 (~~(7)~~) (8) The license, permit, or nonresident privilege of a
4 person convicted of driving or being in physical control of a motor
5 vehicle while under the influence of intoxicating liquor or drugs must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (~~(8)~~) (9) After expiration of any period of suspension,
2 revocation, or denial of the offender's license, permit, or privilege
3 to drive required by this section, the department shall place the
4 offender's driving privilege in probationary status pursuant to RCW
5 46.20.355.

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

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

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

1 (~~(10)~~) (11) A court may waive the electronic home monitoring
2 requirements of this chapter when:

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

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

6 (c) The court determines that there is reason to believe that the
7 offender would violate the conditions of the electronic home monitoring
8 penalty.

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

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

21 (~~(11)~~) (12) An offender serving a sentence under this section,
22 whether or not a mandatory minimum term has expired, may be granted an
23 extraordinary medical placement by the jail administrator subject to
24 the standards and limitations set forth in RCW 9.94A.728(4).

25 (~~(12)~~) (13) For purposes of this section and RCW 46.61.502 and
26 46.61.504:

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

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

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

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

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

36 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
37 9A.36.050 or an equivalent local ordinance, if the conviction is the

1 result of a charge that was originally filed as a violation of RCW
2 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
3 46.61.520 or 46.61.522;

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

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

10 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
11 prosecution for a violation of RCW 46.61.5249, or an equivalent local
12 ordinance, if the charge under which the deferred prosecution was
13 granted was originally filed as a violation of RCW 46.61.502 or
14 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
15 46.61.522; and

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

18 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.94A RCW
19 to read as follows:

20 (1) When sentencing an offender convicted of a violation of RCW
21 46.61.502(6) or 46.61.504(6), the court, in addition to imposing the
22 provisions of this chapter, shall order the offender to undergo alcohol
23 or chemical dependency treatment services during incarceration. The
24 offender shall be liable for the cost of treatment unless the court
25 finds the offender indigent and no third-party insurance coverage is
26 available.

27 (2) The provisions under RCW 46.61.5055 (8) and (9) regarding the
28 suspension, revocation, or denial of the offender's license, permit, or
29 nonresident privilege to drive shall apply to an offender convicted of
30 a violation of RCW 46.61.502(6) or 46.61.504(6).

31 (3) The provisions under RCW 46.20.720 and 46.61.5055(5) regarding
32 ignition interlock devices shall apply to an offender convicted of a
33 violation of RCW 46.61.502(6) or 46.61.504(6).

34 **Sec. 5.** RCW 9.94A.030 and 2005 c 436 s 1 are each amended to read
35 as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

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

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

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

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

18 (5) "Community custody" means that portion of an offender's
19 sentence of confinement in lieu of earned release time or imposed
20 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
21 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
22 community subject to controls placed on the offender's movement and
23 activities by the department. For offenders placed on community
24 custody for crimes committed on or after July 1, 2000, the department
25 shall assess the offender's risk of reoffense and may establish and
26 modify conditions of community custody, in addition to those imposed by
27 the court, based upon the risk to community safety.

28 (6) "Community custody range" means the minimum and maximum period
29 of community custody included as part of a sentence under RCW
30 9.94A.715, as established by the commission or the legislature under
31 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

32 (7) "Community placement" means that period during which the
33 offender is subject to the conditions of community custody and/or
34 postrelease supervision, which begins either upon completion of the
35 term of confinement (postrelease supervision) or at such time as the
36 offender is transferred to community custody in lieu of earned release.
37 Community placement may consist of entirely community custody, entirely
38 postrelease supervision, or a combination of the two.

1 (8) "Community protection zone" means the area within eight hundred
2 eighty feet of the facilities and grounds of a public or private
3 school.

4 (9) "Community restitution" means compulsory service, without
5 compensation, performed for the benefit of the community by the
6 offender.

7 (10) "Community supervision" means a period of time during which a
8 convicted offender is subject to crime-related prohibitions and other
9 sentence conditions imposed by a court pursuant to this chapter or RCW
10 16.52.200(6) or 46.61.524. Where the court finds that any offender has
11 a chemical dependency that has contributed to his or her offense, the
12 conditions of supervision may, subject to available resources, include
13 treatment. For purposes of the interstate compact for out-of-state
14 supervision of parolees and probationers, RCW 9.95.270, community
15 supervision is the functional equivalent of probation and should be
16 considered the same as probation by other states.

17 (11) "Confinement" means total or partial confinement.

18 (12) "Conviction" means an adjudication of guilt pursuant to Titles
19 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
20 acceptance of a plea of guilty.

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

28 (14) "Criminal history" means the list of a defendant's prior
29 convictions and juvenile adjudications, whether in this state, in
30 federal court, or elsewhere.

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

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

1 (c) The determination of a defendant's criminal history is distinct
2 from the determination of an offender score. A prior conviction that
3 was not included in an offender score calculated pursuant to a former
4 version of the sentencing reform act remains part of the defendant's
5 criminal history.

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

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

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

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

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

36 (20) "Drug offender sentencing alternative" is a sentencing option
37 available to persons convicted of a felony offense other than a violent

1 offense or a sex offense and who are eligible for the option under RCW
2 9.94A.660.

3 (21) "Drug offense" means:

4 (a) Any felony violation of chapter 69.50 RCW except possession of
5 a controlled substance (RCW 69.50.4013) or forged prescription for a
6 controlled substance (RCW 69.50.403);

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

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

13 (22) "Earned release" means earned release from confinement as
14 provided in RCW 9.94A.728.

15 (23) "Escape" means:

16 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
17 first degree (RCW 9A.76.110), escape in the second degree (RCW
18 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
19 willful failure to return from work release (RCW 72.65.070), or willful
20 failure to be available for supervision by the department while in
21 community custody (RCW 72.09.310); or

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

25 (24) "Felony traffic offense" means:

26 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
27 46.61.522), eluding a police officer (RCW 46.61.024), ~~((~~o~~))~~ felony
28 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while
29 under the influence of intoxicating liquor or any drug (RCW
30 46.61.502(6)), or felony physical control of a vehicle while under the
31 influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

35 (25) "Fine" means a specific sum of money ordered by the sentencing
36 court to be paid by the offender to the court over a specific period of
37 time.

1 (26) "First-time offender" means any person who has no prior
2 convictions for a felony and is eligible for the first-time offender
3 waiver under RCW 9.94A.650.

4 (27) "Home detention" means a program of partial confinement
5 available to offenders wherein the offender is confined in a private
6 residence subject to electronic surveillance.

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

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

23 (a) Any felony defined under any law as a class A felony or
24 criminal solicitation of or criminal conspiracy to commit a class A
25 felony;

26 (b) Assault in the second degree;

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

28 (d) Child molestation in the second degree;

29 (e) Controlled substance homicide;

30 (f) Extortion in the first degree;

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

32 (h) Indecent liberties;

33 (i) Kidnapping in the second degree;

34 (j) Leading organized crime;

35 (k) Manslaughter in the first degree;

36 (l) Manslaughter in the second degree;

37 (m) Promoting prostitution in the first degree;

38 (n) Rape in the third degree;

- 1 (o) Robbery in the second degree;
- 2 (p) Sexual exploitation;
- 3 (q) Vehicular assault, when caused by the operation or driving of
4 a vehicle by a person while under the influence of intoxicating liquor
5 or any drug or by the operation or driving of a vehicle in a reckless
6 manner;
- 7 (r) Vehicular homicide, when proximately caused by the driving of
8 any vehicle by any person while under the influence of intoxicating
9 liquor or any drug as defined by RCW 46.61.502, or by the operation of
10 any vehicle in a reckless manner;
- 11 (s) Any other class B felony offense with a finding of sexual
12 motivation;
- 13 (t) Any other felony with a deadly weapon verdict under RCW
14 9.94A.602;
- 15 (u) Any felony offense in effect at any time prior to December 2,
16 1993, that is comparable to a most serious offense under this
17 subsection, or any federal or out-of-state conviction for an offense
18 that under the laws of this state would be a felony classified as a
19 most serious offense under this subsection;
- 20 (v)(i) A prior conviction for indecent liberties under RCW
21 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
22 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
23 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
24 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- 25 (ii) A prior conviction for indecent liberties under RCW
26 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
27 if: (A) The crime was committed against a child under the age of
28 fourteen; or (B) the relationship between the victim and perpetrator is
29 included in the definition of indecent liberties under RCW
30 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
31 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
32 through July 27, 1997.
- 33 (30) "Nonviolent offense" means an offense which is not a violent
34 offense.
- 35 (31) "Offender" means a person who has committed a felony
36 established by state law and is eighteen years of age or older or is
37 less than eighteen years of age but whose case is under superior court
38 jurisdiction under RCW 13.04.030 or has been transferred by the

1 appropriate juvenile court to a criminal court pursuant to RCW
2 13.40.110. Throughout this chapter, the terms "offender" and
3 "defendant" are used interchangeably.

4 (32) "Partial confinement" means confinement for no more than one
5 year in a facility or institution operated or utilized under contract
6 by the state or any other unit of government, or, if home detention or
7 work crew has been ordered by the court, in an approved residence, for
8 a substantial portion of each day with the balance of the day spent in
9 the community. Partial confinement includes work release, home
10 detention, work crew, and a combination of work crew and home
11 detention.

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

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

15 (ii) Has, before the commission of the offense under (a) of this
16 subsection, been convicted as an offender on at least two separate
17 occasions, whether in this state or elsewhere, of felonies that under
18 the laws of this state would be considered most serious offenses and
19 would be included in the offender score under RCW 9.94A.525; provided
20 that of the two or more previous convictions, at least one conviction
21 must have occurred before the commission of any of the other most
22 serious offenses for which the offender was previously convicted; or

23 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
24 of a child in the first degree, child molestation in the first degree,
25 rape in the second degree, rape of a child in the second degree, or
26 indecent liberties by forcible compulsion; (B) any of the following
27 offenses with a finding of sexual motivation: Murder in the first
28 degree, murder in the second degree, homicide by abuse, kidnapping in
29 the first degree, kidnapping in the second degree, assault in the first
30 degree, assault in the second degree, assault of a child in the first
31 degree, or burglary in the first degree; or (C) an attempt to commit
32 any crime listed in this subsection (33)(b)(i); and

33 (ii) Has, before the commission of the offense under (b)(i) of this
34 subsection, been convicted as an offender on at least one occasion,
35 whether in this state or elsewhere, of an offense listed in (b)(i) of
36 this subsection or any federal or out-of-state offense or offense under
37 prior Washington law that is comparable to the offenses listed in
38 (b)(i) of this subsection. A conviction for rape of a child in the

1 first degree constitutes a conviction under (b)(i) of this subsection
2 only when the offender was sixteen years of age or older when the
3 offender committed the offense. A conviction for rape of a child in
4 the second degree constitutes a conviction under (b)(i) of this
5 subsection only when the offender was eighteen years of age or older
6 when the offender committed the offense.

7 (34) "Postrelease supervision" is that portion of an offender's
8 community placement that is not community custody.

9 (35) "Private school" means a school regulated under chapter
10 28A.195 or 28A.205 RCW.

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

12 (37) "Restitution" means a specific sum of money ordered by the
13 sentencing court to be paid by the offender to the court over a
14 specified period of time as payment of damages. The sum may include
15 both public and private costs.

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

24 (39) "Serious traffic offense" means:

25 (a) Nonfelony driving while under the influence of intoxicating
26 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
27 while under the influence of intoxicating liquor or any drug (RCW
28 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
29 attended vehicle (RCW 46.52.020(5)); or

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

33 (40) "Serious violent offense" is a subcategory of violent offense
34 and means:

35 (a)(i) Murder in the first degree;

36 (ii) Homicide by abuse;

37 (iii) Murder in the second degree;

38 (iv) Manslaughter in the first degree;

1 (v) Assault in the first degree;
2 (vi) Kidnapping in the first degree;
3 (vii) Rape in the first degree;
4 (viii) Assault of a child in the first degree; or
5 (ix) An attempt, criminal solicitation, or criminal conspiracy to
6 commit one of these felonies; or
7 (b) 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 serious
9 violent offense under (a) of this subsection.
10 (41) "Sex offense" means:
11 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
12 RCW 9A.44.130(11);
13 (ii) A violation of RCW 9A.64.020;
14 (iii) A felony that is a violation of chapter 9.68A RCW other than
15 RCW 9.68A.070 or 9.68A.080; or
16 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
17 criminal solicitation, or criminal conspiracy to commit such crimes;
18 (b) Any conviction for a felony offense in effect at any time prior
19 to July 1, 1976, that is comparable to a felony classified as a sex
20 offense in (a) of this subsection;
21 (c) A felony with a finding of sexual motivation under RCW
22 9.94A.835 or 13.40.135; or
23 (d) Any federal or out-of-state conviction for an offense that
24 under the laws of this state would be a felony classified as a sex
25 offense under (a) of this subsection.
26 (42) "Sexual motivation" means that one of the purposes for which
27 the defendant committed the crime was for the purpose of his or her
28 sexual gratification.
29 (43) "Standard sentence range" means the sentencing court's
30 discretionary range in imposing a nonappealable sentence.
31 (44) "Statutory maximum sentence" means the maximum length of time
32 for which an offender may be confined as punishment for a crime as
33 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
34 crime, or other statute defining the maximum penalty for a crime.
35 (45) "Total confinement" means confinement inside the physical
36 boundaries of a facility or institution operated or utilized under
37 contract by the state or any other unit of government for twenty-four
38 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

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

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

10 (48) "Violent offense" means:

11 (a) Any of the following felonies:

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

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

16 (iii) Manslaughter in the first degree;

17 (iv) Manslaughter in the second degree;

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

19 (vi) Kidnapping in the second degree;

20 (vii) Arson in the second degree;

21 (viii) Assault in the second degree;

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

23 (x) Extortion in the first degree;

24 (xi) Robbery in the second degree;

25 (xii) Drive-by shooting;

26 (xiii) Vehicular assault, when caused by the operation or driving
27 of a vehicle by a person while under the influence of intoxicating
28 liquor or any drug or by the operation or driving of a vehicle in a
29 reckless manner; and

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

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

37 (c) Any federal or out-of-state conviction for an offense that

1 under the laws of this state would be a felony classified as a violent
2 offense under (a) or (b) of this subsection.

3 (49) "Work crew" means a program of partial confinement consisting
4 of civic improvement tasks for the benefit of the community that
5 complies with RCW 9.94A.725.

6 (50) "Work ethic camp" means an alternative incarceration program
7 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
8 the cost of corrections by requiring offenders to complete a
9 comprehensive array of real-world job and vocational experiences,
10 character-building work ethics training, life management skills
11 development, substance abuse rehabilitation, counseling, literacy
12 training, and basic adult education.

13 (51) "Work release" means a program of partial confinement
14 available to offenders who are employed or engaged as a student in a
15 regular course of study at school.

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

18 Unless the context clearly requires otherwise, the definitions in
19 this section apply throughout this chapter.

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

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

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

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

35 (5) "Community custody" means that portion of an offender's
36 sentence of confinement in lieu of earned release time or imposed
37 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,

1 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
2 community subject to controls placed on the offender's movement and
3 activities by the department. For offenders placed on community
4 custody for crimes committed on or after July 1, 2000, the department
5 shall assess the offender's risk of reoffense and may establish and
6 modify conditions of community custody, in addition to those imposed by
7 the court, based upon the risk to community safety.

8 (6) "Community custody range" means the minimum and maximum period
9 of community custody included as part of a sentence under RCW
10 9.94A.715, as established by the commission or the legislature under
11 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

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

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

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

33 (11) "Conviction" means an adjudication of guilt pursuant to Titles
34 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
35 acceptance of a plea of guilty.

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

1 construed to mean orders directing an offender affirmatively to
2 participate in rehabilitative programs or to otherwise perform
3 affirmative conduct. However, affirmative acts necessary to monitor
4 compliance with the order of a court may be required by the department.

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

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

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

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

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

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

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

31 (17) "Determinate sentence" means a sentence that states with
32 exactitude the number of actual years, months, or days of total
33 confinement, of partial confinement, of community supervision, the
34 number of actual hours or days of community restitution work, or
35 dollars or terms of a legal financial obligation. The fact that an
36 offender through earned release can reduce the actual period of
37 confinement shall not affect the classification of the sentence as a
38 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), (~~(e)~~) felony
4 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while
5 under the influence of intoxicating liquor or any drug (RCW
6 46.61.502(6)), or felony physical control of a vehicle while under the
7 influence of 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.505 and 2002 c 290 s 17, 2002 c 289 s 6, and
29 2002 c 175 s 6 are each reenacted and amended to read as follows:

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

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

34 (i) Unless another term of confinement applies, the court shall
35 impose a sentence within the standard sentence range established in RCW
36 9.94A.510 or 9.94A.517;

37 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

1 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;
2 (iv) RCW 9.94A.545, relating to community custody for offenders
3 whose term of confinement is one year or less;
4 (v) RCW 9.94A.570, relating to persistent offenders;
5 (vi) RCW 9.94A.540, relating to mandatory minimum terms;
6 (vii) RCW 9.94A.650, relating to the first-time offender waiver;
7 (viii) RCW 9.94A.660, relating to the drug offender sentencing
8 alternative;

9 (ix) RCW 9.94A.670, relating to the special sex offender sentencing
10 alternative;

11 (x) RCW 9.94A.712, relating to certain sex offenses;

12 (xi) RCW 9.94A.535, relating to exceptional sentences;

13 (xii) RCW 9.94A.589, relating to consecutive and concurrent
14 sentences;

15 (xiii) Section 4 of this act, relating to felony driving while
16 under the influence of intoxicating liquor or any drug and felony
17 physical control of a vehicle while under the influence of intoxicating
18 liquor or any drug.

19 (b) If a standard sentence range has not been established for the
20 offender's crime, the court shall impose a determinate sentence which
21 may include not more than one year of confinement; community
22 restitution work; until July 1, 2000, a term of community supervision
23 not to exceed one year and on and after July 1, 2000, a term of
24 community custody not to exceed one year, subject to conditions and
25 sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other
26 legal financial obligations. The court may impose a sentence which
27 provides more than one year of confinement if the court finds reasons
28 justifying an exceptional sentence as provided in RCW 9.94A.535.

29 (3) If the court imposes a sentence requiring confinement of thirty
30 days or less, the court may, in its discretion, specify that the
31 sentence be served on consecutive or intermittent days. A sentence
32 requiring more than thirty days of confinement shall be served on
33 consecutive days. Local jail administrators may schedule court-ordered
34 intermittent sentences as space permits.

35 (4) If a sentence imposed includes payment of a legal financial
36 obligation, it shall be imposed as provided in RCW 9.94A.750,
37 9.94A.753, 9.94A.760, and 43.43.7541.

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

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

10 (7) The court shall order restitution as provided in RCW 9.94A.750
11 and 9.94A.753.

12 (8) As a part of any sentence, the court may impose and enforce
13 crime-related prohibitions and affirmative conditions as provided in
14 this chapter.

15 (9) The court may order an offender whose sentence includes
16 community placement or community supervision to undergo a mental status
17 evaluation and to participate in available outpatient mental health
18 treatment, if the court finds that reasonable grounds exist to believe
19 that the offender is a mentally ill person as defined in RCW 71.24.025,
20 and that this condition is likely to have influenced the offense. An
21 order requiring mental status evaluation or treatment must be based on
22 a presentence report and, if applicable, mental status evaluations that
23 have been filed with the court to determine the offender's competency
24 or eligibility for a defense of insanity. The court may order
25 additional evaluations at a later date if deemed appropriate.

26 (10) In any sentence of partial confinement, the court may require
27 the offender to serve the partial confinement in work release, in a
28 program of home detention, on work crew, or in a combined program of
29 work crew and home detention.

30 (11) In sentencing an offender convicted of a crime of domestic
31 violence, as defined in RCW 10.99.020, if the offender has a minor
32 child, or if the victim of the offense for which the offender was
33 convicted has a minor child, the court may, as part of any term of
34 community supervision, community placement, or community custody, order
35 the offender to participate in a domestic violence perpetrator program
36 approved under RCW 26.50.150.

1 **Sec. 8.** 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)(a) Class A and sex prior felony convictions shall always be
13 included in the offender score.

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

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

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

33 (e) Prior convictions of felony driving while under the influence
34 of intoxicating liquor or any drug (RCW 46.61.502(6)), felony physical
35 control of a vehicle while under the influence of intoxicating liquor
36 or any drug (RCW 46.61.504(6)), and serious traffic convictions shall
37 be included in the offender score if the present conviction is felony

1 driving while under the influence of intoxicating liquor or any drug
2 (RCW 46.61.502(6)) or felony physical control of a vehicle while under
3 the influence of intoxicating liquor or any drug (RCW 46.61.504(6)).

4 (f) This subsection applies to both adult and juvenile prior
5 convictions.

6 (3) Out-of-state convictions for offenses shall be classified
7 according to the comparable offense definitions and sentences provided
8 by Washington law. Federal convictions for offenses shall be
9 classified according to the comparable offense definitions and
10 sentences provided by Washington law. If there is no clearly
11 comparable offense under Washington law or the offense is one that is
12 usually considered subject to exclusive federal jurisdiction, the
13 offense shall be scored as a class C felony equivalent if it was a
14 felony under the relevant federal statute.

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

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

21 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
22 encompass the same criminal conduct, shall be counted as one offense,
23 the offense that yields the highest offender score. The current
24 sentencing court shall determine with respect to other prior adult
25 offenses for which sentences were served concurrently or prior juvenile
26 offenses for which sentences were served consecutively, whether those
27 offenses shall be counted as one offense or as separate offenses using
28 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
29 if the court finds that they shall be counted as one offense, then the
30 offense that yields the highest offender score shall be used. The
31 current sentencing court may presume that such other prior offenses
32 were not the same criminal conduct from sentences imposed on separate
33 dates, or in separate counties or jurisdictions, or in separate
34 complaints, indictments, or informations;

35 (ii) In the case of multiple prior convictions for offenses
36 committed before July 1, 1986, for the purpose of computing the
37 offender score, count all adult convictions served concurrently as one

1 offense, and count all juvenile convictions entered on the same date as
2 one offense. Use the conviction for the offense that yields the
3 highest offender score.

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

10 (6) If the present conviction is one of the anticipatory offenses
11 of criminal attempt, solicitation, or conspiracy, count each prior
12 conviction as if the present conviction were for a completed offense.
13 When these convictions are used as criminal history, score them the
14 same as a completed crime.

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

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

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

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

36 (11) If the present conviction is for a felony traffic offense
37 count two points for each adult or juvenile prior conviction for
38 Vehicular Homicide or Vehicular Assault; for each felony offense count

1 one point for each adult and 1/2 point for each juvenile prior
2 conviction; for each serious traffic offense, other than those used for
3 an enhancement pursuant to RCW 46.61.520(2), count one point for each
4 adult and 1/2 point for each juvenile prior conviction.

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

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

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

23 (15) If the present conviction is for Burglary 2 or residential
24 burglary, count priors as in subsection (7) of this section; however,
25 count two points for each adult and juvenile prior Burglary 1
26 conviction, two points for each adult prior Burglary 2 or residential
27 burglary conviction, and one point for each juvenile prior Burglary 2
28 or residential burglary conviction.

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

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

34 (18) The fact that a prior conviction was not included in an
35 offender's offender score or criminal history at a previous sentencing
36 shall have no bearing on whether it is included in the criminal history
37 or offender score for the current offense. Accordingly, prior
38 convictions that were not counted in the offender score or included in

1 criminal history under repealed or previous versions of the sentencing
2 reform act shall be included in criminal history and shall count in the
3 offender score if the current version of the sentencing reform act
4 requires including or counting those convictions.

5 **Sec. 9.** RCW 9.94A.640 and 1987 c 486 s 7 are each amended to read
6 as follows:

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

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

30 (3) Once the court vacates a record of conviction under subsection
31 (1) of this section, the fact that the offender has been convicted of
32 the offense shall not be included in the offender's criminal history
33 for purposes of determining a sentence in any subsequent conviction,
34 and the offender shall be released from all penalties and disabilities
35 resulting from the offense. For all purposes, including responding to
36 questions on employment applications, an offender whose conviction has

1 been vacated may state that the offender has never been convicted of
2 that crime. Nothing in this section affects or prevents the use of an
3 offender's prior conviction in a later criminal prosecution.

4 **Sec. 10.** RCW 9.94A.650 and 2002 c 175 s 9 are each amended to read
5 as follows:

6 (1) This section applies to offenders who have never been
7 previously convicted of a felony in this state, federal court, or
8 another state, and who have never participated in a program of deferred
9 prosecution for a felony, and who are convicted of a felony that is
10 not:

11 (a) Classified as a violent offense or a sex offense under this
12 chapter;

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

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

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

22 (e) Felony driving while under the influence of intoxicating liquor
23 or any drug or felony physical control of a vehicle while under the
24 influence of intoxicating liquor or any drug.

25 (2) In sentencing a first-time offender the court may waive the
26 imposition of a sentence within the standard sentence range and impose
27 a sentence which may include up to ninety days of confinement in a
28 facility operated or utilized under contract by the county and a
29 requirement that the offender refrain from committing new offenses.
30 The sentence may also include a term of community supervision or
31 community custody as specified in subsection (3) of this section,
32 which, in addition to crime-related prohibitions, may include
33 requirements that the offender perform any one or more of the
34 following:

35 (a) Devote time to a specific employment or occupation;

36 (b) Undergo available outpatient treatment for up to the period

1 specified in subsection (3) of this section, or inpatient treatment not
2 to exceed the standard range of confinement for that offense;

3 (c) Pursue a prescribed, secular course of study or vocational
4 training;

5 (d) Remain within prescribed geographical boundaries and notify the
6 community corrections officer prior to any change in the offender's
7 address or employment;

8 (e) Report as directed to a community corrections officer; or

9 (f) Pay all court-ordered legal financial obligations as provided
10 in RCW 9.94A.030 and/or perform community restitution work.

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

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

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

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

28 **Sec. 11.** RCW 9.94A.660 and 2005 c 460 s 1 are each amended to read
29 as follows:

30 (1) An offender is eligible for the special drug offender
31 sentencing alternative if:

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

35 (b) The offender is convicted of a felony that is not a felony
36 driving while under the influence of intoxicating liquor or any drug

1 under RCW 46.61.502(6) or felony physical control of a vehicle while
2 under the influence of intoxicating liquor or any drug under RCW
3 46.61.504(6);

4 (c) The offender has no current or prior convictions for a sex
5 offense at any time or violent offense within ten years before
6 conviction of the current offense, in this state, another state, or the
7 United States;

8 ~~((+e))~~ (d) For a violation of the Uniform Controlled Substances
9 Act under chapter 69.50 RCW or a criminal solicitation to commit such
10 a violation under chapter 9A.28 RCW, the offense involved only a small
11 quantity of the particular controlled substance as determined by the
12 judge upon consideration of such factors as the weight, purity,
13 packaging, sale price, and street value of the controlled substance;

14 ~~((+d))~~ (e) The offender has not been found by the United States
15 attorney general to be subject to a deportation detainer or order and
16 does not become subject to a deportation order during the period of the
17 sentence;

18 ~~((+e))~~ (f) The standard sentence range for the current offense is
19 greater than one year; and

20 ~~((+f))~~ (g) The offender has not received a drug offender
21 sentencing alternative more than once in the prior ten years before the
22 current offense.

23 (2) A motion for a sentence under this section may be made by the
24 court, the offender, or the state. If the sentencing court determines
25 that the offender is eligible for this alternative, the court may order
26 an examination of the offender. The examination shall, at a minimum,
27 address the following issues:

28 (a) Whether the offender suffers from drug addiction;

29 (b) Whether the addiction is such that there is a probability that
30 criminal behavior will occur in the future;

31 (c) Whether effective treatment for the offender's addiction is
32 available from a provider that has been licensed or certified by the
33 division of alcohol and substance abuse of the department of social and
34 health services; and

35 (d) Whether the offender and the community will benefit from the
36 use of the alternative.

37 (3) The examination report must contain:

1 (a) Information on the issues required to be addressed in
2 subsection (2) of this section; and

3 (b) A proposed treatment plan that must, at a minimum, contain:

4 (i) A proposed treatment provider that has been licensed or
5 certified by the division of alcohol and substance abuse of the
6 department of social and health services;

7 (ii) The recommended frequency and length of treatment, including
8 both residential chemical dependency treatment and treatment in the
9 community;

10 (iii) A proposed monitoring plan, including any requirements
11 regarding living conditions, lifestyle requirements, and monitoring by
12 family members and others; and

13 (iv) Recommended crime-related prohibitions and affirmative
14 conditions.

15 (4) After receipt of the examination report, if the court
16 determines that a sentence under this section is appropriate, the court
17 shall waive imposition of a sentence within the standard sentence range
18 and impose a sentence consisting of either a prison-based alternative
19 under subsection (5) of this section or a residential chemical
20 dependency treatment-based alternative under subsection (6) of this
21 section. The residential chemical dependency treatment-based
22 alternative is only available if the midpoint of the standard range is
23 twenty-four months or less.

24 (5) The prison-based alternative shall include:

25 (a) A period of total confinement in a state facility for one-half
26 of the midpoint of the standard sentence range. During incarceration
27 in the state facility, offenders sentenced under this subsection shall
28 undergo a comprehensive substance abuse assessment and receive, within
29 available resources, treatment services appropriate for the offender.
30 The treatment services shall be designed by the division of alcohol and
31 substance abuse of the department of social and health services, in
32 cooperation with the department of corrections;

33 (b) The remainder of the midpoint of the standard range as a term
34 of community custody which must include appropriate substance abuse
35 treatment in a program that has been approved by the division of
36 alcohol and substance abuse of the department of social and health
37 services. If the department finds that conditions have been willfully
38 violated, the offender may be reclassified to serve the remaining

1 balance of the original sentence. An offender who fails to complete
2 the program or who is administratively terminated from the program
3 shall be reclassified to serve the unexpired term of his or her
4 sentence as ordered by the sentencing court;

5 (c) Crime-related prohibitions including a condition not to use
6 illegal controlled substances;

7 (d) A requirement to submit to urinalysis or other testing to
8 monitor that status; and

9 (e) A term of community custody pursuant to RCW 9.94A.715 to be
10 imposed upon failure to complete or administrative termination from the
11 special drug offender sentencing alternative program.

12 (6) The residential chemical dependency treatment-based alternative
13 shall include:

14 (a) A term of community custody equal to one-half of the midpoint
15 of the standard sentence range or two years, whichever is greater,
16 conditioned on the offender entering and remaining in residential
17 chemical dependency treatment certified under chapter 70.96A RCW for a
18 period set by the court between three and six months. If the court
19 imposes a term of community custody, the department shall, within
20 available resources, make chemical dependency assessment and treatment
21 services available to the offender during the term of community
22 custody. The court shall impose, as conditions of community custody,
23 treatment and other conditions as proposed in the plan under subsection
24 (3)(b) of this section. The department may impose conditions and
25 sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7),
26 9.94A.737, and 9.94A.740. The court shall schedule a progress hearing
27 during the period of residential chemical dependency treatment, and
28 schedule a treatment termination hearing for three months before the
29 expiration of the term of community custody;

30 (b) Before the progress hearing and treatment termination hearing,
31 the treatment provider and the department shall submit written reports
32 to the court and parties regarding the offender's compliance with
33 treatment and monitoring requirements, and recommendations regarding
34 termination from treatment. At the hearing, the court may:

35 (i) Authorize the department to terminate the offender's community
36 custody status on the expiration date determined under (a) of this
37 subsection; or

1 (ii) Continue the hearing to a date before the expiration date of
2 community custody, with or without modifying the conditions of
3 community custody; or

4 (iii) Impose a term of total confinement equal to one-half the
5 midpoint of the standard sentence range, followed by a term of
6 community custody under RCW 9.94A.715;

7 (c) If the court imposes a term of total confinement under (b)(iii)
8 of this subsection, the department shall, within available resources,
9 make chemical dependency assessment and treatment services available to
10 the offender during the terms of total confinement and community
11 custody.

12 (7) If the court imposes a sentence under this section, the court
13 may prohibit the offender from using alcohol or controlled substances
14 and may require that the monitoring for controlled substances be
15 conducted by the department or by a treatment alternatives to street
16 crime program or a comparable court or agency-referred program. The
17 offender may be required to pay thirty dollars per month while on
18 community custody to offset the cost of monitoring. In addition, the
19 court may impose any of the following conditions:

20 (a) Devote time to a specific employment or training;

21 (b) Remain within prescribed geographical boundaries and notify the
22 court or the community corrections officer before any change in the
23 offender's address or employment;

24 (c) Report as directed to a community corrections officer;

25 (d) Pay all court-ordered legal financial obligations;

26 (e) Perform community restitution work;

27 (f) Stay out of areas designated by the sentencing court;

28 (g) Such other conditions as the court may require such as
29 affirmative conditions.

30 (8)(a) The court may bring any offender sentenced under this
31 section back into court at any time on its own initiative to evaluate
32 the offender's progress in treatment or to determine if any violations
33 of the conditions of the sentence have occurred.

34 (b) If the offender is brought back to court, the court may modify
35 the terms of the community custody or impose sanctions under (c) of
36 this subsection.

37 (c) The court may order the offender to serve a term of total
38 confinement within the standard range of the offender's current offense

1 at any time during the period of community custody if the offender
2 violates the conditions of the sentence or if the offender is failing
3 to make satisfactory progress in treatment.

4 (d) An offender ordered to serve a term of total confinement under
5 (c) of this subsection shall receive credit for any time previously
6 served under this section.

7 (9) If an offender sentenced to the prison-based alternative under
8 subsection (5) of this section is found by the United States attorney
9 general to be subject to a deportation order, a hearing shall be held
10 by the department unless waived by the offender, and, if the department
11 finds that the offender is subject to a valid deportation order, the
12 department may administratively terminate the offender from the program
13 and reclassify the offender to serve the remaining balance of the
14 original sentence.

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

18 (11) Costs of examinations and preparing treatment plans under
19 subsections (2) and (3) of this section may be paid, at the option of
20 the county, from funds provided to the county from the criminal justice
21 treatment account under RCW 70.96A.350.

22 **Sec. 12.** RCW 9.94A.690 and 2000 c 28 s 21 are each amended to read
23 as follows:

24 (1)(a) An offender is eligible to be sentenced to a work ethic camp
25 if the offender:

26 (i) Is sentenced to a term of total confinement of not less than
27 twelve months and one day or more than thirty-six months;

28 (ii) Has no current or prior convictions for any sex offenses or
29 for violent offenses; and

30 (iii) Is not currently subject to a sentence for, or being
31 prosecuted for, a violation of felony driving while under the influence
32 of intoxicating liquor or any drug (RCW 46.61.502(6)), a violation of
33 physical control of a vehicle while under the influence of intoxicating
34 liquor or any drug (RCW 46.61.504(6)), a violation of the uniform
35 controlled substances act, or a criminal solicitation to commit such a
36 violation under chapter 9A.28 or 69.50 RCW.

1 (b) The length of the work ethic camp shall be at least one hundred
2 twenty days and not more than one hundred eighty days.

3 (2) If the sentencing court determines that the offender is
4 eligible for the work ethic camp and is likely to qualify under
5 subsection (3) of this section, the judge shall impose a sentence
6 within the standard sentence range and may recommend that the offender
7 serve the sentence at a work ethic camp. In sentencing an offender to
8 the work ethic camp, the court shall specify: (a) That upon completion
9 of the work ethic camp the offender shall be released on community
10 custody for any remaining time of total confinement; (b) the applicable
11 conditions of supervision on community custody status as required by
12 RCW 9.94A.700(4) and authorized by RCW 9.94A.700(5); and (c) that
13 violation of the conditions may result in a return to total confinement
14 for the balance of the offender's remaining time of confinement.

15 (3) The department shall place the offender in the work ethic camp
16 program, subject to capacity, unless: (a) The department determines
17 that the offender has physical or mental impairments that would prevent
18 participation and completion of the program; (b) the department
19 determines that the offender's custody level prevents placement in the
20 program; (c) the offender refuses to agree to the terms and conditions
21 of the program; (d) the offender has been found by the United States
22 attorney general to be subject to a deportation detainer or order; or
23 (e) the offender has participated in the work ethic camp program in the
24 past.

25 (4) An offender who fails to complete the work ethic camp program,
26 who is administratively terminated from the program, or who otherwise
27 violates any conditions of supervision, as defined by the department,
28 shall be reclassified to serve the unexpired term of his or her
29 sentence as ordered by the sentencing court and shall be subject to all
30 rules relating to earned release time.

31 (5) During the last two weeks prior to release from the work ethic
32 camp program the department shall provide the offender with
33 comprehensive transition training.

34 **Sec. 13.** RCW 9.94A.515 and 2005 c 458 s 2 and 2005 c 183 s 9 are
35 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) Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076)
X	Child Molestation 1 (RCW 9A.44.083) Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) Kidnapping 1 (RCW 9A.40.020) Leading Organized Crime (RCW 9A.82.060(1)(a)) Malicious explosion 3 (RCW 70.74.280(3)) Sexually Violent Predator Escape (RCW 9A.76.115)

1 IX Assault of a Child 2 (RCW 9A.36.130)
2 Explosive devices prohibited (RCW
3 70.74.180)
4 Hit and Run--Death (RCW
5 46.52.020(4)(a))
6 Homicide by Watercraft, by being
7 under the influence of intoxicating
8 liquor or any drug (RCW
9 79A.60.050)
10 Inciting Criminal Profiteering (RCW
11 9A.82.060(1)(b))
12 Malicious placement of an explosive 2
13 (RCW 70.74.270(2))
14 Robbery 1 (RCW 9A.56.200)
15 Sexual Exploitation (RCW 9.68A.040)
16 Vehicular Homicide, by being under
17 the influence of intoxicating liquor
18 or any drug (RCW 46.61.520)
19 VIII Arson 1 (RCW 9A.48.020)
20 Homicide by Watercraft, by the
21 operation of any vessel in a
22 reckless manner (RCW
23 79A.60.050)
24 Manslaughter 2 (RCW 9A.32.070)
25 Promoting Prostitution 1 (RCW
26 9A.88.070)
27 Theft of Ammonia (RCW 69.55.010)
28 Vehicular Homicide, by the operation
29 of any vehicle in a reckless
30 manner (RCW 46.61.520)
31 VII Burglary 1 (RCW 9A.52.020)
32 Child Molestation 2 (RCW 9A.44.086)
33 Civil Disorder Training (RCW
34 9A.48.120)
35 Dealing in depictions of minor
36 engaged in sexually explicit
37 conduct (RCW 9.68A.050)

1 Drive-by Shooting (RCW 9A.36.045)
2 Homicide by Watercraft, by disregard
3 for the safety of others (RCW
4 79A.60.050)
5 Indecent Liberties (without forcible
6 compulsion) (RCW 9A.44.100(1)
7 (b) and (c))
8 Introducing Contraband 1 (RCW
9 9A.76.140)
10 Malicious placement of an explosive 3
11 (RCW 70.74.270(3))
12 Negligently Causing Death By Use of
13 a Signal Preemption Device
14 (RCW 46.37.675)
15 Sending, bringing into state depictions
16 of minor engaged in sexually
17 explicit conduct (RCW
18 9.68A.060)
19 Unlawful Possession of a Firearm in
20 the first degree (RCW
21 9.41.040(1))
22 Use of a Machine Gun in Commission
23 of a Felony (RCW 9.41.225)
24 Vehicular Homicide, by disregard for
25 the safety of others (RCW
26 46.61.520)
27 VI Bail Jumping with Murder 1 (RCW
28 9A.76.170(3)(a))
29 Bribery (RCW 9A.68.010)
30 Incest 1 (RCW 9A.64.020(1))
31 Intimidating a Judge (RCW
32 9A.72.160)
33 Intimidating a Juror/Witness (RCW
34 9A.72.110, 9A.72.130)
35 Malicious placement of an imitation
36 device 2 (RCW 70.74.272(1)(b))
37 Rape of a Child 3 (RCW 9A.44.079)

1 Theft of a Firearm (RCW 9A.56.300)
2 Unlawful Storage of Ammonia (RCW
3 69.55.020)
4 V Abandonment of dependent person 1
5 (RCW 9A.42.060)
6 Advancing money or property for
7 extortionate extension of credit
8 (RCW 9A.82.030)
9 Bail Jumping with class A Felony
10 (RCW 9A.76.170(3)(b))
11 Child Molestation 3 (RCW 9A.44.089)
12 Criminal Mistreatment 1 (RCW
13 9A.42.020)
14 Custodial Sexual Misconduct 1 (RCW
15 9A.44.160)
16 Domestic Violence Court Order
17 Violation (RCW 10.99.040,
18 10.99.050, 26.09.300, 26.10.220,
19 26.26.138, 26.50.110, 26.52.070,
20 or 74.34.145)
21 Driving While Under the Influence
22 (RCW 46.61.502(6))
23 Extortion 1 (RCW 9A.56.120)
24 Extortionate Extension of Credit
25 (RCW 9A.82.020)
26 Extortionate Means to Collect
27 Extensions of Credit (RCW
28 9A.82.040)
29 Incest 2 (RCW 9A.64.020(2))
30 Kidnapping 2 (RCW 9A.40.030)
31 Perjury 1 (RCW 9A.72.020)
32 Persistent prison misbehavior (RCW
33 9.94.070)
34 Physical Control of a Vehicle While
35 Under the Influence (RCW
36 46.61.504(6))

1 Possession of a Stolen Firearm (RCW
2 9A.56.310)
3 Rape 3 (RCW 9A.44.060)
4 Rendering Criminal Assistance 1
5 (RCW 9A.76.070)
6 Sexual Misconduct with a Minor 1
7 (RCW 9A.44.093)
8 Sexually Violating Human Remains
9 (RCW 9A.44.105)
10 Stalking (RCW 9A.46.110)
11 Taking Motor Vehicle Without
12 Permission 1 (RCW 9A.56.070)
13 IV Arson 2 (RCW 9A.48.030)
14 Assault 2 (RCW 9A.36.021)
15 Assault 3 (of a Peace Officer with a
16 Projectile Stun Gun) (RCW
17 9A.36.031(1)(h))
18 Assault by Watercraft (RCW
19 79A.60.060)
20 Bribing a Witness/Bribe Received by
21 Witness (RCW 9A.72.090,
22 9A.72.100)
23 Cheating 1 (RCW 9A.46.1961)
24 Commercial Bribery (RCW
25 9A.68.060)
26 Counterfeiting (RCW 9.16.035(4))
27 Endangerment with a Controlled
28 Substance (RCW 9A.42.100)
29 Escape 1 (RCW 9A.76.110)
30 Hit and Run--Injury (RCW
31 46.52.020(4)(b))
32 Hit and Run with Vessel--Injury
33 Accident (RCW 79A.60.200(3))
34 Identity Theft 1 (RCW 9.35.020(2))
35 Indecent Exposure to Person Under
36 Age Fourteen (subsequent sex
37 offense) (RCW 9A.88.010)

1 Influencing Outcome of Sporting
2 Event (RCW 9A.82.070)
3 Malicious Harassment (RCW
4 9A.36.080)
5 Residential Burglary (RCW
6 9A.52.025)
7 Robbery 2 (RCW 9A.56.210)
8 Theft of Livestock 1 (RCW 9A.56.080)
9 Threats to Bomb (RCW 9.61.160)
10 Trafficking in Stolen Property 1 (RCW
11 9A.82.050)
12 Unlawful factoring of a credit card or
13 payment card transaction (RCW
14 9A.56.290(4)(b))
15 Unlawful transaction of health
16 coverage as a health care service
17 contractor (RCW 48.44.016(3))
18 Unlawful transaction of health
19 coverage as a health maintenance
20 organization (RCW 48.46.033(3))
21 Unlawful transaction of insurance
22 business (RCW 48.15.023(3))
23 Unlicensed practice as an insurance
24 professional (RCW 48.17.063(3))
25 Use of Proceeds of Criminal
26 Profiteering (RCW 9A.82.080 (1)
27 and (2))
28 Vehicular Assault, by being under the
29 influence of intoxicating liquor or
30 any drug, or by the operation or
31 driving of a vehicle in a reckless
32 manner (RCW 46.61.522)
33 Willful Failure to Return from
34 Furlough (RCW 72.66.060)
35 III Abandonment of dependent person 2
36 (RCW 9A.42.070)

1 Assault 3 (Except Assault 3 of a Peace
2 Officer With a Projectile Stun
3 Gun) (RCW 9A.36.031 except
4 subsection (1)(h))
5 Assault of a Child 3 (RCW 9A.36.140)
6 Bail Jumping with class B or C Felony
7 (RCW 9A.76.170(3)(c))
8 Burglary 2 (RCW 9A.52.030)
9 Communication with a Minor for
10 Immoral Purposes (RCW
11 9.68A.090)
12 Criminal Gang Intimidation (RCW
13 9A.46.120)
14 Criminal Mistreatment 2 (RCW
15 9A.42.030)
16 Custodial Assault (RCW 9A.36.100)
17 Cyberstalking (subsequent conviction
18 or threat of death) (RCW
19 9.61.260(3))
20 Escape 2 (RCW 9A.76.120)
21 Extortion 2 (RCW 9A.56.130)
22 Harassment (RCW 9A.46.020)
23 Intimidating a Public Servant (RCW
24 9A.76.180)
25 Introducing Contraband 2 (RCW
26 9A.76.150)
27 Malicious Injury to Railroad Property
28 (RCW 81.60.070)
29 Negligently Causing Substantial Bodily
30 Harm By Use of a Signal
31 Preemption Device (RCW
32 46.37.674)
33 Patronizing a Juvenile Prostitute
34 (RCW 9.68A.100)
35 Perjury 2 (RCW 9A.72.030)
36 Possession of Incendiary Device (RCW
37 9.40.120)

1 Possession of Machine Gun or Short-
2 Barreled Shotgun or Rifle (RCW
3 9.41.190)
4 Promoting Prostitution 2 (RCW
5 9A.88.080)
6 Securities Act violation (RCW
7 21.20.400)
8 Tampering with a Witness (RCW
9 9A.72.120)
10 Telephone Harassment (subsequent
11 conviction or threat of death)
12 (RCW 9.61.230(2))
13 Theft of Livestock 2 (RCW 9A.56.083)
14 Trafficking in Stolen Property 2 (RCW
15 9A.82.055)
16 Unlawful Imprisonment (RCW
17 9A.40.040)
18 Unlawful possession of firearm in the
19 second degree (RCW 9.41.040(2))
20 Vehicular Assault, by the operation or
21 driving of a vehicle with disregard
22 for the safety of others (RCW
23 46.61.522)
24 Willful Failure to Return from Work
25 Release (RCW 72.65.070)
26 II Computer Trespass 1 (RCW
27 9A.52.110)
28 Counterfeiting (RCW 9.16.035(3))
29 Escape from Community Custody
30 (RCW 72.09.310)
31 Health Care False Claims (RCW
32 48.80.030)
33 Identity Theft 2 (RCW 9.35.020(3))
34 Improperly Obtaining Financial
35 Information (RCW 9.35.010)
36 Malicious Mischief 1 (RCW
37 9A.48.070)

1 Possession of Stolen Property 1 (RCW
2 9A.56.150)
3 Theft 1 (RCW 9A.56.030)
4 Theft of Rental, Leased, or Lease-
5 purchased Property (valued at one
6 thousand five hundred dollars or
7 more) (RCW 9A.56.096(5)(a))
8 Trafficking in Insurance Claims (RCW
9 48.30A.015)
10 Unlawful factoring of a credit card or
11 payment card transaction (RCW
12 9A.56.290(4)(a))
13 Unlawful Practice of Law (RCW
14 2.48.180)
15 Unlicensed Practice of a Profession or
16 Business (RCW 18.130.190(7))
17 I Attempting to Elude a Pursuing Police
18 Vehicle (RCW 46.61.024)
19 False Verification for Welfare (RCW
20 74.08.055)
21 Forgery (RCW 9A.60.020)
22 Fraudulent Creation or Revocation of a
23 Mental Health Advance Directive
24 (RCW 9A.60.060)
25 Malicious Mischief 2 (RCW
26 9A.48.080)
27 Mineral Trespass (RCW 78.44.330)
28 Possession of Stolen Property 2 (RCW
29 9A.56.160)
30 Reckless Burning 1 (RCW 9A.48.040)
31 Taking Motor Vehicle Without
32 Permission 2 (RCW 9A.56.075)
33 Theft 2 (RCW 9A.56.040)

1 Theft of Rental, Leased, or Lease-
2 purchased Property (valued at two
3 hundred fifty dollars or more but
4 less than one thousand five
5 hundred dollars) (RCW
6 9A.56.096(5)(b))
7 Transaction of insurance business
8 beyond the scope of licensure
9 (RCW 48.17.063(4))
10 Unlawful Issuance of Checks or Drafts
11 (RCW 9A.56.060)
12 Unlawful Possession of Fictitious
13 Identification (RCW 9A.56.320)
14 Unlawful Possession of Instruments of
15 Financial Fraud (RCW
16 9A.56.320)
17 Unlawful Possession of Payment
18 Instruments (RCW 9A.56.320)
19 Unlawful Possession of a Personal
20 Identification Device (RCW
21 9A.56.320)
22 Unlawful Production of Payment
23 Instruments (RCW 9A.56.320)
24 Unlawful Trafficking in Food Stamps
25 (RCW 9.91.142)
26 Unlawful Use of Food Stamps (RCW
27 9.91.144)
28 Vehicle Prowl 1 (RCW 9A.52.095)

29 **Sec. 14.** RCW 9.94A.411 and 2000 c 119 s 28 and 2000 c 28 s 17 are
30 each reenacted and amended to read as follows:

31 (1) Decision not to prosecute.

32 STANDARD: A prosecuting attorney may decline to prosecute, even
33 though technically sufficient evidence to prosecute exists, in
34 situations where prosecution would serve no public purpose, would
35 defeat the underlying purpose of the law in question or would result in
36 decreased respect for the law.

37 GUIDELINE/COMMENTARY:

1 Examples

2 The following are examples of reasons not to prosecute which could
3 satisfy the standard.

4 (a) Contrary to Legislative Intent - It may be proper to decline to
5 charge where the application of criminal sanctions would be clearly
6 contrary to the intent of the legislature in enacting the particular
7 statute.

8 (b) Antiquated Statute - It may be proper to decline to charge
9 where the statute in question is antiquated in that:

10 (i) It has not been enforced for many years; and

11 (ii) Most members of society act as if it were no longer in
12 existence; and

13 (iii) It serves no deterrent or protective purpose in today's
14 society; and

15 (iv) The statute has not been recently reconsidered by the
16 legislature.

17 This reason is not to be construed as the basis for declining cases
18 because the law in question is unpopular or because it is difficult to
19 enforce.

20 (c) De Minimis Violation - It may be proper to decline to charge
21 where the violation of law is only technical or insubstantial and where
22 no public interest or deterrent purpose would be served by prosecution.

23 (d) Confinement on Other Charges - It may be proper to decline to
24 charge because the accused has been sentenced on another charge to a
25 lengthy period of confinement; and

26 (i) Conviction of the new offense would not merit any additional
27 direct or collateral punishment;

28 (ii) The new offense is either a misdemeanor or a felony which is
29 not particularly aggravated; and

30 (iii) Conviction of the new offense would not serve any significant
31 deterrent purpose.

32 (e) Pending Conviction on Another Charge - It may be proper to
33 decline to charge because the accused is facing a pending prosecution
34 in the same or another county; and

35 (i) Conviction of the new offense would not merit any additional
36 direct or collateral punishment;

37 (ii) Conviction in the pending prosecution is imminent;

1 (iii) The new offense is either a misdemeanor or a felony which is
2 not particularly aggravated; and

3 (iv) Conviction of the new offense would not serve any significant
4 deterrent purpose.

5 (f) High Disproportionate Cost of Prosecution - It may be proper to
6 decline to charge where the cost of locating or transporting, or the
7 burden on, prosecution witnesses is highly disproportionate to the
8 importance of prosecuting the offense in question. This reason should
9 be limited to minor cases and should not be relied upon in serious
10 cases.

11 (g) Improper Motives of Complainant - It may be proper to decline
12 charges because the motives of the complainant are improper and
13 prosecution would serve no public purpose, would defeat the underlying
14 purpose of the law in question or would result in decreased respect for
15 the law.

16 (h) Immunity - It may be proper to decline to charge where immunity
17 is to be given to an accused in order to prosecute another where the
18 accused's information or testimony will reasonably lead to the
19 conviction of others who are responsible for more serious criminal
20 conduct or who represent a greater danger to the public interest.

21 (i) Victim Request - It may be proper to decline to charge because
22 the victim requests that no criminal charges be filed and the case
23 involves the following crimes or situations:

24 (i) Assault cases where the victim has suffered little or no
25 injury;

26 (ii) Crimes against property, not involving violence, where no
27 major loss was suffered;

28 (iii) Where doing so would not jeopardize the safety of society.

29 Care should be taken to insure that the victim's request is freely
30 made and is not the product of threats or pressure by the accused.

31 The presence of these factors may also justify the decision to
32 dismiss a prosecution which has been commenced.

33 Notification

34 The prosecutor is encouraged to notify the victim, when practical,
35 and the law enforcement personnel, of the decision not to prosecute.

36 (2) Decision to prosecute.

37 (a) STANDARD:

1 Crimes against persons will be filed if sufficient admissible
2 evidence exists, which, when considered with the most plausible,
3 reasonably foreseeable defense that could be raised under the evidence,
4 would justify conviction by a reasonable and objective fact-finder.
5 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
6 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
7 9A.64.020 the prosecutor should avoid pre-filing agreements or
8 diversions intended to place the accused in a program of treatment or
9 counseling, so that treatment, if determined to be beneficial, can be
10 provided pursuant to RCW 9.94A.670.

11 Crimes against property/other crimes will be filed if the
12 admissible evidence is of such convincing force as to make it probable
13 that a reasonable and objective fact-finder would convict after hearing
14 all the admissible evidence and the most plausible defense that could
15 be raised.

16 See table below for the crimes within these categories.

17 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

18 CRIMES AGAINST PERSONS

19 Aggravated Murder

20 1st Degree Murder

21 2nd Degree Murder

22 1st Degree Manslaughter

23 2nd Degree Manslaughter

24 1st Degree Kidnapping

25 2nd Degree Kidnapping

26 1st Degree Assault

27 2nd Degree Assault

28 3rd Degree Assault

29 1st Degree Assault of a Child

30 2nd Degree Assault of a Child

31 3rd Degree Assault of a Child

32 1st Degree Rape

33 2nd Degree Rape

34 3rd Degree Rape

35 1st Degree Rape of a Child

36 2nd Degree Rape of a Child

37 3rd Degree Rape of a Child

38 1st Degree Robbery

1 2nd Degree Robbery
2 1st Degree Arson
3 1st Degree Burglary
4 1st Degree Extortion
5 2nd Degree Extortion
6 Indecent Liberties
7 Incest
8 Vehicular Homicide
9 Vehicular Assault
10 1st Degree Child Molestation
11 2nd Degree Child Molestation
12 3rd Degree Child Molestation
13 1st Degree Promoting Prostitution
14 Intimidating a Juror
15 Communication with a Minor
16 Intimidating a Witness
17 Intimidating a Public Servant
18 Bomb Threat (if against person)
19 Unlawful Imprisonment
20 Promoting a Suicide Attempt
21 Riot (if against person)
22 Stalking
23 Custodial Assault
24 Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050,
25 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
26 Counterfeiting (if a violation of RCW 9.16.035(4))
27 Felony Driving a Motor Vehicle While Under the Influence of
28 Intoxicating Liquor or Any Drug (RCW 46.61.502(6))
29 Felony Physical Control of a Motor Vehicle While Under the
30 Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))
31 CRIMES AGAINST PROPERTY/OTHER CRIMES
32 2nd Degree Arson
33 1st Degree Escape
34 2nd Degree Escape
35 2nd Degree Burglary
36 1st Degree Theft
37 2nd Degree Theft
38 1st Degree Perjury

1 2nd Degree Perjury
2 1st Degree Introducing Contraband
3 2nd Degree Introducing Contraband
4 1st Degree Possession of Stolen Property
5 2nd Degree Possession of Stolen Property
6 Bribery
7 Bribing a Witness
8 Bribe received by a Witness
9 Bomb Threat (if against property)
10 1st Degree Malicious Mischief
11 2nd Degree Malicious Mischief
12 1st Degree Reckless Burning
13 Taking a Motor Vehicle without Authorization
14 Forgery
15 2nd Degree Promoting Prostitution
16 Tampering with a Witness
17 Trading in Public Office
18 Trading in Special Influence
19 Receiving/Granting Unlawful Compensation
20 Bigamy
21 Eluding a Pursuing Police Vehicle
22 Willful Failure to Return from Furlough
23 Escape from Community Custody
24 Riot (if against property)
25 1st Degree Theft of Livestock
26 2nd Degree Theft of Livestock

27 ALL OTHER UNCLASSIFIED FELONIES

28 Selection of Charges/Degree of Charge

29 (i) The prosecutor should file charges which adequately describe
30 the nature of defendant's conduct. Other offenses may be charged only
31 if they are necessary to ensure that the charges:

32 (A) Will significantly enhance the strength of the state's case at
33 trial; or

34 (B) Will result in restitution to all victims.

35 (ii) The prosecutor should not overcharge to obtain a guilty plea.

36 Overcharging includes:

37 (A) Charging a higher degree;

38 (B) Charging additional counts.

1 This standard is intended to direct prosecutors to charge those
2 crimes which demonstrate the nature and seriousness of a defendant's
3 criminal conduct, but to decline to charge crimes which are not
4 necessary to such an indication. Crimes which do not merge as a matter
5 of law, but which arise from the same course of conduct, do not all
6 have to be charged.

7 (b) GUIDELINES/COMMENTARY:

8 (i) Police Investigation

9 A prosecuting attorney is dependent upon law enforcement agencies
10 to conduct the necessary factual investigation which must precede the
11 decision to prosecute. The prosecuting attorney shall ensure that a
12 thorough factual investigation has been conducted before a decision to
13 prosecute is made. In ordinary circumstances the investigation should
14 include the following:

15 (A) The interviewing of all material witnesses, together with the
16 obtaining of written statements whenever possible;

17 (B) The completion of necessary laboratory tests; and

18 (C) The obtaining, in accordance with constitutional requirements,
19 of the suspect's version of the events.

20 If the initial investigation is incomplete, a prosecuting attorney
21 should insist upon further investigation before a decision to prosecute
22 is made, and specify what the investigation needs to include.

23 (ii) Exceptions

24 In certain situations, a prosecuting attorney may authorize filing
25 of a criminal complaint before the investigation is complete if:

26 (A) Probable cause exists to believe the suspect is guilty; and

27 (B) The suspect presents a danger to the community or is likely to
28 flee if not apprehended; or

29 (C) The arrest of the suspect is necessary to complete the
30 investigation of the crime.

31 In the event that the exception to the standard is applied, the
32 prosecuting attorney shall obtain a commitment from the law enforcement
33 agency involved to complete the investigation in a timely manner. If
34 the subsequent investigation does not produce sufficient evidence to
35 meet the normal charging standard, the complaint should be dismissed.

36 (iii) Investigation Techniques

37 The prosecutor should be fully advised of the investigatory
38 techniques that were used in the case investigation including:

- 1 (A) Polygraph testing;
- 2 (B) Hypnosis;
- 3 (C) Electronic surveillance;
- 4 (D) Use of informants.
- 5 (iv) Pre-Filing Discussions with Defendant
- 6 Discussions with the defendant or his/her representative regarding
- 7 the selection or disposition of charges may occur prior to the filing
- 8 of charges, and potential agreements can be reached.
- 9 (v) Pre-Filing Discussions with Victim(s)
- 10 Discussions with the victim(s) or victims' representatives
- 11 regarding the selection or disposition of charges may occur before the
- 12 filing of charges. The discussions may be considered by the prosecutor
- 13 in charging and disposition decisions, and should be considered before
- 14 reaching any agreement with the defendant regarding these decisions.

15 **Sec. 15.** RCW 13.40.0357 and 2004 c 117 s 1 are each amended to
 16 read as follows:

DESCRIPTION AND OFFENSE CATEGORY

		JUVENILE DISPOSITION
JUVENILE	DISPOSITION	CATEGORY FOR
OFFENSE	CATEGORY	ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
DESCRIPTION (RCW CITATION)	
Arson and Malicious Mischief		
A Arson 1 (9A.48.020)		B+
B Arson 2 (9A.48.030)		C
C Reckless Burning 1 (9A.48.040)		D
D Reckless Burning 2 (9A.48.050)		E
B Malicious Mischief 1 (9A.48.070)		C
C Malicious Mischief 2 (9A.48.080)		D
D Malicious Mischief 3 (9A.48.090(2) (a) and (c))		E
E Malicious Mischief 3 (9A.48.090(2)(b))		E
E Tampering with Fire Alarm Apparatus (9.40.100)		E

1	E	Tampering with Fire Alarm Apparatus with	
2		Intent to Commit Arson (9.40.105)	E
3	A	Possession of Incendiary Device (9.40.120)	B+
4		Assault and Other Crimes Involving	
5		Physical Harm	
6	A	Assault 1 (9A.36.011)	B+
7	B+	Assault 2 (9A.36.021)	C+
8	C+	Assault 3 (9A.36.031)	D+
9	D+	Assault 4 (9A.36.041)	E
10	B+	Drive-By Shooting (9A.36.045)	C+
11	D+	Reckless Endangerment (9A.36.050)	E
12	C+	Promoting Suicide Attempt (9A.36.060)	D+
13	D+	Coercion (9A.36.070)	E
14	C+	Custodial Assault (9A.36.100)	D+
15		Burglary and Trespass	
16	B+	Burglary 1 (9A.52.020)	C+
17	B	Residential Burglary (9A.52.025)	C
18	B	Burglary 2 (9A.52.030)	C
19	D	Burglary Tools (Possession of) (9A.52.060)	E
20	D	Criminal Trespass 1 (9A.52.070)	E
21	E	Criminal Trespass 2 (9A.52.080)	E
22	C	Mineral Trespass (78.44.330)	C
23	C	Vehicle Prowling 1 (9A.52.095)	D
24	D	Vehicle Prowling 2 (9A.52.100)	E
25		Drugs	
26	E	Possession/Consumption of Alcohol	
27		(66.44.270)	E
28	C	Illegally Obtaining Legend Drug	
29		(69.41.020)	D
30	C+	Sale, Delivery, Possession of Legend Drug	
31		with Intent to Sell (69.41.030(2)(a))	D+
32	E	Possession of Legend Drug	
33		(69.41.030(2)(b))	E

1	B+	Violation of Uniform Controlled Substances	
2		Act - Narcotic, Methamphetamine, or	
3		Flunitrazepam Sale (69.50.401(2) (a) or	
4		(b))	B+
5	C	Violation of Uniform Controlled Substances	
6		Act - Nonnarcotic Sale (69.50.401(2)(c))	C
7	E	Possession of Marihuana <40 grams	
8		(69.50.4014)	E
9	C	Fraudulently Obtaining Controlled	
10		Substance (69.50.403)	C
11	C+	Sale of Controlled Substance for Profit	
12		(69.50.410)	C+
13	E	Unlawful Inhalation (9.47A.020)	E
14	B	Violation of Uniform Controlled Substances	
15		Act - Narcotic, Methamphetamine, or	
16		Flunitrazepam Counterfeit Substances	
17		(69.50.4011(2) (a) or (b))	B
18	C	Violation of Uniform Controlled Substances	
19		Act - Nonnarcotic Counterfeit Substances	
20		(69.50.4011(2) (c), (d), or (e))	C
21	C	Violation of Uniform Controlled Substances	
22		Act - Possession of a Controlled Substance	
23		(69.50.4013)	C
24	C	Violation of Uniform Controlled Substances	
25		Act - Possession of a Controlled Substance	
26		(69.50.4012)	C
27		Firearms and Weapons	
28	B	Theft of Firearm (9A.56.300)	C
29	B	Possession of Stolen Firearm (9A.56.310)	C
30	E	Carrying Loaded Pistol Without Permit	
31		(9.41.050)	E
32	C	Possession of Firearms by Minor (<18)	
33		(9.41.040(2)(a)(iii))	C
34	D+	Possession of Dangerous Weapon	
35		(9.41.250)	E
36	D	Intimidating Another Person by use of	
37		Weapon (9.41.270)	E

1		Homicide	
2	A+	Murder 1 (9A.32.030)	A
3	A+	Murder 2 (9A.32.050)	B+
4	B+	Manslaughter 1 (9A.32.060)	C+
5	C+	Manslaughter 2 (9A.32.070)	D+
6	B+	Vehicle Homicide (46.61.520)	C+
7		Kidnapping	
8	A	Kidnap 1 (9A.40.020)	B+
9	B+	Kidnap 2 (9A.40.030)	C+
10	C+	Unlawful Imprisonment (9A.40.040)	D+
11		Obstructing Governmental Operation	
12	D	Obstructing a Law Enforcement Officer	
13		(9A.76.020)	E
14	E	Resisting Arrest (9A.76.040)	E
15	B	Introducing Contraband 1 (9A.76.140)	C
16	C	Introducing Contraband 2 (9A.76.150)	D
17	E	Introducing Contraband 3 (9A.76.160)	E
18	B+	Intimidating a Public Servant (9A.76.180)	C+
19	B+	Intimidating a Witness (9A.72.110)	C+
20		Public Disturbance	
21	C+	Riot with Weapon (9A.84.010(2)(b))	D+
22	D+	Riot Without Weapon (9A.84.010(2)(a))	E
23	E	Failure to Disperse (9A.84.020)	E
24	E	Disorderly Conduct (9A.84.030)	E
25		Sex Crimes	
26	A	Rape 1 (9A.44.040)	B+
27	A-	Rape 2 (9A.44.050)	B+
28	C+	Rape 3 (9A.44.060)	D+
29	A-	Rape of a Child 1 (9A.44.073)	B+
30	B+	Rape of a Child 2 (9A.44.076)	C+
31	B	Incest 1 (9A.64.020(1))	C
32	C	Incest 2 (9A.64.020(2))	D
33	D+	Indecent Exposure (Victim <14)	
34		(9A.88.010)	E
35	E	Indecent Exposure (Victim 14 or over)	
36		(9A.88.010)	E

1	B+	Promoting Prostitution 1 (9A.88.070)	C+
2	C+	Promoting Prostitution 2 (9A.88.080)	D+
3	E	O & A (Prostitution) (9A.88.030)	E
4	B+	Indecent Liberties (9A.44.100)	C+
5	A-	Child Molestation 1 (9A.44.083)	B+
6	B	Child Molestation 2 (9A.44.086)	C+
7		Theft, Robbery, Extortion, and Forgery	
8	B	Theft 1 (9A.56.030)	C
9	C	Theft 2 (9A.56.040)	D
10	D	Theft 3 (9A.56.050)	E
11	B	Theft of Livestock 1 and 2 (9A.56.080 and	
12		9A.56.083)	C
13	C	Forgery (9A.60.020)	D
14	A	Robbery 1 (9A.56.200)	B+
15	B+	Robbery 2 (9A.56.210)	C+
16	B+	Extortion 1 (9A.56.120)	C+
17	C+	Extortion 2 (9A.56.130)	D+
18	C	Identity Theft 1 (9.35.020(2))	D
19	D	Identity Theft 2 (9.35.020(3))	E
20	D	Improperly Obtaining Financial Information	
21		(9.35.010)	E
22	B	Possession of Stolen Property 1	
23		(9A.56.150)	C
24	C	Possession of Stolen Property 2	
25		(9A.56.160)	D
26	D	Possession of Stolen Property 3	
27		(9A.56.170)	E
28	C	Taking Motor Vehicle Without Permission	
29		1 and 2 (9A.56.070 and 9A.56.075)	D
30		Motor Vehicle Related Crimes	
31	E	Driving Without a License (46.20.005)	E
32	B+	Hit and Run - Death (46.52.020(4)(a))	C+
33	C	Hit and Run - Injury (46.52.020(4)(b))	D
34	D	Hit and Run-Attended (46.52.020(5))	E
35	E	Hit and Run-Unattended (46.52.010)	E
36	C	Vehicular Assault (46.61.522)	D

1	C	Attempting to Elude Pursuing Police	
2		Vehicle (46.61.024)	D
3	E	Reckless Driving (46.61.500)	E
4	D	Driving While Under the Influence	
5		(46.61.502 and 46.61.504)	E
6	<u>B+</u>	<u>Felony Driving While Under the Influence</u>	
7		<u>(46.61.502(6) and 46.61.504(6))</u>	<u>B</u>
8		Other	
9	B	Animal Cruelty 1 (16.52.205)	C
10	B	Bomb Threat (9.61.160)	C
11	C	Escape 1 ¹ (9A.76.110)	C
12	C	Escape 2 ¹ (9A.76.120)	C
13	D	Escape 3 (9A.76.130)	E
14	E	Obscene, Harassing, Etc., Phone Calls	
15		(9.61.230)	E
16	A	Other Offense Equivalent to an Adult Class	
17		A Felony	B+
18	B	Other Offense Equivalent to an Adult Class	
19		B Felony	C
20	C	Other Offense Equivalent to an Adult Class	
21		C Felony	D
22	D	Other Offense Equivalent to an Adult Gross	
23		Misdemeanor	E
24	E	Other Offense Equivalent to an Adult	
25		Misdemeanor	E
26	V	Violation of Order of Restitution,	
27		Community Supervision, or Confinement	
28		(13.40.200) ²	V

29 ¹Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses
30 and the standard range is established as follows:

31 1st escape or attempted escape during 12-month period - 4 weeks
32 confinement

33 2nd escape or attempted escape during 12-month period - 8 weeks
34 confinement

35 3rd and subsequent escape or attempted escape during 12-month
36 period - 12 weeks confinement

1 ²If the court finds that a respondent has violated terms of an order,
 2 it may impose a penalty of up to 30 days of confinement.

3 **JUVENILE SENTENCING STANDARDS**

4 This schedule must be used for juvenile offenders. The court may
 5 select sentencing option A, B, C, D, or RCW 13.40.167.

6
 7 **OPTION A**
 8 **JUVENILE OFFENDER SENTENCING GRID**
 9 **STANDARD RANGE**

10 A+ 180 WEEKS TO AGE 21 YEARS

11
 12 A 103 WEEKS TO 129 WEEKS

13
 14 A- 15-36 | 52-65 | 80-100 | 103-129
 15 WEEKS | WEEKS | WEEKS | WEEKS
 16 EXCEPT
 17 30-40
 18 WEEKS FOR
 19 15-17
 20 YEAR OLDS

21
 22 Current B+ 15-36 | 52-65 | 80-100 | 103-129
 23 Offense WEEKS | WEEKS | WEEKS | WEEKS

24 Category

25 B LOCAL | | |
 26 SANCTIONS (LS) | 15-36 WEEKS | 52-65
 | | WEEKS

27
 28 C+ LS | | |
 29 | | 15-36 WEEKS

30
 31 C LS | | | 15-36 WEEKS

32 Local Sanctions:
 33 0 to 30 Days

34 D+ LS 0 to 12 Months Community Supervision
 35 0 to 150 Hours Community Restitution

36 D LS \$0 to \$500 Fine

37
 38 E LS

39
 40 0 1 2 3 4
 41 or more

NOTE: References in the grid to days or weeks mean periods of confinement.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

OR

OPTION B

SUSPENDED DISPOSITION ALTERNATIVE

(1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. The treatment programs provided to the offender must be research-based best practice programs as identified by the Washington state institute for public policy or the joint legislative audit and review committee.

(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

(3) An offender is ineligible for the suspended disposition option under this section if the offender is:

- (a) Adjudicated of an A+ offense;

1 (b) Fourteen years of age or older and is adjudicated of one or
2 more of the following offenses:

3 (i) A class A offense, or an attempt, conspiracy, or solicitation
4 to commit a class A offense;

5 (ii) Manslaughter in the first degree (RCW 9A.32.060); or

6 (iii) Assault in the second degree (RCW 9A.36.021), extortion in
7 the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW
8 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential
9 burglary (RCW 9A.52.025), burglary in the second degree (RCW
10 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW
11 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a
12 witness (RCW 9A.72.110), violation of the uniform controlled substances
13 act (RCW 69.50.401 (2)(a) and (b)), or manslaughter 2 (RCW 9A.32.070),
14 when the offense includes infliction of bodily harm upon another or
15 when during the commission or immediate withdrawal from the offense the
16 respondent was armed with a deadly weapon;

17 (c) Ordered to serve a disposition for a firearm violation under
18 RCW 13.40.193; or

19 (d) Adjudicated of a sex offense as defined in RCW 9.94A.030.

20 OR

21 **OPTION C**

22 **CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE**

23 If the juvenile offender is subject to a standard range disposition
24 of local sanctions or 15 to 36 weeks of confinement and has not
25 committed an A- or B+ offense, the court may impose a disposition under
26 RCW 13.40.160(4) and 13.40.165.

27 OR

28 **OPTION D**

29 **MANIFEST INJUSTICE**

30 If the court determines that a disposition under option A, B, or C
31 would effectuate a manifest injustice, the court shall impose a
32 disposition outside the standard range under RCW 13.40.160(2).

33 **Sec. 16.** RCW 46.20.311 and 2005 c 314 s 308 are each amended to
34 read as follows:

35 (1)(a) The department shall not suspend a driver's license or

1 privilege to drive a motor vehicle on the public highways for a fixed
2 period of more than one year, except as specifically permitted under
3 RCW 46.20.267, 46.20.342, or other provision of law.

4 (b) Except for a suspension under RCW 46.20.267, 46.20.289,
5 46.20.291(5), 46.61.740, or 74.20A.320, whenever the license or driving
6 privilege of any person is suspended by reason of a conviction, a
7 finding that a traffic infraction has been committed, pursuant to
8 chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the
9 suspension shall remain in effect until the person gives and thereafter
10 maintains proof of financial responsibility for the future as provided
11 in chapter 46.29 RCW.

12 (c) If the suspension is the result of a nonfelony violation of RCW
13 46.61.502 or 46.61.504, the department shall determine the person's
14 eligibility for licensing based upon the reports provided by the
15 alcoholism agency or probation department designated under RCW
16 46.61.5056 and shall deny reinstatement until enrollment and
17 participation in an approved program has been established and the
18 person is otherwise qualified. If the suspension is the result of a
19 violation of RCW 46.61.502(6) or 46.61.504(6), the department shall
20 determine the person's eligibility for licensing based upon the reports
21 provided by the alcohol or drug dependency agency required under RCW
22 46.61.524 and shall deny reinstatement until satisfactory progress in
23 an approved program has been established and the person is otherwise
24 qualified. If the suspension is the result of a violation of RCW
25 46.61.502 or 46.61.504, and the person is required pursuant to RCW
26 46.20.720 to drive only a motor vehicle equipped with a functioning
27 ignition interlock, the department shall determine the person's
28 eligibility for licensing based upon written verification by a company
29 doing business in the state that it has installed the required device
30 on a vehicle owned or operated by the person seeking reinstatement.
31 If, based upon notification from the interlock provider or otherwise,
32 the department determines that an interlock required under RCW
33 46.20.720 is no longer installed or functioning as required, the
34 department shall suspend the person's license or privilege to drive.
35 Whenever the license or driving privilege of any person is suspended or
36 revoked as a result of noncompliance with an ignition interlock
37 requirement, the suspension shall remain in effect until the person

1 provides notice issued by a company doing business in the state that a
2 vehicle owned or operated by the person is equipped with a functioning
3 ignition interlock device.

4 (d) Whenever the license or driving privilege of any person is
5 suspended as a result of certification of noncompliance with a child
6 support order under chapter 74.20A RCW or a residential or visitation
7 order, the suspension shall remain in effect until the person provides
8 a release issued by the department of social and health services
9 stating that the person is in compliance with the order.

10 (e)(i) The department shall not issue to the person a new,
11 duplicate, or renewal license until the person pays a reissue fee of
12 seventy-five dollars.

13 (ii) If the suspension is the result of a violation of RCW
14 46.61.502 or 46.61.504, or is the result of administrative action under
15 RCW 46.20.308, the reissue fee shall be one hundred fifty dollars.

16 (2)(a) Any person whose license or privilege to drive a motor
17 vehicle on the public highways has been revoked, unless the revocation
18 was for a cause which has been removed, is not entitled to have the
19 license or privilege renewed or restored until: (i) After the
20 expiration of one year from the date the license or privilege to drive
21 was revoked; (ii) after the expiration of the applicable revocation
22 period provided by RCW 46.20.3101 or 46.61.5055; (iii) after the
23 expiration of two years for persons convicted of vehicular homicide; or
24 (iv) after the expiration of the applicable revocation period provided
25 by RCW 46.20.265.

26 (b)(i) After the expiration of the appropriate period, the person
27 may make application for a new license as provided by law together with
28 a reissue fee in the amount of seventy-five dollars.

29 (ii) If the revocation is the result of a violation of RCW
30 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one
31 hundred fifty dollars. If the revocation is the result of a nonfelony
32 violation of RCW 46.61.502 or 46.61.504, the department shall determine
33 the person's eligibility for licensing based upon the reports provided
34 by the alcoholism agency or probation department designated under RCW
35 46.61.5056 and shall deny reissuance of a license, permit, or privilege
36 to drive until enrollment and participation in an approved program has
37 been established and the person is otherwise qualified. If the
38 suspension is the result of a violation of RCW 46.61.502(6) or

1 46.61.504(6), the department shall determine the person's eligibility
2 for licensing based upon the reports provided by the alcohol or drug
3 dependency agency required under RCW 46.61.524 and shall deny
4 reinstatement until satisfactory progress in an approved program has
5 been established and the person is otherwise qualified. If the
6 revocation is the result of a violation of RCW 46.61.502 or 46.61.504,
7 and the person is required pursuant to RCW 46.20.720 to drive only a
8 motor vehicle equipped with a functioning ignition interlock or other
9 biological or technical device, the department shall determine the
10 person's eligibility for licensing based upon written verification by
11 a company doing business in the state that it has installed the
12 required device on a vehicle owned or operated by the person applying
13 for a new license. If, following issuance of a new license, the
14 department determines, based upon notification from the interlock
15 provider or otherwise, that an interlock required under RCW 46.20.720
16 is no longer functioning, the department shall suspend the person's
17 license or privilege to drive until the department has received written
18 verification from an interlock provider that a functioning interlock is
19 installed.

20 (c) Except for a revocation under RCW 46.20.265, the department
21 shall not then issue a new license unless it is satisfied after
22 investigation of the driving ability of the person that it will be safe
23 to grant the privilege of driving a motor vehicle on the public
24 highways, and until the person gives and thereafter maintains proof of
25 financial responsibility for the future as provided in chapter 46.29
26 RCW. For a revocation under RCW 46.20.265, the department shall not
27 issue a new license unless it is satisfied after investigation of the
28 driving ability of the person that it will be safe to grant that person
29 the privilege of driving a motor vehicle on the public highways.

30 (3)(a) Whenever the driver's license of any person is suspended
31 pursuant to Article IV of the nonresident violators compact or RCW
32 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue
33 to the person any new or renewal license until the person pays a
34 reissue fee of seventy-five dollars.

35 (b) If the suspension is the result of a violation of the laws of
36 this or any other state, province, or other jurisdiction involving (i)
37 the operation or physical control of a motor vehicle upon the public

1 highways while under the influence of intoxicating liquor or drugs, or
2 (ii) the refusal to submit to a chemical test of the driver's blood
3 alcohol content, the reissue fee shall be one hundred fifty dollars.

4 **Sec. 17.** RCW 46.61.524 and 2001 c 64 s 7 are each amended to read
5 as follows:

6 (1) A person convicted under RCW 46.61.502(6), 46.61.504(6),
7 46.61.520(1)(a), or 46.61.522(1)(b) shall, as a condition of community
8 custody imposed under RCW 9.94A.545 or community placement imposed
9 under RCW 9.94A.660, complete a diagnostic evaluation by an alcohol or
10 drug dependency agency approved by the department of social and health
11 services or a qualified probation department, as defined under RCW
12 46.61.516 that has been approved by the department of social and health
13 services. This report shall be forwarded to the department of
14 licensing. If the person is found to have an alcohol or drug problem
15 that requires treatment, the person shall complete treatment in a
16 program approved by the department of social and health services under
17 chapter 70.96A RCW. If the person is found not to have an alcohol or
18 drug problem that requires treatment, he or she shall complete a course
19 in an information school approved by the department of social and
20 health services under chapter 70.96A RCW. The convicted person shall
21 pay all costs for any evaluation, education, or treatment required by
22 this section, unless the person is eligible for an existing program
23 offered or approved by the department of social and health services.
24 Nothing in chapter 348, Laws of 1991 requires the addition of new
25 treatment or assessment facilities nor affects the department of social
26 and health services use of existing programs and facilities authorized
27 by law.

28 (2) As provided for under RCW 46.20.285, the department shall
29 revoke the license, permit to drive, or a nonresident privilege of a
30 person convicted of vehicular homicide under RCW 46.61.520 or vehicular
31 assault under RCW 46.61.522. The department shall determine the
32 eligibility of a person convicted of vehicular homicide under RCW
33 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to
34 receive a license based upon the report provided by the designated
35 alcoholism treatment facility or probation department, and shall deny
36 reinstatement until satisfactory progress in an approved program has
37 been established and the person is otherwise qualified.

1 **Sec. 18.** RCW 46.61.5152 and 1998 c 41 s 9 are each amended to read
2 as follows:

3 In addition to penalties that may be imposed under RCW 46.61.5055,
4 the court may require a person who is convicted of a nonfelony
5 violation of RCW 46.61.502 or 46.61.504 or who enters a deferred
6 prosecution program under RCW 10.05.020 based on a nonfelony violation
7 of RCW 46.61.502 or 46.61.504, to attend an educational program
8 focusing on the emotional, physical, and financial suffering of victims
9 who were injured by persons convicted of driving while under the
10 influence of intoxicants.

11 **Sec. 19.** RCW 46.61.5151 and 1995 c 332 s 15 are each amended to
12 read as follows:

13 A sentencing court may allow (~~(persons)~~) a person convicted of
14 (~~(violating)~~) a nonfelony violation of RCW 46.61.502 or 46.61.504 to
15 fulfill the terms of the sentence provided in RCW 46.61.5055 in
16 nonconsecutive or intermittent time periods. However, any mandatory
17 minimum sentence under RCW 46.61.5055 shall be served consecutively
18 unless suspended or deferred as otherwise provided by law.

19 NEW SECTION. **Sec. 20.** Section 5 of this act expires July 1, 2006.

20 NEW SECTION. **Sec. 21.** Section 6 of this act takes effect July 1,
21 2006.

--- END ---