

ESHB 2302 - S COMM AMD
By Committee on Judiciary

ADOPTED 02/29/2012

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

3 "Sec. 1. RCW 46.61.507 and 2010 c 214 s 1 are each amended to read
4 as follows:

5 (1) In every case where a person is arrested for a violation of RCW
6 46.61.502 or 46.61.504, the law enforcement officer shall make a clear
7 notation if a child under the age of sixteen was present in the
8 vehicle.

9 (2) A law enforcement officer shall promptly notify child
10 protective services whenever a child is present in a vehicle being
11 driven by his or her parent, guardian, (~~or~~) legal custodian, or
12 sibling or half-sibling and that person is being arrested for a drug or
13 alcohol-related driving offense. This section does not require law
14 enforcement to take custody of the child unless there is no other
15 responsible person, or an agency having the right to physical custody
16 of the child that can be contacted, or the officer has reasonable
17 grounds to believe the child should be taken into custody pursuant to
18 RCW 13.34.050 or 26.44.050.

19 (3) For purposes of this section, "child" means any person under
20 (~~thirteen~~) sixteen years of age.

21 **Sec. 2.** RCW 46.61.5055 and 2011 c 293 s 7 and 2011 c 96 s 35 are
22 each reenacted and amended to read as follows:

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

27 (a) In the case of a person whose alcohol concentration was less
28 than 0.15, or for whom for reasons other than the person's refusal to

1 take a test offered pursuant to RCW 46.20.308 there is no test result
2 indicating the person's alcohol concentration:

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

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

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

28 (i) By imprisonment for not less than two days nor more than three
29 hundred sixty-four days. Two consecutive days of the imprisonment may
30 not be suspended or deferred unless the court finds that the imposition
31 of this mandatory minimum sentence would impose a substantial risk to
32 the offender's physical or mental well-being. Whenever the mandatory
33 minimum sentence is suspended or deferred, the court shall state in
34 writing the reason for granting the suspension or deferral and the
35 facts upon which the suspension or deferral is based. In lieu of the
36 mandatory minimum term of imprisonment required under this subsection
37 (1)(b)(i), the court may order not less than thirty days of electronic
38 home monitoring. The offender shall pay the cost of electronic home

1 monitoring. The county or municipality in which the penalty is being
2 imposed shall determine the cost. The court may also require the
3 offender's electronic home monitoring device to include an alcohol
4 detection breathalyzer, and the court may restrict the amount of
5 alcohol the offender may consume during the time the offender is on
6 electronic home monitoring; and

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

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

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

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

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

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

25 (3) 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 two or three prior offenses within seven years shall be
28 punished as 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 ninety days nor more than
34 three hundred sixty-four days and one hundred twenty days of electronic
35 home monitoring. The offender shall pay for the cost of the electronic
36 monitoring. The county or municipality where the penalty is being
37 imposed shall determine the cost. The court may also require the
38 offender's electronic home monitoring device include an alcohol

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

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

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

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

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

1 (4) A person who is convicted of a violation of RCW 46.61.502 or
2 46.61.504 shall be punished under chapter 9.94A RCW if:

3 (a) The person has four or more prior offenses within ten years; or

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

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

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

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

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

12 (5)(a) The court shall require any person convicted of a violation
13 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply
14 for an ignition interlock driver's license from the department and to
15 have a functioning ignition interlock device installed on all motor
16 vehicles operated by the person.

17 (b) The installation of an ignition interlock device is not
18 necessary on vehicles owned, leased, or rented by a person's employer
19 and on those vehicles whose care and/or maintenance is the temporary
20 responsibility of the employer, and driven at the direction of a
21 person's employer as a requirement of employment during working hours.
22 The person must provide the department with a declaration pursuant to
23 RCW 9A.72.085 from his or her employer stating that the person's
24 employment requires the person to operate a vehicle owned by the
25 employer or other persons during working hours.

26 (c) An ignition interlock device imposed under this section shall
27 be calibrated to prevent a motor vehicle from being started when the
28 breath sample provided has an alcohol concentration of 0.025 or more.

29 (d) The court may waive the requirement that a person apply for an
30 ignition interlock driver's license if the court makes a specific
31 finding in writing that:

32 (i) The person lives out-of-state and the devices are not
33 reasonably available in the person's local area;

34 (ii) The person does not operate a vehicle; or

35 (iii) The person is not eligible to receive an ignition interlock
36 driver's license under RCW 46.20.385 because the person is not a
37 resident of Washington, is a habitual traffic offender, has already
38 applied for or is already in possession of an ignition interlock

1 driver's license, has never had a driver's license, has been certified
2 under chapter 74.20A RCW as noncompliant with a child support order, or
3 is subject to any other condition or circumstance that makes the person
4 ineligible to obtain an ignition interlock driver's license.

5 (e) If a court finds that a person is not eligible to receive an
6 ignition interlock driver's license under this section, the court is
7 not required to make any further subsequent inquiry or determination as
8 to the person's eligibility.

9 (f) If the court orders that a person refrain from consuming any
10 alcohol and requires the person to apply for an ignition interlock
11 driver's license, and the person states that he or she does not operate
12 a motor vehicle or the person is ineligible to obtain an ignition
13 interlock driver's license, the court shall order the person to submit
14 to alcohol monitoring through an alcohol detection breathalyzer device,
15 transdermal sensor device, or other technology designed to detect
16 alcohol in a person's system. Alcohol monitoring ordered under this
17 subsection must be for the period of the mandatory license suspension
18 or revocation. The person shall pay for the cost of the monitoring.
19 The county or municipality where the penalty is being imposed shall
20 determine the cost.

21 (g) The period of time for which ignition interlock use is required
22 will be as follows:

23 (i) For a person who has not previously been restricted under this
24 section, a period of one year;

25 (ii) For a person who has previously been restricted under (g)(i)
26 of this subsection, a period of five years;

27 (iii) For a person who has previously been restricted under (g)(ii)
28 of this subsection, a period of ten years.

29 (h) Beginning with incidents occurring on or after September 1,
30 2011, when calculating the period of time for the restriction under RCW
31 46.20.720(3), the department must also give the person a day-for-day
32 credit for the time period, beginning from the date of the incident,
33 during which the person kept an ignition interlock device installed on
34 all vehicles the person operates. For the purposes of this subsection
35 (5)(h), the term "all vehicles" does not include vehicles that would be
36 subject to the employer exception under RCW 46.20.720(3).

37 (6) If a person who is convicted of a violation of RCW 46.61.502 or

1 46.61.504 committed the offense while a passenger under the age of
2 sixteen was in the vehicle, the court shall:

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

8 ~~(b) In any case in which the installation and use of such a device~~
9 ~~is otherwise mandatory,)) Order the use of ((such a)) an ignition~~

10 interlock or other device for an additional ((sixty days)) six months;
11 (b) In any case in which the person has no prior offenses within
12 seven years, and except as provided in RCW 46.61.502(6) or
13 46.61.504(6), order a penalty by a fine of not less than one thousand
14 dollars and not more than five thousand dollars. One thousand dollars
15 of the fine may not be suspended or deferred unless the court finds the
16 offender to be indigent;

17 (c) In any case in which the person has one prior offense within
18 seven years, and except as provided in RCW 46.61.502(6) or
19 46.61.504(6), order a penalty by a fine of not less than two thousand
20 dollars and not more than five thousand dollars. One thousand dollars
21 of the fine may not be suspended or deferred unless the court finds the
22 offender to be indigent;

23 (d) In any case in which the person has two or three prior offenses
24 within seven years, and except as provided in RCW 46.61.502(6) or
25 46.61.504(6), order a penalty by a fine of not less than three thousand
26 dollars and not more than ten thousand dollars. One thousand dollars
27 of the fine may not be suspended or deferred unless the court finds the
28 offender to be indigent.

29 (7) In exercising its discretion in setting penalties within the
30 limits allowed by this section, the court shall particularly consider
31 the following:

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

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

36 (8) An offender punishable under this section is subject to the
37 alcohol assessment and treatment provisions of RCW 46.61.5056.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (10) After expiration of any period of suspension, revocation, or

1 denial of the offender's license, permit, or privilege to drive
2 required by this section, the department shall place the offender's
3 driving privilege in probationary status pursuant to RCW 46.20.355.

4 (11)(a) In addition to any nonsuspendable and nondeferrable jail
5 sentence required by this section, whenever the court imposes up to
6 three hundred sixty-four days in jail, the court shall also suspend but
7 shall not defer a period of confinement for a period not exceeding five
8 years. The court shall impose conditions of probation that include:

9 (i) Not driving a motor vehicle within this state without a valid
10 license to drive and proof of financial responsibility for the future;

11 (ii) not driving a motor vehicle within this state while having an
12 alcohol concentration of 0.08 or more within two hours after driving;

13 and (iii) not refusing to submit to a test of his or her breath or
14 blood to determine alcohol concentration upon request of a law
15 enforcement officer who has reasonable grounds to believe the person
16 was driving or was in actual physical control of a motor vehicle within
17 this state while under the influence of intoxicating liquor. The court
18 may impose conditions of probation that include nonrepetition,
19 installation of an ignition interlock device on the probationer's motor
20 vehicle, alcohol or drug treatment, supervised probation, or other
21 conditions that may be appropriate. The sentence may be imposed in
22 whole or in part upon violation of a condition of probation during the
23 suspension period.

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

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

1 (12) A court may waive the electronic home monitoring requirements
2 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 four 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-four days.

21 (13) An offender serving a sentence under this section, whether or
22 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(3).

25 (14) For purposes of this section and RCW 46.61.502 and 46.61.504:

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

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

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

31 (iii) A conviction for a violation of RCW 46.61.520 committed while
32 under the influence of intoxicating liquor or any drug, or a conviction
33 for a violation of RCW 46.61.520 committed in a reckless manner or with
34 the disregard for the safety of others if the conviction is the result
35 of a charge that was originally filed as a violation of RCW 46.61.520
36 committed while under the influence of intoxicating liquor or any drug;

37 (iv) A conviction for a violation of RCW 46.61.522 committed while
38 under the influence of intoxicating liquor or any drug, or a conviction

1 for a violation of RCW 46.61.522 committed in a reckless manner or with
2 the disregard for the safety of others if the conviction is the result
3 of a charge that was originally filed as a violation of RCW 46.61.522
4 committed while under the influence of intoxicating liquor or any drug;

5 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
6 9A.36.050 or an equivalent local ordinance, if the conviction is the
7 result of a charge that was originally filed as a violation of RCW
8 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
9 46.61.520 or 46.61.522;

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

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

16 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
17 prosecution for a violation of RCW 46.61.5249, or an equivalent local
18 ordinance, if the charge under which the deferred prosecution was
19 granted was originally filed as a violation of RCW 46.61.502 or
20 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
21 46.61.522;

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

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

29 (c) "Within ten years" means that the arrest for a prior offense
30 occurred within ten years before or after the arrest for the current
31 offense.

32 **Sec. 3.** RCW 9.94A.533 and 2011 c 293 s 9 are each amended to read
33 as follows:

34 (1) The provisions of this section apply to the standard sentence
35 ranges determined by RCW 9.94A.510 or 9.94A.517.

36 (2) For persons convicted of the anticipatory offenses of criminal
37 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the

1 standard sentence range is determined by locating the sentencing grid
2 sentence range defined by the appropriate offender score and the
3 seriousness level of the completed crime, and multiplying the range by
4 seventy-five percent.

5 (3) The following additional times shall be added to the standard
6 sentence range for felony crimes committed after July 23, 1995, if the
7 offender or an accomplice was armed with a firearm as defined in RCW
8 9.41.010 and the offender is being sentenced for one of the crimes
9 listed in this subsection as eligible for any firearm enhancements
10 based on the classification of the completed felony crime. If the
11 offender is being sentenced for more than one offense, the firearm
12 enhancement or enhancements must be added to the total period of
13 confinement for all offenses, regardless of which underlying offense is
14 subject to a firearm enhancement. If the offender or an accomplice was
15 armed with a firearm as defined in RCW 9.41.010 and the offender is
16 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
17 commit one of the crimes listed in this subsection as eligible for any
18 firearm enhancements, the following additional times shall be added to
19 the standard sentence range determined under subsection (2) of this
20 section based on the felony crime of conviction as classified under RCW
21 9A.28.020:

22 (a) Five years for any felony defined under any law as a class A
23 felony or with a statutory maximum sentence of at least twenty years,
24 or both, and not covered under (f) of this subsection;

25 (b) Three years for any felony defined under any law as a class B
26 felony or with a statutory maximum sentence of ten years, or both, and
27 not covered under (f) of this subsection;

28 (c) Eighteen months for any felony defined under any law as a class
29 C felony or with a statutory maximum sentence of five years, or both,
30 and not covered under (f) of this subsection;

31 (d) If the offender is being sentenced for any firearm enhancements
32 under (a), (b), and/or (c) of this subsection and the offender has
33 previously been sentenced for any deadly weapon enhancements after July
34 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
35 (4)(a), (b), and/or (c) of this section, or both, all firearm
36 enhancements under this subsection shall be twice the amount of the
37 enhancement listed;

1 (e) Notwithstanding any other provision of law, all firearm
2 enhancements under this section are mandatory, shall be served in total
3 confinement, and shall run consecutively to all other sentencing
4 provisions, including other firearm or deadly weapon enhancements, for
5 all offenses sentenced under this chapter. However, whether or not a
6 mandatory minimum term has expired, an offender serving a sentence
7 under this subsection may be granted an extraordinary medical placement
8 when authorized under RCW 9.94A.728(3);

9 (f) The firearm enhancements in this section shall apply to all
10 felony crimes except the following: Possession of a machine gun,
11 possessing a stolen firearm, drive-by shooting, theft of a firearm,
12 unlawful possession of a firearm in the first and second degree, and
13 use of a machine gun in a felony;

14 (g) If the standard sentence range under this section exceeds the
15 statutory maximum sentence for the offense, the statutory maximum
16 sentence shall be the presumptive sentence unless the offender is a
17 persistent offender. If the addition of a firearm enhancement
18 increases the sentence so that it would exceed the statutory maximum
19 for the offense, the portion of the sentence representing the
20 enhancement may not be reduced.

21 (4) The following additional times shall be added to the standard
22 sentence range for felony crimes committed after July 23, 1995, if the
23 offender or an accomplice was armed with a deadly weapon other than a
24 firearm as defined in RCW 9.41.010 and the offender is being sentenced
25 for one of the crimes listed in this subsection as eligible for any
26 deadly weapon enhancements based on the classification of the completed
27 felony crime. If the offender is being sentenced for more than one
28 offense, the deadly weapon enhancement or enhancements must be added to
29 the total period of confinement for all offenses, regardless of which
30 underlying offense is subject to a deadly weapon enhancement. If the
31 offender or an accomplice was armed with a deadly weapon other than a
32 firearm as defined in RCW 9.41.010 and the offender is being sentenced
33 for an anticipatory offense under chapter 9A.28 RCW to commit one of
34 the crimes listed in this subsection as eligible for any deadly weapon
35 enhancements, the following additional times shall be added to the
36 standard sentence range determined under subsection (2) of this section
37 based on the felony crime of conviction as classified under RCW
38 9A.28.020:

1 (a) Two years for any felony defined under any law as a class A
2 felony or with a statutory maximum sentence of at least twenty years,
3 or both, and not covered under (f) of this subsection;

4 (b) One year for any felony defined under any law as a class B
5 felony or with a statutory maximum sentence of ten years, or both, and
6 not covered under (f) of this subsection;

7 (c) Six months for any felony defined under any law as a class C
8 felony or with a statutory maximum sentence of five years, or both, and
9 not covered under (f) of this subsection;

10 (d) If the offender is being sentenced under (a), (b), and/or (c)
11 of this subsection for any deadly weapon enhancements and the offender
12 has previously been sentenced for any deadly weapon enhancements after
13 July 23, 1995, under (a), (b), and/or (c) of this subsection or
14 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
15 weapon enhancements under this subsection shall be twice the amount of
16 the enhancement listed;

17 (e) Notwithstanding any other provision of law, all deadly weapon
18 enhancements under this section are mandatory, shall be served in total
19 confinement, and shall run consecutively to all other sentencing
20 provisions, including other firearm or deadly weapon enhancements, for
21 all offenses sentenced under this chapter. However, whether or not a
22 mandatory minimum term has expired, an offender serving a sentence
23 under this subsection may be granted an extraordinary medical placement
24 when authorized under RCW 9.94A.728(3);

25 (f) The deadly weapon enhancements in this section shall apply to
26 all felony crimes except the following: Possession of a machine gun,
27 possessing a stolen firearm, drive-by shooting, theft of a firearm,
28 unlawful possession of a firearm in the first and second degree, and
29 use of a machine gun in a felony;

30 (g) If the standard sentence range under this section exceeds the
31 statutory maximum sentence for the offense, the statutory maximum
32 sentence shall be the presumptive sentence unless the offender is a
33 persistent offender. If the addition of a deadly weapon enhancement
34 increases the sentence so that it would exceed the statutory maximum
35 for the offense, the portion of the sentence representing the
36 enhancement may not be reduced.

37 (5) The following additional times shall be added to the standard
38 sentence range if the offender or an accomplice committed the offense

1 while in a county jail or state correctional facility and the offender
2 is being sentenced for one of the crimes listed in this subsection. If
3 the offender or an accomplice committed one of the crimes listed in
4 this subsection while in a county jail or state correctional facility,
5 and the offender is being sentenced for an anticipatory offense under
6 chapter 9A.28 RCW to commit one of the crimes listed in this
7 subsection, the following additional times shall be added to the
8 standard sentence range determined under subsection (2) of this
9 section:

10 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
11 (a) or (b) or 69.50.410;

12 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
13 (c), (d), or (e);

14 (c) Twelve months for offenses committed under RCW 69.50.4013.

15 For the purposes of this subsection, all of the real property of a
16 state correctional facility or county jail shall be deemed to be part
17 of that facility or county jail.

18 (6) An additional twenty-four months shall be added to the standard
19 sentence range for any ranked offense involving a violation of chapter
20 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
21 9.94A.827. All enhancements under this subsection shall run
22 consecutively to all other sentencing provisions, for all offenses
23 sentenced under this chapter.

24 (7) An additional two years shall be added to the standard sentence
25 range for vehicular homicide committed while under the influence of
26 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
27 prior offense as defined in RCW 46.61.5055. All enhancements under
28 this subsection shall be mandatory, shall be served in total
29 confinement, and shall run consecutively to all other sentencing
30 provisions.

31 (8)(a) The following additional times shall be added to the
32 standard sentence range for felony crimes committed on or after July 1,
33 2006, if the offense was committed with sexual motivation, as that term
34 is defined in RCW 9.94A.030. If the offender is being sentenced for
35 more than one offense, the sexual motivation enhancement must be added
36 to the total period of total confinement for all offenses, regardless
37 of which underlying offense is subject to a sexual motivation
38 enhancement. If the offender committed the offense with sexual

1 motivation and the offender is being sentenced for an anticipatory
2 offense under chapter 9A.28 RCW, the following additional times shall
3 be added to the standard sentence range determined under subsection (2)
4 of this section based on the felony crime of conviction as classified
5 under RCW 9A.28.020:

6 (i) Two years for any felony defined under the law as a class A
7 felony or with a statutory maximum sentence of at least twenty years,
8 or both;

9 (ii) Eighteen months for any felony defined under any law as a
10 class B felony or with a statutory maximum sentence of ten years, or
11 both;

12 (iii) One year for any felony defined under any law as a class C
13 felony or with a statutory maximum sentence of five years, or both;

14 (iv) If the offender is being sentenced for any sexual motivation
15 enhancements under (i), (ii), and/or (iii) of this subsection and the
16 offender has previously been sentenced for any sexual motivation
17 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
18 this subsection, all sexual motivation enhancements under this
19 subsection shall be twice the amount of the enhancement listed;

20 (b) Notwithstanding any other provision of law, all sexual
21 motivation enhancements under this subsection are mandatory, shall be
22 served in total confinement, and shall run consecutively to all other
23 sentencing provisions, including other sexual motivation enhancements,
24 for all offenses sentenced under this chapter. However, whether or not
25 a mandatory minimum term has expired, an offender serving a sentence
26 under this subsection may be granted an extraordinary medical placement
27 when authorized under RCW 9.94A.728(3);

28 (c) The sexual motivation enhancements in this subsection apply to
29 all felony crimes;

30 (d) If the standard sentence range under this subsection exceeds
31 the statutory maximum sentence for the offense, the statutory maximum
32 sentence shall be the presumptive sentence unless the offender is a
33 persistent offender. If the addition of a sexual motivation
34 enhancement increases the sentence so that it would exceed the
35 statutory maximum for the offense, the portion of the sentence
36 representing the enhancement may not be reduced;

37 (e) The portion of the total confinement sentence which the

1 offender must serve under this subsection shall be calculated before
2 any earned early release time is credited to the offender;

3 (f) Nothing in this subsection prevents a sentencing court from
4 imposing a sentence outside the standard sentence range pursuant to RCW
5 9.94A.535.

6 (9) An additional one-year enhancement shall be added to the
7 standard sentence range for the felony crimes of RCW 9A.44.073,
8 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
9 or after July 22, 2007, if the offender engaged, agreed, or offered to
10 engage the victim in the sexual conduct in return for a fee. If the
11 offender is being sentenced for more than one offense, the one-year
12 enhancement must be added to the total period of total confinement for
13 all offenses, regardless of which underlying offense is subject to the
14 enhancement. If the offender is being sentenced for an anticipatory
15 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
16 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
17 solicited another, or conspired to engage, agree, or offer to engage
18 the victim in the sexual conduct in return for a fee, an additional
19 one-year enhancement shall be added to the standard sentence range
20 determined under subsection (2) of this section. For purposes of this
21 subsection, "sexual conduct" means sexual intercourse or sexual
22 contact, both as defined in chapter 9A.44 RCW.

23 (10)(a) For a person age eighteen or older convicted of any
24 criminal street gang-related felony offense for which the person
25 compensated, threatened, or solicited a minor in order to involve the
26 minor in the commission of the felony offense, the standard sentence
27 range is determined by locating the sentencing grid sentence range
28 defined by the appropriate offender score and the seriousness level of
29 the completed crime, and multiplying the range by one hundred twenty-
30 five percent. If the standard sentence range under this subsection
31 exceeds the statutory maximum sentence for the offense, the statutory
32 maximum sentence is the presumptive sentence unless the offender is a
33 persistent offender.

34 (b) This subsection does not apply to any criminal street gang-
35 related felony offense for which involving a minor in the commission of
36 the felony offense is an element of the offense.

37 (c) The increased penalty specified in (a) of this subsection is

1 unavailable in the event that the prosecution gives notice that it will
2 seek an exceptional sentence based on an aggravating factor under RCW
3 9.94A.535.

4 (11) An additional twelve months and one day shall be added to the
5 standard sentence range for a conviction of attempting to elude a
6 police vehicle as defined by RCW 46.61.024, if the conviction included
7 a finding by special allegation of endangering one or more persons
8 under RCW 9.94A.834.

9 (12) An additional twelve months shall be added to the standard
10 sentence range for an offense that is also a violation of RCW
11 9.94A.831.

12 (13) An additional twelve months shall be added to the standard
13 sentence range for vehicular homicide committed while under the
14 influence of intoxicating liquor or any drug as defined by RCW
15 46.61.520 or for vehicular assault committed while under the influence
16 of intoxicating liquor or any drug as defined by RCW 46.61.522, or for
17 any felony driving under the influence (RCW 46.61.502(6)) or felony
18 physical control under the influence (RCW 46.61.504(6)) for each child
19 passenger under the age of sixteen who is an occupant in the
20 defendant's vehicle. These enhancements shall be mandatory, shall be
21 served in total confinement, and shall run consecutively to all other
22 sentencing provisions. If the addition of a minor child enhancement
23 increases the sentence so that it would exceed the statutory maximum
24 for the offense, the portion of the sentence representing the
25 enhancement may not be reduced."

ESHB 2302 - S COMM AMD
By Committee on Judiciary

ADOPTED 02/29/2012

26 On page 1, line 2 of the title, after "vehicle;" strike the
27 remainder of the title and insert "amending RCW 46.61.507 and
28 9.94A.533; reenacting and amending RCW 46.61.5055; and prescribing
29 penalties."

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