

ESHB 1493 - S COMM AMD

By Committee on Law & Justice

OUT OF ORDER 02/29/2024

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A
4 RCW to read as follows:

5 (1) An offender is eligible for the special drug offender
6 sentencing alternative for driving under the influence if the
7 offender:

8 (a) Does not have a prior conviction under RCW 46.61.520,
9 46.61.522, 46.61.502(6), or 46.61.504(6); and either

10 (b) Is convicted of felony driving while under the influence of
11 intoxicating liquor, cannabis, or any drug under RCW 46.61.502(6)(a);
12 or

13 (c) Is convicted of felony physical control of a vehicle while
14 under the influence of intoxicating liquor or any drug under RCW
15 46.61.504(6)(a).

16 (2) A motion for a special drug offender sentencing alternative
17 for driving under the influence may be made by the court, the
18 offender, or the state if the midpoint of the standard sentence range
19 is 26 months or less. If an offender has a higher midpoint, a motion
20 for a special drug offender sentencing alternative for driving under
21 the influence can only be made by joint agreement of the state and
22 offender.

23 (3) If the sentencing court determines that the offender is
24 eligible for an alternative sentence under this section and that the
25 alternative sentence is appropriate, the court shall waive imposition
26 of a sentence within the standard sentence range and:

27 (a) Impose a sentence equivalent to a prison-based alternative
28 under RCW 9.94A.662, and subject to the same requirements and
29 restrictions as are established in that section, if the low end of
30 the standard sentence range is greater than 24 months; or

1 (b) Impose a sentence consisting of a residential treatment-based
2 alternative consistent with this section if the low end of the
3 standard sentence range is 24 months or less.

4 (4) (a) To assist the court in making its determination, the court
5 may order the department to complete either a risk assessment report
6 or a substance use disorder screening report as provided in RCW
7 9.94A.500, or both.

8 (b) If the court is considering imposing a sentence under the
9 residential substance use disorder treatment-based alternative, the
10 court may order an examination of the offender by the department. The
11 examination shall, at a minimum, address the following issues:

12 (i) Whether the offender suffers from a substance use disorder;

13 (ii) Whether effective treatment for the offender's substance use
14 disorder is available from a provider that has been licensed or
15 certified by the department of health; and

16 (iii) Whether the offender and the community will benefit from
17 the use of the alternative.

18 (5) An offender who is eligible for a residential treatment-based
19 alternative under this section shall be sentenced as follows:

20 (a) If necessary, an indeterminate term of confinement of no more
21 than 30 days in a facility operated, licensed, or utilized under
22 contract, by the county in order to facilitate direct transfer to a
23 residential substance use disorder treatment facility;

24 (b) Treatment in a residential substance use disorder treatment
25 program licensed or certified by the department of health for a
26 period set by the court up to six months with treatment completion
27 and continued care delivered in accordance with rules established by
28 the department of health. In establishing rules pursuant to this
29 subsection, the department of health must consider criteria
30 established by the American society of addiction medicine;

31 (c) Twenty-four months of partial confinement to consist of 12
32 months work release followed by 12 months of home detention with
33 electronic monitoring; and

34 (d) Twelve months of community custody.

35 (6) (a) During any period of partial confinement or community
36 custody, the court shall impose treatment and other conditions as
37 provided in RCW 9.94A.703 or as the court considers appropriate.

38 (b) The department may impose conditions and sanctions as
39 authorized in RCW 9.94A.704 and 9.94A.737.

1 (c) The department shall, within available resources, make
2 substance use disorder assessment and treatment services available to
3 the offender.

4 (d) An offender sentenced to community custody under subsection
5 (3)(a) of this section as part of the prison-based alternative or
6 under subsection (3)(b) of this section as part of the residential
7 treatment-based alternative may be required to pay \$30 per month
8 while on community custody to offset the cost of monitoring for
9 alcohol or controlled substances.

10 (7) (a) If the court imposes a sentence under subsection (3)(b) of
11 this section, the treatment provider must send the treatment plan to
12 the court within 30 days of the offender's arrival to the residential
13 substance use disorder treatment program.

14 (b) Upon receipt of the plan, the court shall schedule a progress
15 hearing during the period of treatment and schedule a treatment
16 termination hearing for three months before the expiration of the
17 term of community custody.

18 (c) Before the progress hearing and treatment termination
19 hearing, the treatment provider and the department shall submit
20 written reports to the court and parties regarding the offender's
21 compliance with treatment and monitoring requirements and
22 recommendations regarding termination from treatment.

23 (8) At a progress hearing or treatment termination hearing, the
24 court may:

25 (a) Authorize the department to terminate the offender's
26 community custody status on the expiration date determined under
27 subsection (7) of this section;

28 (b) Continue the hearing to a date before the expiration date of
29 community custody, with or without modifying the conditions of
30 partial confinement or community custody; or

31 (c) Impose a term of total confinement equal to one-half the
32 midpoint of the standard sentence range, followed by a term of
33 community custody under RCW 9.94A.701.

34 (9) (a) The court may bring any offender sentenced under
35 subsection (3) (a) or (b) of this section back into court at any time
36 on its own initiative to evaluate the offender's progress in
37 treatment or to determine if any violations of the conditions of the
38 sentence have occurred.

39 (b) If the offender is brought back to court, the court may
40 modify the conditions of partial confinement or community custody or

1 order the offender to serve a term of total confinement within the
2 standard sentence range of the offender's current offense at any time
3 during the period of partial confinement or community custody if the
4 offender violates the conditions or requirements of the sentence or
5 if the offender is failing to make satisfactory progress in
6 treatment.

7 (c) An offender ordered to serve a term of total confinement
8 under (b) of this subsection shall receive credit for any time
9 previously served in total confinement or residential treatment under
10 this section and shall receive 50 percent credit for any time
11 previously served in partial confinement or community custody under
12 this section.

13 (10) In serving a term of community custody imposed upon failure
14 to complete, or administrative termination from, the special drug
15 offender sentencing alternative program for driving under the
16 influence under this section, the offender shall receive no credit
17 for time served in community custody prior to termination of the
18 offender's participation in the program.

19 (11) An offender sentenced under this section shall be subject to
20 all rules relating to earned release time with respect to any period
21 served in total or partial confinement.

22 (12) Costs of examinations and preparing the recommended service
23 delivery plans under a special drug offender sentencing alternative
24 for driving under the influence may be paid, at the option of the
25 county, from funds provided to the county from the criminal justice
26 treatment account under RCW 71.24.580.

27 **Sec. 2.** RCW 9.94A.030 and 2022 c 231 s 11 are each amended to
28 read as follows:

29 Unless the context clearly requires otherwise, the definitions in
30 this section apply throughout this chapter.

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

33 (2) "Collect," or any derivative thereof, "collect and remit," or
34 "collect and deliver," when used with reference to the department,
35 means that the department, either directly or through a collection
36 agreement authorized by RCW 9.94A.760, is responsible for monitoring
37 and enforcing the offender's sentence with regard to the legal
38 financial obligation, receiving payment thereof from the offender,
39 and, consistent with current law, delivering daily the entire payment

1 to the superior court clerk without depositing it in a departmental
2 account.

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

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

8 (5) "Community custody" means that portion of an offender's
9 sentence of confinement in lieu of earned release time or imposed as
10 part of a sentence under this chapter and served in the community
11 subject to controls placed on the offender's movement and activities
12 by the department.

13 (6) "Community protection zone" means the area within 880 feet of
14 the facilities and grounds of a public or private school.

15 (7) "Community restitution" means compulsory service, without
16 compensation, performed for the benefit of the community by the
17 offender.

18 (8) "Confinement" means total or partial confinement.

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

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

30 (11) "Criminal history" means the list of a defendant's prior
31 convictions and juvenile adjudications, whether in this state, in
32 federal court, or elsewhere, and any issued certificates of
33 restoration of opportunity pursuant to RCW 9.97.020.

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

38 (b) A conviction may be removed from a defendant's criminal
39 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,
40 9.95.240, or a similar out-of-state statute, or if the conviction has

1 been vacated pursuant to a governor's pardon. However, when a
2 defendant is charged with a recidivist offense, "criminal history"
3 includes a vacated prior conviction for the sole purpose of
4 establishing that such vacated prior conviction constitutes an
5 element of the present recidivist offense as provided in RCW
6 9.94A.640(4)(b) and 9.96.060(7)(c).

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

12 (12) "Criminal street gang" means any ongoing organization,
13 association, or group of three or more persons, whether formal or
14 informal, having a common name or common identifying sign or symbol,
15 having as one of its primary activities the commission of criminal
16 acts, and whose members or associates individually or collectively
17 engage in or have engaged in a pattern of criminal street gang
18 activity. This definition does not apply to employees engaged in
19 concerted activities for their mutual aid and protection, or to the
20 activities of labor and bona fide nonprofit organizations or their
21 members or agents.

22 (13) "Criminal street gang associate or member" means any person
23 who actively participates in any criminal street gang and who
24 intentionally promotes, furthers, or assists in any criminal act by
25 the criminal street gang.

26 (14) "Criminal street gang-related offense" means any felony or
27 misdemeanor offense, whether in this state or elsewhere, that is
28 committed for the benefit of, at the direction of, or in association
29 with any criminal street gang, or is committed with the intent to
30 promote, further, or assist in any criminal conduct by the gang, or
31 is committed for one or more of the following reasons:

32 (a) To gain admission, prestige, or promotion within the gang;

33 (b) To increase or maintain the gang's size, membership,
34 prestige, dominance, or control in any geographical area;

35 (c) To exact revenge or retribution for the gang or any member of
36 the gang;

37 (d) To obstruct justice, or intimidate or eliminate any witness
38 against the gang or any member of the gang;

1 (e) To directly or indirectly cause any benefit, aggrandizement,
2 gain, profit, or other advantage for the gang, its reputation,
3 influence, or membership; or

4 (f) To provide the gang with any advantage in, or any control or
5 dominance over any criminal market sector, including, but not limited
6 to, manufacturing, delivering, or selling any controlled substance
7 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
8 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
9 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
10 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
11 9.68 RCW).

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

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

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

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

30 (19) "Disposable earnings" means that part of the earnings of an
31 offender remaining after the deduction from those earnings of any
32 amount required by law to be withheld. For the purposes of this
33 definition, "earnings" means compensation paid or payable for
34 personal services, whether denominated as wages, salary, commission,
35 bonuses, or otherwise, and, notwithstanding any other provision of
36 law making the payments exempt from garnishment, attachment, or other
37 process to satisfy a court-ordered legal financial obligation,
38 specifically includes periodic payments pursuant to pension or
39 retirement programs, or insurance policies of any type, but does not

1 include payments made under Title 50 RCW, except as provided in RCW
2 50.40.020 and 50.40.050, or Title 74 RCW.

3 (20) (a) "Domestic violence" has the same meaning as defined in
4 RCW 10.99.020.

5 (b) "Domestic violence" also means: (i) Physical harm, bodily
6 injury, assault, or the infliction of fear of imminent physical harm,
7 bodily injury, or assault, sexual assault, or stalking, as defined in
8 RCW 9A.46.110, of one intimate partner by another intimate partner as
9 defined in RCW 10.99.020; or (ii) physical harm, bodily injury,
10 assault, or the infliction of fear of imminent physical harm, bodily
11 injury, or assault, sexual assault, or stalking, as defined in RCW
12 9A.46.110, of one family or household member by another family or
13 household member as defined in RCW 10.99.020.

14 (21) "Drug offender sentencing alternative" is a sentencing
15 option available to persons convicted of a felony offense who are
16 eligible for the option under RCW 9.94A.660.

17 (22) "Drug offender sentencing alternative for driving under the
18 influence" is a sentencing option available to persons convicted of
19 felony driving while under the influence of intoxicating liquor or
20 any drug under RCW 46.61.502(6), or felony physical control of a
21 vehicle while under the influence of intoxicating liquor or any drug
22 under RCW 46.61.504(6) who are eligible under section 1 of this act.

23 (23) "Drug offense" means:

24 (a) Any felony violation of chapter 69.50 RCW except possession
25 of a controlled substance (RCW 69.50.4013) or forged prescription for
26 a controlled substance (RCW 69.50.403);

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

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

33 ~~((23))~~ (24) "Earned release" means earned release from
34 confinement as provided in RCW 9.94A.728.

35 ~~((24))~~ (25) "Electronic monitoring" means tracking the location
36 of an individual through the use of technology that is capable of
37 determining or identifying the monitored individual's presence or
38 absence at a particular location including, but not limited to:

39 (a) Radio frequency signaling technology, which detects if the
40 monitored individual is or is not at an approved location and

1 notifies the monitoring agency of the time that the monitored
2 individual either leaves the approved location or tampers with or
3 removes the monitoring device; or

4 (b) Active or passive global positioning system technology, which
5 detects the location of the monitored individual and notifies the
6 monitoring agency of the monitored individual's location and which
7 may also include electronic monitoring with victim notification
8 technology that is capable of notifying a victim or protected party,
9 either directly or through a monitoring agency, if the monitored
10 individual enters within the restricted distance of a victim or
11 protected party, or within the restricted distance of a designated
12 location.

13 ~~((25))~~ (26) "Escape" means:

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

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

23 ~~((26))~~ (27) "Felony traffic offense" means:

24 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
25 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
26 run injury-accident (RCW 46.52.020(4)), felony driving while under
27 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),
28 or felony physical control of a vehicle while under the influence of
29 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

33 ~~((27))~~ (28) "Fine" means a specific sum of money ordered by the
34 sentencing court to be paid by the offender to the court over a
35 specific period of time.

36 ~~((28))~~ (29) "First-time offender" means any person who has no
37 prior convictions for a felony and is eligible for the first-time
38 offender waiver under RCW 9.94A.650.

39 ~~((29))~~ (30) "Home detention" is a subset of electronic
40 monitoring and means a program of partial confinement available to

1 offenders wherein the offender is confined in a private residence 24
2 hours a day, unless an absence from the residence is approved,
3 authorized, or otherwise permitted in the order by the court or other
4 supervising agency that ordered home detention, and the offender is
5 subject to electronic monitoring.

6 ~~((30))~~ (31) "Homelessness" or "homeless" means a condition
7 where an individual lacks a fixed, regular, and adequate nighttime
8 residence and who has a primary nighttime residence that is:

9 (a) A supervised, publicly or privately operated shelter designed
10 to provide temporary living accommodations;

11 (b) A public or private place not designed for, or ordinarily
12 used as, a regular sleeping accommodation for human beings; or

13 (c) A private residence where the individual stays as a transient
14 invitee.

15 ~~((31))~~ (32) "Legal financial obligation" means a sum of money
16 that is ordered by a superior court of the state of Washington for
17 legal financial obligations which may include restitution to the
18 victim, statutorily imposed crime victims' compensation fees as
19 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
20 drug funds, court-appointed attorneys' fees, and costs of defense,
21 fines, and any other financial obligation that is assessed to the
22 offender as a result of a felony conviction. Upon conviction for
23 vehicular assault while under the influence of intoxicating liquor or
24 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
25 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
26 legal financial obligations may also include payment to a public
27 agency of the expense of an emergency response to the incident
28 resulting in the conviction, subject to RCW 38.52.430.

29 ~~((32))~~ (33) "Most serious offense" means any of the following
30 felonies or a felony attempt to commit any of the following felonies:

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

34 (b) Assault in the second degree;

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

36 (d) Child molestation in the second degree;

37 (e) Controlled substance homicide;

38 (f) Extortion in the first degree;

39 (g) Incest when committed against a child under age 14;

40 (h) Indecent liberties;

- 1 (i) Kidnapping in the second degree;
- 2 (j) Leading organized crime;
- 3 (k) Manslaughter in the first degree;
- 4 (l) Manslaughter in the second degree;
- 5 (m) Promoting prostitution in the first degree;
- 6 (n) Rape in the third degree;
- 7 (o) Sexual exploitation;
- 8 (p) Vehicular assault, when caused by the operation or driving of
- 9 a vehicle by a person while under the influence of intoxicating
- 10 liquor or any drug or by the operation or driving of a vehicle in a
- 11 reckless manner;
- 12 (q) Vehicular homicide, when proximately caused by the driving of
- 13 any vehicle by any person while under the influence of intoxicating
- 14 liquor or any drug as defined by RCW 46.61.502, or by the operation
- 15 of any vehicle in a reckless manner;
- 16 (r) Any other class B felony offense with a finding of sexual
- 17 motivation;
- 18 (s) Any other felony with a deadly weapon verdict under RCW
- 19 9.94A.825;
- 20 (t) Any felony offense in effect at any time prior to December 2,
- 21 1993, that is comparable to a most serious offense under this
- 22 subsection, or any federal or out-of-state conviction for an offense
- 23 that under the laws of this state would be a felony classified as a
- 24 most serious offense under this subsection;
- 25 (u) (i) A prior conviction for indecent liberties under RCW
- 26 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
- 27 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
- 28 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW
- 29 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
- 30 until July 1, 1988;
- 31 (ii) A prior conviction for indecent liberties under RCW
- 32 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
- 33 if: (A) The crime was committed against a child under the age of 14;
- 34 or (B) the relationship between the victim and perpetrator is
- 35 included in the definition of indecent liberties under RCW
- 36 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
- 37 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
- 38 1993, through July 27, 1997;
- 39 (v) Any out-of-state conviction for a felony offense with a
- 40 finding of sexual motivation if the minimum sentence imposed was 10

1 years or more; provided that the out-of-state felony offense must be
2 comparable to a felony offense under this title and Title 9A RCW and
3 the out-of-state definition of sexual motivation must be comparable
4 to the definition of sexual motivation contained in this section.

5 ~~((33))~~ (34) "Nonviolent offense" means an offense which is not
6 a violent offense.

7 ~~((34))~~ (35) "Offender" means a person who has committed a
8 felony established by state law and is 18 years of age or older or is
9 less than 18 years of age but whose case is under superior court
10 jurisdiction under RCW 13.04.030 or has been transferred by the
11 appropriate juvenile court to a criminal court pursuant to RCW
12 13.40.110. In addition, for the purpose of community custody
13 requirements under this chapter, "offender" also means a misdemeanor
14 or gross misdemeanor probationer ordered by a superior court to
15 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and
16 supervised by the department pursuant to RCW 9.94A.501 and
17 9.94A.5011. Throughout this chapter, the terms "offender" and
18 "defendant" are used interchangeably.

19 ~~((35))~~ (36) "Partial confinement" means confinement for no more
20 than one year in a facility or institution operated or utilized under
21 contract by the state or any other unit of government, or, if home
22 detention, electronic monitoring, or work crew has been ordered by
23 the court or home detention has been ordered by the department as
24 part of the parenting program or the graduated reentry program, in an
25 approved residence, for a substantial portion of each day with the
26 balance of the day spent in the community. Partial confinement
27 includes work release, home detention, work crew, electronic
28 monitoring, and a combination of work crew, electronic monitoring,
29 and home detention.

30 ~~((36))~~ (37) "Pattern of criminal street gang activity" means:

31 (a) The commission, attempt, conspiracy, or solicitation of, or
32 any prior juvenile adjudication of or adult conviction of, two or
33 more of the following criminal street gang-related offenses:

34 (i) Any "serious violent" felony offense as defined in this
35 section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a
36 Child 1 (RCW 9A.36.120);

37 (ii) Any "violent" offense as defined by this section, excluding
38 Assault of a Child 2 (RCW 9A.36.130);

39 (iii) Deliver or Possession with Intent to Deliver a Controlled
40 Substance (chapter 69.50 RCW);

1 (iv) Any violation of the firearms and dangerous weapon act
2 (chapter 9.41 RCW);
3 (v) Theft of a Firearm (RCW 9A.56.300);
4 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);
5 (vii) Hate Crime (RCW 9A.36.080);
6 (viii) Harassment where a subsequent violation or deadly threat
7 is made (RCW 9A.46.020(2)(b));
8 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
9 (x) Any felony conviction by a person 18 years of age or older
10 with a special finding of involving a juvenile in a felony offense
11 under RCW 9.94A.833;
12 (xi) Residential Burglary (RCW 9A.52.025);
13 (xii) Burglary 2 (RCW 9A.52.030);
14 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
15 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
16 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
17 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
18 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
19 9A.56.070);
20 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
21 9A.56.075);
22 (xix) Extortion 1 (RCW 9A.56.120);
23 (xx) Extortion 2 (RCW 9A.56.130);
24 (xxi) Intimidating a Witness (RCW 9A.72.110);
25 (xxii) Tampering with a Witness (RCW 9A.72.120);
26 (xxiii) Reckless Endangerment (RCW 9A.36.050);
27 (xxiv) Coercion (RCW 9A.36.070);
28 (xxv) Harassment (RCW 9A.46.020); or
29 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
30 (b) That at least one of the offenses listed in (a) of this
31 subsection shall have occurred after July 1, 2008;
32 (c) That the most recent committed offense listed in (a) of this
33 subsection occurred within three years of a prior offense listed in
34 (a) of this subsection; and
35 (d) Of the offenses that were committed in (a) of this
36 subsection, the offenses occurred on separate occasions or were
37 committed by two or more persons.

38 (~~(37)~~) (38) "Persistent offender" is an offender who:

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

1 (ii) Has, before the commission of the offense under (a) of this
2 subsection, been convicted as an offender on at least two separate
3 occasions, whether in this state or elsewhere, of felonies that under
4 the laws of this state would be considered most serious offenses and
5 would be included in the offender score under RCW 9.94A.525; provided
6 that of the two or more previous convictions, at least one conviction
7 must have occurred before the commission of any of the other most
8 serious offenses for which the offender was previously convicted; or

9 (b) (i) Has been convicted of: (A) Rape in the first degree, rape
10 of a child in the first degree, child molestation in the first
11 degree, rape in the second degree, rape of a child in the second
12 degree, or indecent liberties by forcible compulsion; (B) any of the
13 following offenses with a finding of sexual motivation: Murder in the
14 first degree, murder in the second degree, homicide by abuse,
15 kidnapping in the first degree, kidnapping in the second degree,
16 assault in the first degree, assault in the second degree, assault of
17 a child in the first degree, assault of a child in the second degree,
18 or burglary in the first degree; or (C) an attempt to commit any
19 crime listed in this subsection (~~((+37+))~~) (38) (b) (i); and

20 (ii) Has, before the commission of the offense under (b) (i) of
21 this subsection, been convicted as an offender on at least one
22 occasion, whether in this state or elsewhere, of an offense listed in
23 (b) (i) of this subsection or any federal or out-of-state offense or
24 offense under prior Washington law that is comparable to the offenses
25 listed in (b) (i) of this subsection. A conviction for rape of a child
26 in the first degree constitutes a conviction under (b) (i) of this
27 subsection only when the offender was 16 years of age or older when
28 the offender committed the offense. A conviction for rape of a child
29 in the second degree constitutes a conviction under (b) (i) of this
30 subsection only when the offender was 18 years of age or older when
31 the offender committed the offense.

32 (~~((+38+))~~) (39) "Predatory" means: (a) The perpetrator of the crime
33 was a stranger to the victim, as defined in this section; (b) the
34 perpetrator established or promoted a relationship with the victim
35 prior to the offense and the victimization of the victim was a
36 significant reason the perpetrator established or promoted the
37 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
38 volunteer, or other person in authority in any public or private
39 school and the victim was a student of the school under his or her
40 authority or supervision. For purposes of this subsection, "school"

1 does not include home-based instruction as defined in RCW
2 28A.225.010; (ii) a coach, trainer, volunteer, or other person in
3 authority in any recreational activity and the victim was a
4 participant in the activity under his or her authority or
5 supervision; (iii) a pastor, elder, volunteer, or other person in
6 authority in any church or religious organization, and the victim was
7 a member or participant of the organization under his or her
8 authority; or (iv) a teacher, counselor, volunteer, or other person
9 in authority providing home-based instruction and the victim was a
10 student receiving home-based instruction while under his or her
11 authority or supervision. For purposes of this subsection: (A) "Home-
12 based instruction" has the same meaning as defined in RCW
13 28A.225.010; and (B) "teacher, counselor, volunteer, or other person
14 in authority" does not include the parent or legal guardian of the
15 victim.

16 ~~((39))~~ (40) "Private school" means a school regulated under
17 chapter 28A.195 or 28A.205 RCW.

18 ~~((40))~~ (41) "Public school" has the same meaning as in RCW
19 28A.150.010.

20 ~~((41))~~ (42) "Recidivist offense" means a felony offense where a
21 prior conviction of the same offense or other specified offense is an
22 element of the crime including, but not limited to:

23 (a) Assault in the fourth degree where domestic violence is
24 pleaded and proven, RCW 9A.36.041(3);

25 (b) Cyber harassment, RCW 9A.90.120(2)(b)(i);

26 (c) Harassment, RCW 9A.46.020(2)(b)(i);

27 (d) Indecent exposure, RCW 9A.88.010(2)(c);

28 (e) Stalking, RCW 9A.46.110(5)(b)(i) and (iii);

29 (f) Telephone harassment, RCW 9.61.230(2)(a); and

30 (g) Violation of a no-contact or protection order, RCW 7.105.450
31 or former RCW 26.50.110(5).

32 ~~((42))~~ (43) "Repetitive domestic violence offense" means any:

33 (a)(i) Domestic violence assault that is not a felony offense
34 under RCW 9A.36.041;

35 (ii) Domestic violence violation of a no-contact order under
36 chapter 10.99 RCW that is not a felony offense;

37 (iii) Domestic violence violation of a protection order under
38 chapter 26.09, 26.26A, or 26.26B RCW or former chapter 26.50 RCW, or
39 violation of a domestic violence protection order under chapter 7.105
40 RCW, that is not a felony offense;

1 (iv) Domestic violence harassment offense under RCW 9A.46.020
2 that is not a felony offense; or

3 (v) Domestic violence stalking offense under RCW 9A.46.110 that
4 is not a felony offense; or

5 (b) Any federal, out-of-state, tribal court, military, county, or
6 municipal conviction for an offense that under the laws of this state
7 would be classified as a repetitive domestic violence offense under
8 (a) of this subsection.

9 ~~((43))~~ (44) "Restitution" means a specific sum of money ordered
10 by the sentencing court to be paid by the offender to the court over
11 a specified period of time as payment of damages. The sum may include
12 both public and private costs.

13 ~~((44))~~ (45) "Risk assessment" means the application of the risk
14 instrument recommended to the department by the Washington state
15 institute for public policy as having the highest degree of
16 predictive accuracy for assessing an offender's risk of reoffense.

17 ~~((45))~~ (46) "Serious traffic offense" means:

18 (a) (i) Nonfelony driving while under the influence of
19 intoxicating liquor or any drug (RCW 46.61.502) ~~((nonfelony))~~;

20 (ii) Nonfelony actual physical control while under the influence
21 of intoxicating liquor or any drug (RCW 46.61.504) ~~((reckless))~~;

22 (iii) Reckless driving (RCW 46.61.500) ~~((or hit-and-run))~~;

23 (iv) Negligent driving if the conviction is the result of a
24 charge that was originally filed as a violation of RCW 46.61.502 or
25 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
26 46.61.522 while under the influence of intoxicating liquor or any
27 drug (RCW 46.61.5249);

28 (v) Reckless endangerment if the conviction is the result of a
29 charge that was originally filed as a violation of RCW 46.61.502 or
30 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
31 46.61.522 while under the influence of intoxicating liquor or any
32 drug (RCW 9A.36.050); or

33 (vi) Hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

37 (c) This definition applies for the purpose of a personal
38 driver's license only and does not apply to violations related to a
39 commercial motor vehicle under RCW 46.25.090.

1 (~~(46)~~) (47) "Serious violent offense" is a subcategory of
2 violent offense and means:

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

16 (~~(47)~~) (48) "Sex offense" means:

- 17 (a) (i) A felony that is a violation of chapter 9A.44 RCW other
- 18 than RCW 9A.44.132;
- 19 (ii) A violation of RCW 9A.64.020;
- 20 (iii) A felony that is a violation of chapter 9.68A RCW other
- 21 than RCW 9.68A.080;
- 22 (iv) A felony that is, under chapter 9A.28 RCW, a criminal
- 23 attempt, criminal solicitation, or criminal conspiracy to commit such
- 24 crimes; or
- 25 (v) A felony violation of RCW 9A.44.132(1) (failure to register
- 26 as a sex offender) if the person has been convicted of violating RCW
- 27 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
- 28 prior to June 10, 2010, on at least one prior occasion;
- 29 (b) Any conviction for a felony offense in effect at any time
- 30 prior to July 1, 1976, that is comparable to a felony classified as a
- 31 sex offense in (a) of this subsection;
- 32 (c) A felony with a finding of sexual motivation under RCW
- 33 9.94A.835 or 13.40.135; or
- 34 (d) Any federal or out-of-state conviction for an offense that
- 35 under the laws of this state would be a felony classified as a sex
- 36 offense under (a) of this subsection.

37 (~~(48)~~) (49) "Sexual motivation" means that one of the purposes
38 for which the defendant committed the crime was for the purpose of
39 his or her sexual gratification.

1 (~~(49)~~) (50) "Standard sentence range" means the sentencing
2 court's discretionary range in imposing a nonappealable sentence.

3 (~~(50)~~) (51) "Statutory maximum sentence" means the maximum
4 length of time for which an offender may be confined as punishment
5 for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the
6 statute defining the crime, or other statute defining the maximum
7 penalty for a crime.

8 (~~(51)~~) (52) "Stranger" means that the victim did not know the
9 offender 24 hours before the offense.

10 (~~(52)~~) (53) "Total confinement" means confinement inside the
11 physical boundaries of a facility or institution operated or utilized
12 under contract by the state or any other unit of government for 24
13 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

14 (~~(53)~~) (54) "Transition training" means written and verbal
15 instructions and assistance provided by the department to the
16 offender during the two weeks prior to the offender's successful
17 completion of the work ethic camp program. The transition training
18 shall include instructions in the offender's requirements and
19 obligations during the offender's period of community custody.

20 (~~(54)~~) (55) "Victim" means any person who has sustained
21 emotional, psychological, physical, or financial injury to person or
22 property as a direct result of the crime charged.

23 (~~(55)~~) (56) "Victim of domestic violence" means an intimate
24 partner or household member who has been subjected to the infliction
25 of physical harm or sexual and psychological abuse by an intimate
26 partner or household member as part of a pattern of assaultive,
27 coercive, and controlling behaviors directed at achieving compliance
28 from or control over that intimate partner or household member.
29 Domestic violence includes, but is not limited to, the offenses
30 listed in RCW 10.99.020 and 26.50.010 committed by an intimate
31 partner or household member against a victim who is an intimate
32 partner or household member.

33 (~~(56)~~) (57) "Victim of sex trafficking, prostitution, or
34 commercial sexual abuse of a minor" means a person who has been
35 forced or coerced to perform a commercial sex act including, but not
36 limited to, being a victim of offenses defined in RCW 9A.40.100,
37 9A.88.070, 9.68A.101, and the trafficking victims protection act of
38 2000, 22 U.S.C. Sec. 7101 et seq.; or a person who was induced to
39 perform a commercial sex act when they were less than 18 years of age

1 including but not limited to the offenses defined in chapter 9.68A
2 RCW.

3 ~~((57))~~ (58) "Victim of sexual assault" means any person who is
4 a victim of a sexual assault offense, nonconsensual sexual conduct,
5 or nonconsensual sexual penetration and as a result suffers physical,
6 emotional, financial, or psychological impacts. Sexual assault
7 offenses include, but are not limited to, the offenses defined in
8 chapter 9A.44 RCW.

9 ~~((58))~~ (59) "Violent offense" means:

10 (a) Any of the following felonies:

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

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

15 (iii) Manslaughter in the first degree;

16 (iv) Manslaughter in the second degree;

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

18 (vi) Kidnapping in the second degree;

19 (vii) Arson in the second degree;

20 (viii) Assault in the second degree;

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

22 (x) Extortion in the first degree;

23 (xi) Robbery in the second degree;

24 (xii) Drive-by shooting;

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

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

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

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

1 (~~(59)~~) (60) "Work crew" means a program of partial confinement
2 consisting of civic improvement tasks for the benefit of the
3 community that complies with RCW 9.94A.725.

4 (~~(60)~~) (61) "Work ethic camp" means an alternative
5 incarceration program as provided in RCW 9.94A.690 designed to reduce
6 recidivism and lower the cost of corrections by requiring offenders
7 to complete a comprehensive array of real-world job and vocational
8 experiences, character-building work ethics training, life management
9 skills development, substance abuse rehabilitation, counseling,
10 literacy training, and basic adult education.

11 (~~(61)~~) (62) "Work release" means a program of partial
12 confinement available to offenders who are employed or engaged as a
13 student in a regular course of study at school.

14 **Sec. 3.** RCW 9.94A.190 and 2018 c 166 s 5 are each amended to
15 read as follows:

16 (1) A sentence that includes a term or terms of confinement
17 totaling more than one year shall be served in a facility or
18 institution operated, or utilized under contract, by the state, or in
19 home detention pursuant to RCW 9.94A.6551 or the graduated reentry
20 program under RCW 9.94A.733. Except as provided in subsection (3) or
21 (5) of this section, a sentence of not more than one year of
22 confinement shall be served in a facility operated, licensed, or
23 utilized under contract, by the county, or if home detention or work
24 crew has been ordered by the court, in the residence of either the
25 offender or a member of the offender's immediate family.

26 (2) If a county uses a state partial confinement facility for the
27 partial confinement of a person sentenced to confinement for not more
28 than one year, the county shall reimburse the state for the use of
29 the facility as provided in this subsection. The office of financial
30 management shall set the rate of reimbursement based upon the average
31 per diem cost per offender in the facility. The office of financial
32 management shall determine to what extent, if any, reimbursement
33 shall be reduced or eliminated because of funds provided by the
34 legislature to the department for the purpose of covering the cost of
35 county use of state partial confinement facilities. The office of
36 financial management shall reestablish reimbursement rates each even-
37 numbered year.

38 (3) A person who is sentenced for a felony to a term of not more
39 than one year, and who is committed or returned to incarceration in a

1 state facility on another felony conviction, either under the
2 indeterminate sentencing laws, chapter 9.95 RCW, or under this
3 chapter shall serve all terms of confinement, including a sentence of
4 not more than one year, in a facility or institution operated, or
5 utilized under contract, by the state, consistent with the provisions
6 of RCW 9.94A.589.

7 (4) Notwithstanding any other provision of this section, a
8 sentence imposed pursuant to RCW 9.94A.660 or section 1 of this act
9 which has a standard sentence range of over one year, regardless of
10 length, shall be served in a facility or institution operated, or
11 utilized under contract, by the state.

12 (5) Sentences imposed pursuant to RCW 9.94A.507 shall be served
13 in a facility or institution operated, or utilized under contract, by
14 the state.

15 **Sec. 4.** RCW 9.94A.501 and 2021 c 242 s 2 are each amended to
16 read as follows:

17 (1) The department shall supervise the following offenders who
18 are sentenced to probation in superior court, pursuant to RCW
19 9.92.060, 9.95.204, or 9.95.210:

20 (a) Offenders convicted of:

21 (i) Sexual misconduct with a minor second degree;

22 (ii) Custodial sexual misconduct second degree;

23 (iii) Communication with a minor for immoral purposes; and

24 (iv) Violation of RCW 9A.44.132(2) (failure to register); and

25 (b) Offenders who have:

26 (i) A current conviction for a repetitive domestic violence
27 offense where domestic violence has been pleaded and proven after
28 August 1, 2011; and

29 (ii) A prior conviction for a repetitive domestic violence
30 offense or domestic violence felony offense where domestic violence
31 has been pleaded and proven after August 1, 2011.

32 (2) Misdemeanor and gross misdemeanor offenders supervised by the
33 department pursuant to this section shall be placed on community
34 custody.

35 (3) The department shall supervise every felony offender
36 sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702
37 whose risk assessment classifies the offender as one who is at a high
38 risk to reoffend.

1 (4) Notwithstanding any other provision of this section, the
2 department shall supervise an offender sentenced to community custody
3 regardless of risk classification if the offender:

4 (a) Has a current conviction for a sex offense or a serious
5 violent offense and was sentenced to a term of community custody
6 pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

7 (b) Has been identified by the department as a dangerous mentally
8 ill offender pursuant to RCW 72.09.370;

9 (c) Has an indeterminate sentence and is subject to parole
10 pursuant to RCW 9.95.017;

11 (d) Has a current conviction for violating RCW 9A.44.132(1)
12 (failure to register) and was sentenced to a term of community
13 custody pursuant to RCW 9.94A.701;

14 (e)(i) Has a current conviction for a domestic violence felony
15 offense where domestic violence has been pleaded and proven after
16 August 1, 2011, and a prior conviction for a repetitive domestic
17 violence offense or domestic violence felony offense where domestic
18 violence was pleaded and proven after August 1, 2011. This subsection
19 (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

20 (ii) Has a current conviction for a domestic violence felony
21 offense where domestic violence was pleaded and proven. The state and
22 its officers, agents, and employees shall not be held criminally or
23 civilly liable for its supervision of an offender under this
24 subsection (4)(e)(ii) unless the state and its officers, agents, and
25 employees acted with gross negligence;

26 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660,
27 9.94A.670, 9.94A.711, ~~((or))~~ 9.94A.695, or section 1 of this act;

28 (g) Is subject to supervision pursuant to RCW 9.94A.745; or

29 (h) Was convicted and sentenced under RCW 46.61.520 (vehicular
30 homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6)
31 (felony DUI), or RCW 46.61.504(6) (felony physical control).

32 (5) The department shall supervise any offender who is released
33 by the indeterminate sentence review board and who was sentenced to
34 community custody or subject to community custody under the terms of
35 release.

36 (6) The department is not authorized to, and may not, supervise
37 any offender sentenced to a term of community custody or any
38 probationer unless the offender or probationer is one for whom
39 supervision is required under this section or RCW 9.94A.5011.

1 (7) The department shall conduct a risk assessment for every
2 felony offender sentenced to a term of community custody who may be
3 subject to supervision under this section or RCW 9.94A.5011.

4 (8) The period of time the department is authorized to supervise
5 an offender under this section may not exceed the duration of
6 community custody specified under RCW 9.94B.050, 9.94A.701 (1)
7 through (9), or 9.94A.702, except in cases where the court has
8 imposed an exceptional term of community custody under RCW 9.94A.535.

9 (9) The period of time the department is authorized to supervise
10 an offender under this section may be reduced by the earned award of
11 supervision compliance credit pursuant to RCW 9.94A.717.

12 **Sec. 5.** RCW 9.94A.505 and 2022 c 260 s 23 are each amended to
13 read as follows:

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

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

18 (i) Unless another term of confinement applies, a sentence within
19 the standard sentence range established in RCW 9.94A.510 or
20 9.94A.517;

21 (ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

22 (iii) RCW 9.94A.570, relating to persistent offenders;

23 (iv) RCW 9.94A.540, relating to mandatory minimum terms;

24 (v) RCW 9.94A.650, relating to the first-time offender waiver;

25 (vi) RCW 9.94A.660, relating to the drug offender sentencing
26 alternative;

27 (vii) Section 1 of this act, relating to the drug offender
28 sentencing alternative for driving under the influence;

29 (viii) RCW 9.94A.670, relating to the special sex offender
30 sentencing alternative;

31 ~~((viii))~~ (ix) RCW 9.94A.655, relating to the parenting
32 sentencing alternative;

33 ~~((ix))~~ (x) RCW 9.94A.695, relating to the mental health
34 sentencing alternative;

35 ~~((x))~~ (xi) RCW 9.94A.507, relating to certain sex offenses;

36 ~~((xi))~~ (xii) RCW 9.94A.535, relating to exceptional sentences;

37 ~~((xii))~~ (xiii) RCW 9.94A.589, relating to consecutive and
38 concurrent sentences;

1 (~~(xiii)~~) (xiv) RCW 9.94A.603, relating to felony driving while
2 under the influence of intoxicating liquor or any drug and felony
3 physical control of a vehicle while under the influence of
4 intoxicating liquor or any drug;

5 (~~(xiv)~~) (xv) RCW 9.94A.711, relating to the theft or taking of
6 a motor vehicle.

7 (b) If a standard sentence range has not been established for the
8 offender's crime, the court shall impose a determinate sentence which
9 may include not more than one year of confinement; community
10 restitution work; a term of community custody under RCW 9.94A.702 not
11 to exceed one year; and/or other legal financial obligations. The
12 court may impose a sentence which provides more than one year of
13 confinement and a community custody term under RCW 9.94A.701 if the
14 court finds reasons justifying an exceptional sentence as provided in
15 RCW 9.94A.535.

16 (3) If the court imposes a sentence requiring confinement of 30
17 days or less, the court may, in its discretion, specify that the
18 sentence be served on consecutive or intermittent days. A sentence
19 requiring more than 30 days of confinement shall be served on
20 consecutive days. Local jail administrators may schedule court-
21 ordered intermittent sentences as space permits.

22 (4) If a sentence imposed includes payment of a legal financial
23 obligation, it shall be imposed as provided in RCW 9.94A.750,
24 9.94A.753, and 9.94A.760.

25 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
26 court may not impose a sentence providing for a term of confinement
27 or community custody that exceeds the statutory maximum for the crime
28 as provided in chapter 9A.20 RCW.

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

33 (7) The sentencing court shall not give the offender credit for
34 any time the offender was required to comply with an electronic
35 monitoring program prior to sentencing if the offender was convicted
36 of one of the following offenses:

- 37 (a) A violent offense;
- 38 (b) Any sex offense;
- 39 (c) Any drug offense;

1 (d) Reckless burning in the first or second degree as defined in
2 RCW 9A.48.040 or 9A.48.050;

3 (e) Assault in the third degree as defined in RCW 9A.36.031;

4 (f) Assault of a child in the third degree;

5 (g) Unlawful imprisonment as defined in RCW 9A.40.040; or

6 (h) Harassment as defined in RCW 9A.46.020.

7 (8) The court shall order restitution as provided in RCW
8 9.94A.750 and 9.94A.753.

9 (9) As a part of any sentence, the court may impose and enforce
10 crime-related prohibitions and affirmative conditions as provided in
11 this chapter. "Crime-related prohibitions" may include a prohibition
12 on the use or possession of alcohol or controlled substances if the
13 court finds that any chemical dependency or substance abuse
14 contributed to the offense.

15 (10) In any sentence of partial confinement, the court may
16 require the offender to serve the partial confinement in work
17 release, in a program of home detention, on work crew, or in a
18 combined program of work crew and home detention.

19 **Sec. 6.** RCW 9.94A.525 and 2023 c 415 s 2 are each amended to
20 read as follows:

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

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

25 (1)(a) A prior conviction is a conviction which exists before the
26 date of sentencing for the offense for which the offender score is
27 being computed. Convictions entered or sentenced on the same date as
28 the conviction for which the offender score is being computed shall
29 be deemed "other current offenses" within the meaning of RCW
30 9.94A.589.

31 (b) For the purposes of this section, adjudications of guilt
32 pursuant to Title 13 RCW which are not murder in the first or second
33 degree or class A felony sex offenses may not be included in the
34 offender score.

35 (2)(a) Class A and sex prior felony convictions shall always be
36 included in the offender score.

37 (b) Class B prior felony convictions other than sex offenses
38 shall not be included in the offender score, if since the last date
39 of release from confinement (including full-time residential

1 treatment) pursuant to a felony conviction, if any, or entry of
2 judgment and sentence, the offender had spent (~~ten~~) 10 consecutive
3 years in the community without committing any crime that subsequently
4 results in a conviction.

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

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

19 (e) If the present conviction is felony driving while under the
20 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
21 felony physical control of a vehicle while under the influence of
22 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate
23 crimes for the offense as defined by RCW 46.61.5055(14) shall be
24 included in the offender score, and prior convictions for felony
25 driving while under the influence of intoxicating liquor or any drug
26 (RCW 46.61.502(6)) or felony physical control of a vehicle while
27 under the influence of intoxicating liquor or any drug (RCW
28 46.61.504(6)) shall always be included in the offender score. All
29 other convictions of the defendant shall be scored according to this
30 section.

31 (f) Prior convictions for a repetitive domestic violence offense,
32 as defined in RCW 9.94A.030, shall not be included in the offender
33 score if, since the last date of release from confinement or entry of
34 judgment and sentence, the offender had spent (~~ten~~) 10 consecutive
35 years in the community without committing any crime that subsequently
36 results in a conviction.

37 (g) This subsection applies to both prior adult convictions and
38 prior juvenile adjudications.

39 (3) Out-of-state convictions for offenses shall be classified
40 according to the comparable offense definitions and sentences

1 provided by Washington law. Federal convictions for offenses shall be
2 classified according to the comparable offense definitions and
3 sentences provided by Washington law. Neither out-of-state or federal
4 convictions which would have been presumptively adjudicated in
5 juvenile court under Washington law may be included in the offender
6 score unless they are comparable to murder in the first or second
7 degree or a class A felony sex offense. If there is no clearly
8 comparable offense under Washington law or the offense is one that is
9 usually considered subject to exclusive federal jurisdiction, the
10 offense shall be scored as a class C felony equivalent if it was a
11 felony under the relevant federal statute.

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

15 (5) (a) In the case of multiple prior convictions, for the purpose
16 of computing the offender score, count all convictions separately,
17 except:

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

33 (ii) In the case of multiple prior convictions for offenses
34 committed before July 1, 1986, for the purpose of computing the
35 offender score, count all convictions or adjudications served
36 concurrently as one offense. Use the conviction for the offense that
37 yields the highest offender score.

38 (b) As used in this subsection (5), "served concurrently" means
39 that: (i) The latter sentence was imposed with specific reference to
40 the former; (ii) the concurrent relationship of the sentences was

1 judicially imposed; and (iii) the concurrent timing of the sentences
2 was not the result of a probation or parole revocation on the former
3 offense.

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

9 (7) If the present conviction is for a nonviolent offense and not
10 covered by subsection (11), (12), or (13) of this section, count one
11 point for each adult prior felony conviction and one point for each
12 juvenile prior violent felony conviction which is scorable under
13 subsection (1)(b) of this section.

14 (8) If the present conviction is for a violent offense and not
15 covered in subsection (9), (10), (11), (12), or (13) of this section,
16 count two points for each prior adult violent felony conviction and
17 juvenile violent felony conviction which is scorable under subsection
18 (1)(b) of this section, and one point for each prior adult nonviolent
19 felony conviction.

20 (9) If the present conviction is for a serious violent offense,
21 count three points for prior adult convictions and juvenile
22 convictions which are scorable under subsection (1)(b) of this
23 section for crimes in this category, two points for each prior adult
24 and scorable juvenile violent conviction (not already counted), and
25 one point for each prior adult nonviolent felony conviction.

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

29 (11) If the present conviction is for a felony traffic offense
30 count two points for each prior conviction for Vehicular Homicide or
31 Vehicular Assault; for each felony offense count one point for each
32 adult prior conviction and 1/2 point for each juvenile prior
33 conviction which is scorable under subsection (1)(b) of this section;
34 for each serious traffic offense, other than those used for an
35 enhancement pursuant to RCW 46.61.520(2), count one point for each
36 adult prior conviction and 1/2 point for each juvenile prior
37 conviction which is scorable under subsection (1)(b) of this section;
38 count one point for each adult prior conviction for operation of a
39 vessel while under the influence of intoxicating liquor or any drug;
40 count one point for a deferred prosecution granted under chapter

1 10.05 RCW for a second or subsequent violation of RCW 46.61.502 or
2 46.61.504, or an equivalent local ordinance.

3 (12) If the present conviction is for homicide by watercraft or
4 assault by watercraft count two points for each adult prior
5 conviction for homicide by watercraft or assault by watercraft; for
6 each felony offense count one point for each adult prior conviction
7 and 1/2 point for each juvenile prior conviction which would be
8 scorable under subsection (1)(b) of this section; count one point for
9 each adult prior conviction for driving under the influence of
10 intoxicating liquor or any drug, actual physical control of a motor
11 vehicle while under the influence of intoxicating liquor or any drug,
12 or operation of a vessel while under the influence of intoxicating
13 liquor or any drug.

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

23 (14) If the present conviction is for Escape from Community
24 Custody, RCW 72.09.310, count only adult prior escape convictions in
25 the offender score. Count prior escape convictions as one point.

26 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or
27 Escape 2, RCW 9A.76.120, count adult prior convictions as one point
28 and juvenile prior convictions which are scorable under subsection
29 (1)(b) of this section as 1/2 point.

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

34 (17) If the present conviction is for a sex offense, count priors
35 as in subsections (7) through (11) and (13) through (16) of this
36 section; however, count three points for each adult prior sex offense
37 conviction and juvenile prior class A felony sex offense
38 adjudication.

39 (18) If the present conviction is for failure to register as a
40 sex offender under RCW 9A.44.130 or 9A.44.132, count priors as in

1 subsections (7) through (11) and (13) through (16) of this section;
2 however, count three points for each adult prior sex offense
3 conviction and juvenile prior sex offense conviction which is
4 scorable under subsection (1)(b) of this section, excluding adult
5 prior convictions for failure to register as a sex offender under RCW
6 9A.44.130 or 9A.44.132, which shall count as one point.

7 (19) If the present conviction is for an offense committed while
8 the offender was under community custody, add one point. For purposes
9 of this subsection, community custody includes community placement or
10 postrelease supervision, as defined in chapter 9.94B RCW.

11 (20) If the present conviction is for Theft of a Motor Vehicle,
12 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
13 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
14 priors as in subsections (7) through (18) of this section; however
15 count one point for prior convictions of Vehicle Prowling 2, and
16 three points for each adult prior Theft 1 (of a motor vehicle), Theft
17 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor
18 vehicle), Possession of Stolen Property 2 (of a motor vehicle), Theft
19 of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor
20 Vehicle Without Permission 1, or Taking a Motor Vehicle Without
21 Permission 2 conviction.

22 (21) If the present conviction is for a felony domestic violence
23 offense where domestic violence as defined in RCW 9.94A.030 was
24 pleaded and proven, count priors as in subsections (7) through (20)
25 of this section; however, count points as follows:

26 (a) Count two points for each adult prior conviction where
27 domestic violence as defined in RCW 9.94A.030 was pleaded and proven
28 after August 1, 2011, for any of the following offenses: A felony
29 violation of a no-contact or protection order (RCW 7.105.450 or
30 former RCW 26.50.110), felony Harassment (RCW 9A.46.020(2)(b)),
31 felony Stalking (RCW 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020),
32 Kidnapping 1 (RCW 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful
33 imprisonment (RCW 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2
34 (RCW 9A.56.210), Assault 1 (RCW 9A.36.011), Assault 2 (RCW
35 9A.36.021), Assault 3 (RCW 9A.36.031), Arson 1 (RCW 9A.48.020), or
36 Arson 2 (RCW 9A.48.030);

37 (b) Count two points for each adult prior conviction where
38 domestic violence as defined in RCW 9.94A.030 was pleaded and proven
39 after July 23, 2017, for any of the following offenses: Assault of a
40 child in the first degree, RCW 9A.36.120; Assault of a child in the

1 second degree, RCW 9A.36.130; Assault of a child in the third degree,
2 RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW
3 9A.42.020; or Criminal Mistreatment in the second degree, RCW
4 9A.42.030; and

5 (c) Count one point for each adult prior conviction for a
6 repetitive domestic violence offense as defined in RCW 9.94A.030,
7 where domestic violence as defined in RCW 9.94A.030, was pleaded and
8 proven after August 1, 2011.

9 (22) The fact that a prior conviction was not included in an
10 offender's offender score or criminal history at a previous
11 sentencing shall have no bearing on whether it is included in the
12 criminal history or offender score for the current offense. Prior
13 convictions that were not counted in the offender score or included
14 in criminal history under repealed or previous versions of the
15 sentencing reform act shall be included in criminal history and shall
16 count in the offender score if the current version of the sentencing
17 reform act requires including or counting those convictions. Prior
18 convictions that were not included in criminal history or in the
19 offender score shall be included upon any resentencing to ensure
20 imposition of an accurate sentence.

21 **Sec. 7.** RCW 9.94A.633 and 2021 c 242 s 4 are each amended to
22 read as follows:

23 (1) (a) An offender who violates any condition or requirement of a
24 sentence may be sanctioned by the court with up to (~~sixty~~) 60 days'
25 confinement for each violation or by the department with up to
26 (~~thirty~~) 30 days' confinement as provided in RCW 9.94A.737.

27 (b) In lieu of confinement, an offender may be sanctioned with
28 work release, home detention with electronic monitoring, work crew,
29 community restitution, inpatient treatment, daily reporting, curfew,
30 educational or counseling sessions, supervision enhanced through
31 electronic monitoring, or any other community-based sanctions.

32 (2) If an offender was under community custody pursuant to one of
33 the following statutes, the offender may be sanctioned as follows:

34 (a) If the offender was transferred to community custody in lieu
35 of earned early release in accordance with RCW 9.94A.728, the
36 offender may be transferred to a more restrictive confinement status
37 to serve up to the remaining portion of the sentence, less credit for
38 any period actually spent in community custody or in detention
39 awaiting disposition of an alleged violation.

1 (b) If the offender was sentenced under the drug offender
2 sentencing alternative set out in RCW 9.94A.660, the offender may be
3 sanctioned in accordance with that section.

4 (c) If the offender was sentenced under the drug offender
5 sentencing alternative for driving under the influence set out in
6 section 1 of this act, the offender may be sanctioned in accordance
7 with that section.

8 (d) If the offender was sentenced under the parenting sentencing
9 alternative set out in RCW 9.94A.655, the offender may be sanctioned
10 in accordance with that section.

11 (~~(d)~~) (e) If the offender was sentenced under the special sex
12 offender sentencing alternative set out in RCW 9.94A.670, the
13 suspended sentence may be revoked and the offender committed to serve
14 the original sentence of confinement.

15 (~~(e)~~) (f) If the offender was sentenced under the mental health
16 sentencing alternative set out in RCW 9.94A.695, the offender may be
17 sanctioned in accordance with that section.

18 (~~(f)~~) (g) If the offender was sentenced to a work ethic camp
19 pursuant to RCW 9.94A.690, the offender may be reclassified to serve
20 the unexpired term of his or her sentence in total confinement.

21 (~~(g)~~) (h) If a sex offender was sentenced pursuant to RCW
22 9.94A.507, the offender may be transferred to a more restrictive
23 confinement status to serve up to the remaining portion of the
24 sentence, less credit for any period actually spent in community
25 custody or in detention awaiting disposition of an alleged violation.

26 (3) If a probationer is being supervised by the department
27 pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may
28 be sanctioned pursuant to subsection (1) of this section. The
29 department shall have authority to issue a warrant for the arrest of
30 an offender who violates a condition of community custody, as
31 provided in RCW 9.94A.716. Any sanctions shall be imposed by the
32 department pursuant to RCW 9.94A.737. Nothing in this subsection is
33 intended to limit the power of the sentencing court to respond to a
34 probationer's violation of conditions.

35 (4) The parole or probation of an offender who is charged with a
36 new felony offense may be suspended and the offender placed in total
37 confinement pending disposition of the new criminal charges if:

38 (a) The offender is on parole pursuant to RCW 9.95.110(1); or

39 (b) The offender is being supervised pursuant to RCW 9.94A.745
40 and is on parole or probation pursuant to the laws of another state.

1 **Sec. 8.** RCW 9.94A.6332 and 2021 c 242 s 5 are each amended to
2 read as follows:

3 The procedure for imposing sanctions for violations of sentence
4 conditions or requirements is as follows:

5 (1) If the offender was sentenced under the drug offender
6 sentencing alternative, any sanctions shall be imposed by the
7 department or the court pursuant to RCW 9.94A.660.

8 (2) If the offender was sentenced under the drug offender
9 sentencing alternative for driving under the influence, any sanctions
10 shall be imposed by the department or the court pursuant to section 1
11 of this act.

12 (3) If the offender was sentenced under the special sex offender
13 sentencing alternative, any sanctions shall be imposed by the
14 department or the court pursuant to RCW 9.94A.670.

15 ~~((3))~~ (4) If the offender was sentenced under the parenting
16 sentencing alternative, any sanctions shall be imposed by the
17 department or by the court pursuant to RCW 9.94A.655.

18 ~~((4))~~ (5) If the offender was sentenced under the mental health
19 sentencing alternative, any sanctions shall be imposed by the
20 department or the court pursuant to RCW 9.94A.695.

21 ~~((5))~~ (6) If a sex offender was sentenced pursuant to RCW
22 9.94A.507, any sanctions shall be imposed by the board pursuant to
23 RCW 9.95.435.

24 ~~((6))~~ (7) If the offender was released pursuant to RCW
25 9.94A.730, any sanctions shall be imposed by the board pursuant to
26 RCW 9.95.435.

27 ~~((7))~~ (8) If the offender was sentenced pursuant to RCW
28 10.95.030~~((3))~~ (2) or 10.95.035, any sanctions shall be imposed by
29 the board pursuant to RCW 9.95.435.

30 ~~((8))~~ (9) In any other case, if the offender is being
31 supervised by the department, any sanctions shall be imposed by the
32 department pursuant to RCW 9.94A.737. If a probationer is being
33 supervised by the department pursuant to RCW 9.92.060, 9.95.204, or
34 9.95.210, upon receipt of a violation hearing report from the
35 department, the court retains any authority that those statutes
36 provide to respond to a probationer's violation of conditions.

37 ~~((9))~~ (10) If the offender is not being supervised by the
38 department, any sanctions shall be imposed by the court pursuant to
39 RCW 9.94A.6333.

1 **Sec. 9.** RCW 9.94A.660 and 2021 c 215 s 102 are each amended to
2 read as follows:

3 (1) An offender is eligible for the special drug offender
4 sentencing alternative if:

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

8 (b) The offender is convicted of a felony that is not a felony
9 driving while under the influence of intoxicating liquor or any drug
10 under RCW 46.61.502(6) or felony physical control of a vehicle while
11 under the influence of intoxicating liquor or any drug under RCW
12 46.61.504(6);

13 (c) The offender has no current or prior convictions for a sex
14 offense for which the offender is currently or may be required to
15 register pursuant to RCW 9A.44.130;

16 (d) The offender has no prior convictions in this state, and no
17 prior convictions for an equivalent out-of-state or federal offense,
18 for the following offenses during the following time frames:

19 (i) Robbery in the second degree that did not involve the use of
20 a firearm and was not reduced from robbery in the first degree within
21 seven years before conviction of the current offense; or

22 (ii) Any other violent offense within (~~ten~~) 10 years before
23 conviction of the current offense;

24 (e) For a violation of the uniform controlled substances act
25 under chapter 69.50 RCW or a criminal solicitation to commit such a
26 violation under chapter 9A.28 RCW, the offense involved only a small
27 quantity of the particular controlled substance as determined by the
28 judge upon consideration of such factors as the weight, purity,
29 packaging, sale price, and street value of the controlled substance;

30 (f) The offender has not been found by the United States attorney
31 general to be subject to a deportation detainer or order and does not
32 become subject to a deportation order during the period of the
33 sentence; and

34 (g) The offender has not received a drug offender sentencing
35 alternative under this section, or a drug offender sentencing
36 alternative for driving under the influence under section 1 of this
37 act, more than once in the prior (~~ten~~) 10 years before the current
38 offense.

39 (2) A motion for a special drug offender sentencing alternative
40 may be made by the court, the offender, or the state.

1 (3) If the sentencing court determines that the offender is
2 eligible for an alternative sentence under this section and that the
3 alternative sentence is appropriate, the court shall waive imposition
4 of a sentence within the standard sentence range and impose a
5 sentence consisting of either a prison-based alternative under RCW
6 9.94A.662 or a residential substance use disorder treatment-based
7 alternative under RCW 9.94A.664. The residential substance use
8 disorder treatment-based alternative is only available if the
9 midpoint of the standard sentence range is (~~twenty-six~~) 26 months
10 or less.

11 (4) (a) To assist the court in making its determination, the court
12 may order the department to complete either or both a risk assessment
13 report and a substance use disorder screening report as provided in
14 RCW 9.94A.500.

15 (b) To assist the court in making its determination in domestic
16 violence cases, the court shall order the department to complete a
17 presentence investigation and a chemical dependency screening report
18 as provided in RCW 9.94A.500, unless otherwise specifically waived by
19 the court.

20 (5) If the court is considering imposing a sentence under the
21 residential substance use disorder treatment-based alternative, the
22 court may order an examination of the offender by the department. The
23 examination must be performed by an agency licensed or certified by
24 the department of health to provide substance use disorder services.
25 The examination shall, at a minimum, address the following issues:

26 (a) Whether the offender suffers from a substance use disorder;

27 (b) (~~Whether the substance use disorder is such that there is a~~
28 ~~probability that criminal behavior will occur in the future;~~

29 ~~(c)~~) Whether effective treatment for the offender's substance
30 use disorder is available from a provider that has been licensed or
31 certified by the department of health, and where applicable, whether
32 effective domestic violence perpetrator treatment is available from a
33 state-certified domestic violence treatment provider pursuant to RCW
34 43.20A.735; and

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

37 (6) When a court imposes a sentence of community custody under
38 this section:

39 (a) The court may impose conditions as provided in RCW 9.94A.703
40 and may impose other affirmative conditions as the court considers

1 appropriate. In addition, an offender may be required to pay (~~thirty~~
2 ~~dollars~~) \$30 per month while on community custody to offset the cost
3 of monitoring for alcohol or controlled substances, or in cases of
4 domestic violence for monitoring with global positioning system
5 technology for compliance with a no-contact order.

6 (b) The department may impose conditions and sanctions as
7 authorized in RCW 9.94A.704 and 9.94A.737.

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

12 (b) If the offender is brought back to court, the court may
13 modify the conditions of the community custody or impose sanctions
14 under (c) of this subsection.

15 (c) The court may order the offender to serve a term of total
16 confinement within the standard sentence range of the offender's
17 current offense at any time during the period of community custody if
18 the offender violates the conditions or requirements of the sentence
19 or if the offender is failing to make satisfactory progress in
20 treatment.

21 (d) An offender ordered to serve a term of total confinement
22 under (c) of this subsection shall receive credit for time previously
23 served in total or partial confinement and inpatient treatment under
24 this section, and shall receive (~~fifty~~) 50 percent credit for time
25 previously served in community custody under this section.

26 (8) In serving a term of community custody imposed upon failure
27 to complete, or administrative termination from, the special drug
28 offender sentencing alternative program, the offender shall receive
29 no credit for time served in community custody prior to termination
30 of the offender's participation in the program.

31 (9) An offender sentenced under this section shall be subject to
32 all rules relating to earned release time with respect to any period
33 served in total confinement.

34 (10) The Washington state institute for public policy shall
35 submit a report to the governor and the appropriate committees of the
36 legislature by November 1, 2022, analyzing the effectiveness of the
37 drug offender sentencing alternative in reducing recidivism among
38 various offender populations. An additional report is due November 1,
39 2028, and every five years thereafter. The Washington state institute

1 for public policy may coordinate with the department and the caseload
2 forecast council in tracking data and preparing the report.

3 **Sec. 10.** RCW 9.94A.701 and 2021 c 242 s 6 are each amended to
4 read as follows:

5 (1) If an offender is sentenced to the custody of the department
6 for one of the following crimes, the court shall, in addition to the
7 other terms of the sentence, sentence the offender to community
8 custody for three years:

9 (a) A sex offense not sentenced under RCW 9.94A.507; or

10 (b) A serious violent offense.

11 (2) A court shall, in addition to the other terms of the
12 sentence, sentence an offender to community custody for ~~((eighteen))~~
13 18 months when the court sentences the person to the custody of the
14 department for a violent offense that is not considered a serious
15 violent offense.

16 (3) A court shall, in addition to the other terms of the
17 sentence, sentence an offender to community custody for one year when
18 the court sentences the person to the custody of the department for:

19 (a) Any crime against persons under RCW 9.94A.411(2);

20 (b) An offense involving the unlawful possession of a firearm
21 under RCW 9.41.040, where the offender is a criminal street gang
22 member or associate;

23 (c) A felony offense under chapter 69.50 or 69.52 RCW, committed
24 on or after July 1, 2000; or

25 (d) A felony violation of RCW 9A.44.132(1) (failure to register)
26 that is the offender's first violation for a felony failure to
27 register.

28 (4) If an offender is sentenced under the drug offender
29 sentencing alternative, the court shall impose community custody as
30 provided in:

31 (a) RCW 9.94A.660 and 9.94A.662 for a prison-based drug offender
32 sentencing alternative;

33 (b) RCW 9.94A.660 and 9.94A.664 for a residential-based drug
34 offender sentencing alternative;

35 (c) RCW 9.94A.662 and section 1(6) of this act for a prison-based
36 drug offender sentencing alternative for driving under the influence;
37 and

38 (d) Section 1 (5) and (6) of this act for a residential-based
39 drug offender sentencing alternative for driving under the influence.

1 (5) If an offender is sentenced under the special sex offender
2 sentencing alternative, the court shall impose community custody as
3 provided in RCW 9.94A.670.

4 (6) If an offender is sentenced to a work ethic camp, the court
5 shall impose community custody as provided in RCW 9.94A.690.

6 (7) If an offender is sentenced under the parenting sentencing
7 alternative, the court shall impose a term of community custody as
8 provided in RCW 9.94A.655.

9 (8) If the offender is sentenced under the mental health
10 sentencing alternative, the court shall impose a term of community
11 custody as provided in RCW 9.94A.695.

12 (9) If a sex offender is sentenced as a nonpersistent offender
13 pursuant to RCW 9.94A.507, the court shall impose community custody
14 as provided in that section.

15 (10) The term of community custody specified by this section
16 shall be reduced by the court whenever an offender's standard
17 sentence range term of confinement in combination with the term of
18 community custody exceeds the statutory maximum for the crime as
19 provided in RCW 9A.20.021.

20 **Sec. 11.** RCW 10.05.010 and 2019 c 263 s 701 are each amended to
21 read as follows:

22 (1) In a court of limited jurisdiction a person charged with a
23 misdemeanor or gross misdemeanor may petition the court to be
24 considered for a deferred prosecution (~~(program)~~). The petition shall
25 be filed with the court at least seven days before the date set for
26 trial but, upon a written motion and affidavit establishing good
27 cause for the delay and failure to comply with this section, the
28 court may waive this requirement subject to the defendant's
29 reimbursement to the court of the witness fees and expenses due for
30 subpoenaed witnesses who have appeared on the date set for trial. A
31 person charged with a misdemeanor or gross misdemeanor shall not be
32 eligible for a deferred prosecution unless the court makes specific
33 findings pursuant to RCW 10.05.020.

34 (2) A person charged with a (~~traffic infraction, misdemeanor, or~~
35 ~~gross misdemeanor under Title 46 RCW, or a misdemeanor or gross~~
36 ~~misdemeanor domestic violence offense,)) violation of RCW 46.61.502
37 or 46.61.504 shall not be eligible for a deferred prosecution
38 (~~program~~) unless the court makes specific findings pursuant to RCW
39 10.05.020. A person (~~may not participate in a deferred prosecution~~~~

1 ~~program for a traffic infraction, misdemeanor, or gross misdemeanor~~
2 ~~under Title 46 RCW if he or she has participated in a deferred~~
3 ~~prosecution program for a prior traffic infraction, misdemeanor, or~~
4 ~~gross misdemeanor under Title 46 RCW, and a person may not~~
5 ~~participate in a deferred prosecution program for a misdemeanor or~~
6 ~~gross misdemeanor domestic violence offense if he or she has~~
7 ~~participated in a deferred prosecution program for a prior domestic~~
8 ~~violence offense)) who petitions the court for the deferred~~
9 ~~prosecution and participates in the deferred prosecution under this~~
10 ~~chapter for his or her first violation of RCW 46.61.502 or 46.61.504~~
11 ~~is eligible to petition the court for a second deferred prosecution~~
12 ~~for the person's next violation of RCW 46.61.502 or 46.61.504 when~~
13 ~~the person has no other prior convictions defined as a "prior~~
14 ~~offense" under RCW 46.61.5055. The person's first deferred~~
15 ~~prosecution shall not be considered a prior offense for the purpose~~
16 ~~of granting a second deferred prosecution.~~ Separate offenses
17 committed more than seven days apart may not be consolidated in a
18 single program.

19 (3) A person charged with a misdemeanor or a gross misdemeanor
20 under chapter 9A.42 RCW shall not be eligible for a deferred
21 prosecution ((~~program~~)) unless the court makes specific findings
22 pursuant to RCW 10.05.020. Such person shall not be eligible for a
23 deferred prosecution ((~~program~~)) more than once.

24 (4) A person is not eligible for a deferred prosecution
25 ((~~program~~)) if the misdemeanor or gross misdemeanor domestic violence
26 offense was originally charged as a felony offense in superior court.

27 (5) A person may petition a court for a second deferred
28 prosecution while still under the jurisdiction of a court for the
29 person's first deferred prosecution; however, the first deferred
30 prosecution shall be revoked prior to the entry of the second
31 deferred prosecution.

32 (6) A person may not be on two deferred prosecutions at the same
33 time unless separate offenses are committed within seven days of each
34 other and the person petitions to consolidate each offense into a
35 single deferred prosecution.

36 (7) A person charged with a misdemeanor or gross misdemeanor for
37 a violation of RCW 46.61.502 or 46.61.504 who does not participate in
38 a deferred prosecution for his or her first violation of RCW
39 46.61.502 or 46.61.504 remains eligible to petition the court for a
40 deferred prosecution pursuant to the terms of this section and

1 specific findings made under RCW 10.05.020. Such person shall not be
2 eligible for a deferred prosecution more than once.

3 **Sec. 12.** RCW 10.05.015 and 2019 c 263 s 702 are each amended to
4 read as follows:

5 At the time of arraignment a person charged with a violation of
6 RCW 46.61.502 or 46.61.504 or a misdemeanor or gross misdemeanor
7 domestic violence offense may be given a statement by the court that
8 explains the availability, operation, and effects of the deferred
9 prosecution (~~(program)~~).

10 **Sec. 13.** RCW 10.05.020 and 2021 c 215 s 115 are each amended to
11 read as follows:

12 (1) Except as provided in subsection (2) of this section, the
13 petitioner shall allege under oath in the petition that the wrongful
14 conduct charged is the result of or caused by substance use disorders
15 or mental (~~(problems)~~) health disorders or domestic violence behavior
16 problems for which the person is in need of treatment and unless
17 treated the probability of future recurrence is great, along with a
18 statement that the person agrees to pay the cost of a diagnosis and
19 treatment of the alleged problem or problems if financially able to
20 do so. The petition shall also contain a case history and written
21 assessment prepared by an approved (~~(substance use disorder treatment~~
22 ~~program)) behavioral health agency, approved for mental health
23 services or substance use disorder services, as designated in chapter
24 71.24 RCW (~~(if the petition alleges a substance use disorder, by an~~
25 ~~approved mental health center if the petition alleges a mental~~
26 ~~problem,~~) or by a state-certified domestic violence treatment
27 provider pursuant to RCW 43.20A.735 (~~(if the petition alleges a~~
28 ~~domestic violence behavior problem)~~).~~

29 (2) In the case of a petitioner charged with a misdemeanor or
30 gross misdemeanor under chapter 9A.42 RCW, the petitioner shall
31 allege under oath in the petition that the petitioner is the natural
32 or adoptive parent of the alleged victim; that the wrongful conduct
33 charged is the result of parenting problems for which the petitioner
34 is in need of services; that the petitioner is in need of child
35 welfare services under chapter 74.13 RCW to improve his or her
36 parenting skills in order to better provide his or her child or
37 children with the basic necessities of life; that the petitioner
38 wants to correct his or her conduct to reduce the likelihood of harm

1 to his or her minor children; that in the absence of child welfare
2 services the petitioner may be unable to reduce the likelihood of
3 harm to his or her minor children; and that the petitioner has
4 cooperated with the department of (~~social and health services~~)
5 children, youth, and families to develop a plan to receive
6 appropriate child welfare services; along with a statement that the
7 person agrees to pay the cost of the services if he or she is
8 financially able to do so. The petition shall also contain a case
9 history and a written service plan from the department of (~~social
10 and health services~~) children, youth, and families.

11 (3) Before entry of an order deferring prosecution, a petitioner
12 shall be advised of his or her rights as an accused and execute, as a
13 condition of receiving treatment, a statement that contains: (a) An
14 acknowledgment of his or her rights; (b) an acknowledgment and waiver
15 of the right to testify, the right to a speedy trial, the right to
16 call witnesses to testify, the right to present evidence in his or
17 her defense, and the right to a jury trial; (c) a stipulation to the
18 admissibility and sufficiency of the facts contained in the written
19 police report; and (d) an acknowledgment that the statement will be
20 entered and used to support a finding of guilty if the court finds
21 cause to revoke the order granting deferred prosecution. The
22 petitioner shall also be advised that he or she may, if he or she
23 proceeds to trial and is found guilty, be allowed to seek suspension
24 of some or all of the fines and incarceration that may be ordered
25 upon the condition that he or she seek treatment and, further, that
26 he or she may seek treatment from public and private agencies at any
27 time without regard to whether or not he or she is found guilty of
28 the offense charged. He or she shall also be advised that the court
29 will not accept a petition for deferred prosecution from a person
30 who: (i) Sincerely believes that he or she is innocent of the
31 charges; (ii) sincerely believes that he or she does not, in fact,
32 suffer from (~~alcoholism, drug addiction, mental problems~~) a
33 substance use disorder, a mental health disorder, or domestic
34 violence behavior problems; or (iii) in the case of a petitioner
35 charged under chapter 9A.42 RCW, sincerely believes that he or she
36 does not need child welfare services.

37 (4) Before entering an order deferring prosecution, the court
38 shall make specific findings that: (a) The petitioner has stipulated
39 to the admissibility and sufficiency of the facts as contained in the
40 written police report; (b) the petitioner has acknowledged the

1 admissibility of the stipulated facts in any criminal hearing on the
2 underlying offense or offenses held subsequent to revocation of the
3 order granting deferred prosecution; (c) the petitioner has
4 acknowledged and waived the right to testify, the right to a speedy
5 trial, the right to call witnesses to testify, the right to present
6 evidence in his or her defense, and the right to a jury trial; and
7 (d) the petitioner's statements were made knowingly and voluntarily.
8 Such findings shall be included in the order granting deferred
9 prosecution.

10 **Sec. 14.** RCW 10.05.030 and 2023 c 102 s 17 are each amended to
11 read as follows:

12 The arraignment judge upon consideration of the petition may
13 continue the arraignment and refer such person for a diagnostic
14 investigation and evaluation to:

15 (1) (~~An approved substance use disorder treatment program~~) A
16 state-approved behavioral health agency, approved for substance use
17 disorder services, as designated in chapter 71.24 RCW if the petition
18 alleges a substance use disorder;

19 (2) (~~An approved mental health center~~) A state-approved
20 behavioral health agency, approved for mental health services, as
21 designated in chapter 71.24 RCW, if the petition alleges a mental
22 (~~problem~~) health disorder;

23 (3) The department of (~~social and health services~~) children,
24 youth, and families if the petition is brought under RCW
25 10.05.020(2); or

26 (4) An approved state-certified domestic violence treatment
27 provider pursuant to RCW 43.20A.735 if the petition alleges a
28 domestic violence behavior problem.

29 **Sec. 15.** RCW 10.05.040 and 2018 c 201 s 9005 are each amended to
30 read as follows:

31 The program to which such person is referred, or the department
32 of (~~social and health services~~) children, youth, and families if
33 the petition is brought under RCW 10.05.020(2), shall conduct an
34 investigation and examination to determine:

35 (1) Whether the person suffers from the problem described;

36 (2) Whether the problem is such that if not treated, or if no
37 child welfare services are provided, there is a probability that
38 similar misconduct will occur in the future;

1 (3) Whether extensive and long term treatment is required;

2 (4) Whether effective treatment or child welfare services for the
3 person's problem are available; and

4 (5) Whether the person is (~~amenable~~): (a) Amenable to treatment
5 as demonstrated by (i) completion of residential treatment; (ii)
6 completion of a minimum of 18 hours of intensive outpatient
7 treatment, for substance use disorder petitions; (iii) completion of
8 a minimum of six mental health sessions, for mental health disorder
9 petitions; or (iv) completion of a minimum of six domestic violence
10 treatment sessions for domestic violence petitions; or (b) willing to
11 cooperate with child welfare services. The requirement for completing
12 a minimum number of sessions may be waived if the court finds good
13 cause.

14 **Sec. 16.** RCW 10.05.050 and 2018 c 201 s 9006 are each amended to
15 read as follows:

16 (1) The program, or the department of (~~social and health~~
17 ~~services~~) children, youth, and families if the petition is brought
18 under RCW 10.05.020(2), shall make a written report to the court
19 stating its findings and recommendations after the examination
20 required by RCW 10.05.040. If its findings and recommendations
21 support treatment or the implementation of a child welfare service
22 plan, it shall also recommend a treatment or service plan setting
23 out:

24 (a) The type;

25 (b) Nature;

26 (c) Length;

27 (d) A treatment or service time schedule; and

28 (e) Approximate cost of the treatment or child welfare services.

29 (2) In the case of a child welfare service plan, the plan shall
30 be designed in a manner so that a parent who successfully completes
31 the plan will not be likely to withhold the basic necessities of life
32 from his or her child.

33 (3) The report with the treatment or service plan shall be filed
34 with the court and a copy given to the petitioner and petitioner's
35 counsel. A copy of the treatment or service plan shall be given to
36 the prosecutor by petitioner's counsel at the request of the
37 prosecutor. The evaluation facility, or the department of (~~social~~
38 ~~and health services~~) children, youth, and families if the petition
39 is brought under RCW 10.05.020(2), making the written report shall

1 append to the report a commitment by the treatment program or the
2 department of (~~social and health services~~) children, youth, and
3 families that it will provide the treatment or child welfare services
4 in accordance with this chapter. The facility or the service provider
5 shall agree to provide the court with a statement (~~every three~~
6 ~~months for the first year and every six months for the second year~~)
7 monthly regarding (a) the petitioner's cooperation with the treatment
8 or child welfare service plan proposed and (b) the petitioner's
9 progress or failure in treatment or child welfare services. These
10 statements shall be made as a declaration by the person who is
11 personally responsible for providing the treatment or services.

12 **Sec. 17.** RCW 10.05.060 and 2009 c 135 s 1 are each amended to
13 read as follows:

14 If the report recommends treatment, the court shall examine the
15 treatment plan. If it approves the plan and the petitioner agrees to
16 comply with its terms and conditions and agrees to pay the cost
17 thereof, if able to do so, or arrange for the treatment, an entry
18 shall be made upon the person's court docket showing that the person
19 has been accepted for deferred prosecution. A copy of the treatment
20 plan shall be filed with the court. If the charge be one that an
21 abstract of the docket showing the charge, the date of the violation
22 for which the charge was made, and the date of petitioner's
23 acceptance is required to be sent to the department of licensing, an
24 abstract shall be sent, and the department of licensing shall make an
25 entry of the charge and of the petitioner's acceptance for deferred
26 prosecution on the department's driving record of the petitioner. The
27 entry is not a conviction for purposes of Title 46 RCW. Upon receipt
28 of the abstract of the docket, the department shall issue notice that
29 45 days after receipt, the petitioner must apply for a probationary
30 license in accordance with RCW 46.20.355, and the petitioner's
31 driver's license shall be on probationary status for five years from
32 the date of the violation that gave rise to the charge. The
33 department shall maintain the record (~~for ten years from date of~~
34 entry of the order granting deferred prosecution) consistent with
35 the requirements of RCW 46.01.260.

36 **Sec. 18.** RCW 10.05.090 and 2010 c 269 s 10 are each amended to
37 read as follows:

1 If a petitioner, who has been accepted for a deferred
2 prosecution, fails or neglects to carry out and fulfill any term or
3 condition of the petitioner's treatment plan or any term or condition
4 imposed in connection with the installation of an interlock or other
5 device under RCW 46.20.720, the facility, center, institution, or
6 agency administering the treatment or the entity administering the
7 use of the device, shall immediately report such breach to the court,
8 the prosecutor, and the petitioner or petitioner's attorney of
9 record, together with its recommendation. The court upon receiving
10 such a report shall hold a hearing to determine whether the
11 petitioner should be removed from the deferred prosecution
12 ((~~program~~)). At the hearing, evidence shall be taken of the
13 petitioner's alleged failure to comply with the treatment plan or
14 device installation and the petitioner shall have the right to
15 present evidence on his or her own behalf. The court shall either
16 order that the petitioner continue on the treatment plan or be
17 removed from deferred prosecution. If removed from deferred
18 prosecution, the court shall enter judgment pursuant to RCW 10.05.020
19 and, if the charge for which the deferred prosecution was granted was
20 a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify
21 the department of licensing of the removal and entry of judgment.

22 **Sec. 19.** RCW 10.05.100 and 1998 c 208 s 2 are each amended to
23 read as follows:

24 If a petitioner is subsequently convicted of a similar offense
25 that was committed while the petitioner was in a deferred prosecution
26 ((~~program~~)), upon notice the court shall remove the petitioner's
27 docket from the deferred prosecution file and the court shall enter
28 judgment pursuant to RCW 10.05.020.

29 **Sec. 20.** RCW 10.05.120 and 2019 c 263 s 705 are each amended to
30 read as follows:

31 (1) Three years after receiving proof of successful completion of
32 the ((~~two-year~~)) approved treatment ((~~program~~)) plan, and following
33 proof to the court that the petitioner has complied with the
34 conditions imposed by the court following successful completion of
35 the ((~~two-year~~)) approved treatment ((~~program~~)) plan, but not before
36 five years following entry of the order of deferred prosecution
37 pursuant to a petition brought under RCW 10.05.020(1), the court
38 shall dismiss the charges pending against the petitioner.

1 (2) When a deferred prosecution is ordered pursuant to a petition
2 brought under RCW 10.05.020(2) and the court has received proof that
3 the petitioner has successfully completed the child welfare service
4 plan, or the plan has been terminated because the alleged victim has
5 reached his or her majority and there are no other minor children in
6 the home, the court shall dismiss the charges pending against the
7 petitioner: PROVIDED, That in any case where the petitioner's
8 parental rights have been terminated with regard to the alleged
9 victim due to abuse or neglect that occurred during the pendency of
10 the deferred prosecution, the termination shall be per se evidence
11 that the petitioner did not successfully complete the child welfare
12 service plan.

13 ~~((3) When a deferred prosecution is ordered for a petition
14 brought under RCW 10.05.020(1) involving a domestic violence behavior
15 problem and the court has received proof that the petitioner has
16 successfully completed the domestic violence treatment plan, the
17 court shall dismiss the charges pending against the petitioner.))~~

18 **Sec. 21.** RCW 10.05.140 and 2019 c 263 s 706 are each amended to
19 read as follows:

20 (1) As a condition of granting a deferred prosecution petition
21 for a violation of RCW 46.61.502 or 46.61.504, the court shall order
22 that the petitioner shall not operate a motor vehicle upon the public
23 highways without a valid operator's license and proof of liability
24 insurance. The amount of liability insurance shall be established by
25 the court at not less than that established by RCW 46.29.490. As a
26 condition of granting a deferred prosecution petition on any
27 ~~((alcohol-dependency))~~ substance use disorder-based case, the court
28 shall also order the installation of an ignition interlock under RCW
29 46.20.720. The required periods of use of the interlock shall be not
30 less than the periods provided for in RCW 46.20.720. As a condition
31 of granting a deferred prosecution petition, the court may order the
32 petitioner to make restitution and to pay costs as defined in RCW
33 10.01.160. To help ensure continued sobriety and reduce the
34 likelihood of reoffense, the court may order reasonable conditions
35 during the period of the deferred prosecution including, but not
36 limited to, attendance at self-help recovery support groups for
37 ~~((alcoholism or drugs))~~ substance use disorder, complete abstinence
38 from alcohol and all nonprescribed mind-altering drugs, periodic
39 urinalysis or breath analysis, and maintaining law-abiding behavior.

1 The court may terminate the deferred prosecution ((program)) upon
2 violation of the deferred prosecution order.

3 (2) As a condition of granting a deferred prosecution petition
4 for a case involving a domestic violence behavior problem:

5 (a) The court shall order the petitioner not to possess firearms
6 and order the petitioner to surrender firearms under RCW 9.41.800;
7 and

8 (b) The court may order the petitioner to make restitution and to
9 pay costs as defined in RCW 10.01.160. In addition, to help ensure
10 continued sobriety and reduce the likelihood of reoffense in co-
11 occurring domestic violence and substance ((abuse)) use disorder or
12 mental health disorder cases, the court may order reasonable
13 conditions during the period of the deferred prosecution including,
14 but not limited to, attendance at self-help recovery support groups
15 for ((alcoholism—or—drugs)) substance use disorder, complete
16 abstinence from alcohol and all nonprescribed mind-altering drugs,
17 periodic urinalysis or breath analysis, and maintaining law-abiding
18 behavior. The court may terminate the deferred prosecution
19 ((program)) upon violation of the deferred prosecution order.

20 **Sec. 22.** RCW 10.05.150 and 2016 sp.s. c 29 s 527 are each
21 amended to read as follows:

22 (1) A deferred prosecution ((program)) for ((alcoholism)) either
23 substance use disorder or mental health co-occurring disorder shall
24 be for a two-year period and shall include, but not be limited to,
25 the following requirements:

26 ((1)) (a) Total abstinence from alcohol and all other
27 nonprescribed mind-altering drugs;

28 ((2) Participation in an intensive inpatient or intensive
29 outpatient program in a state-approved substance use disorder
30 treatment program;

31 ((3) Participation in a minimum of two meetings per week of an
32 alcoholism self-help recovery support group, as determined by the
33 assessing agency, for the duration of the treatment program;

34 ((4) Participation in an alcoholism self-help recovery support
35 group, as determined by the assessing agency, from the date of court
36 approval of the plan to entry into intensive treatment;

37 ((5) Not less than weekly approved outpatient counseling, group or
38 individual, for a minimum of six months following the intensive phase
39 of treatment;

1 ~~(6) Not less than monthly outpatient contact, group or~~
2 ~~individual, for the remainder of the two-year deferred prosecution~~
3 ~~period;~~

4 ~~(7) The decision to include the use of prescribed drugs,~~
5 ~~including disulfiram, as a condition of treatment shall be reserved~~
6 ~~to the treating facility and the petitioner's physician;~~

7 ~~(8)) (b) All treatment within the purview of this section shall~~
8 ~~occur within or be approved by a state-approved ((substance use~~
9 ~~disorder treatment program)) behavioral health agency as described in~~
10 ~~chapter ((70.96A)) 71.24 RCW;~~

11 ~~((9)) (c) Signature of the petitioner agreeing to the terms and~~
12 ~~conditions of the treatment program;~~

13 (d) Periodic, random urinalysis or breath analysis;

14 (e) If the petitioner fails to remain abstinent, a full substance
15 use disorder reassessment and recommended treatment;

16 (f) No less than weekly approved outpatient counseling, whether
17 group or individual, for a minimum of six months following the
18 intensive phase of treatment;

19 (g) No less than monthly outpatient contact, whether group or
20 individual, for the remainder of the two-year deferred prosecution
21 period; and

22 (h) The decision to include the use of prescribed drugs,
23 including disulfiram, as a condition of treatment shall be reserved
24 to the treating facility and the petitioner's physician.

25 (2) A deferred prosecution for substance use disorder shall
26 include the following requirements:

27 (a) Completion of an intensive outpatient treatment program or
28 residential inpatient treatment program, depending on the severity of
29 the diagnosis; and

30 (b) Participation in a minimum of two meetings per week of a
31 substance use disorder self-help recovery support group, as
32 determined by the assessing agency, for the duration of the treatment
33 program.

34 (3) A deferred prosecution for mental health co-occurring
35 disorder shall include the following requirements:

36 (a) Completion of the requirements described in subsection (2) of
37 this section, or completion of an outpatient program as determined by
38 the petitioner's diagnostic evaluation; and

39 (b) Completion of individual or group mental health services.

1 **Sec. 23.** RCW 10.05.155 and 2019 c 263 s 708 are each amended to
2 read as follows:

3 A deferred prosecution (~~(program)~~) for domestic violence
4 behavior, or domestic violence co-occurring with substance abuse or
5 mental health, must include, but is not limited to, the following
6 requirements:

7 (1) Completion of a risk assessment;

8 (2) Participation in the level of treatment recommended by the
9 program as outlined in the current treatment plan;

10 (3) Compliance with the contract for treatment;

11 (4) Participation in any ancillary or co-occurring treatments
12 that are determined to be necessary for the successful completion of
13 the domestic violence intervention treatment including, but not
14 limited to, mental health or substance use treatment;

15 (5) Domestic violence intervention treatment within the purview
16 of this section to be completed with a state-certified domestic
17 violence intervention treatment program;

18 (6) Signature of the petitioner agreeing to the terms and
19 conditions of the treatment program;

20 (7) Proof of compliance with any active order to surrender
21 weapons issued in this program or related civil protection orders or
22 no-contact orders.

23 NEW SECTION. **Sec. 24.** A new section is added to chapter 10.05
24 RCW to read as follows:

25 A deferred prosecution for mental health disorder where the
26 wrongful conduct did not involve, and was not caused by, alcohol,
27 drugs, or a substance use disorder, shall include treatment
28 recommended by a state-approved mental health provider.

29 **Sec. 25.** RCW 10.05.170 and 1991 c 247 s 2 are each amended to
30 read as follows:

31 As a condition of granting deferred prosecution, the court may
32 order supervision of the petitioner during the period of deferral and
33 may levy a monthly assessment upon the petitioner as provided in RCW
34 10.64.120. In a jurisdiction with a probation department, the court
35 may appoint the probation department to supervise the petitioner. In
36 a jurisdiction without a probation department, the court may appoint
37 an appropriate person or agency to supervise the petitioner. A

1 supervisor appointed under this section shall be required to do at
2 least the following:

3 (1) If the charge for which deferral is granted relates to
4 operation of a motor vehicle, at least once every ~~((six))~~ three
5 months request ~~((from the department of licensing))~~ an abstract of
6 the petitioner's driving record; ~~((and))~~

7 (2) At least once every month make contact with the petitioner
8 ~~((or with any agency to which the petitioner has been directed for~~
9 ~~treatment as a part of the deferral))~~ until treatment is completed;

10 (3) Review the petitioner's criminal history at a minimum of
11 every 90 days until the end of the deferral period; and

12 (4) Report known violations of supervision or law and
13 noncompliance with conditions of the deferred prosecution to the
14 court within five business days or as soon as practicable.

15 **Sec. 26.** RCW 46.20.355 and 2020 c 330 s 8 are each amended to
16 read as follows:

17 (1) Upon receipt of an abstract indicating a deferred prosecution
18 has been granted under RCW 10.05.060, or upon receipt of a notice of
19 conviction of RCW 46.61.502 or 46.61.504, the department of licensing
20 shall issue notice that 45 days after receipt, the person must apply
21 for a probationary license, and order the person to surrender any
22 nonprobationary Washington state driver's license that may be in his
23 or her possession. The department shall revoke the license, permit,
24 or privilege to drive of any person who fails to surrender it as
25 required by this section for one year, unless the license has been
26 previously surrendered to the department, a law enforcement officer,
27 or a court, or the person has completed an affidavit of lost, stolen,
28 destroyed, or previously surrendered license, such revocation to take
29 effect ~~((thirty))~~ 30 days after notice is given of the requirement
30 for license surrender.

31 (2) The department shall place a person's driving privilege in
32 probationary status as required by RCW 10.05.060 or 46.61.5055 for a
33 period of five years from the date the probationary status is
34 required to go into effect.

35 (3) Following receipt of an abstract indicating a deferred
36 prosecution has been granted under RCW 10.05.060, or upon
37 reinstatement or reissuance of a driver's license suspended or
38 revoked as the result of a conviction of RCW 46.61.502 or 46.61.504,
39 the department shall require the person to obtain a probationary

1 license in order to operate a motor vehicle in the state of
2 Washington, except as otherwise exempt under RCW 46.20.025. The
3 department shall not issue the probationary license unless the person
4 is otherwise qualified for licensing, and the person must renew the
5 probationary license on the same cycle as the person's regular
6 license would have been renewed until the expiration of the five-year
7 probationary status period imposed under subsection (2) of this
8 section.

9 (4) If a person is eligible for full credit under RCW
10 46.61.5055(9)(b)(ii) and, by the date specified in the notice issued
11 under RCW 46.20.245, has completed the requirements under RCW
12 46.20.311 and paid the fee under subsection (5) of this section, the
13 department shall issue a probationary license on the date specified
14 in the notice with no further action required of the person.

15 (5) For each original issue or renewal of a probationary license
16 under this section, the department shall charge a fee of (~~fifty~~
17 ~~dollars~~) \$50 in addition to any other licensing fees required.
18 Except for when renewing a probationary license, the department shall
19 waive the requirement to obtain an additional probationary license
20 and the (~~fifty-dollar~~) \$50 fee if the person has a probationary
21 license in his or her possession at the time a new probationary
22 license is required.

23 (6) A probationary license shall enable the department and law
24 enforcement personnel to determine that the person is on probationary
25 status. The fact that a person's driving privilege is in probationary
26 status or that the person has been issued a probationary license
27 shall not be a part of the person's record that is available to
28 insurance companies.

29 **Sec. 27.** RCW 46.20.385 and 2020 c 330 s 9 are each amended to
30 read as follows:

31 (1)(a) Any person licensed under this chapter or who has a valid
32 driver's license from another state, who is convicted of: (i) A
33 violation of RCW 46.61.502 or 46.61.504 or an equivalent local or
34 out-of-state statute or ordinance, or (ii) a violation of RCW
35 46.61.520(1)(a) or an equivalent local or out-of-state statute or
36 ordinance, or (iii) a conviction for a violation of RCW 46.61.520(1)
37 (b) or (c) if the conviction is the result of a charge that was
38 originally filed as a violation of RCW 46.61.520(1)(a), or (iv) RCW
39 46.61.522(1)(b) or an equivalent local or out-of-state statute or

1 ordinance, or (v) RCW 46.61.522(1) (a) or (c) if the conviction is
2 the result of a charge that was originally filed as a violation of
3 RCW 46.61.522(1)(b) committed while under the influence of
4 intoxicating liquor or any drug, or (vi) who has had or will have his
5 or her license suspended, revoked, or denied under RCW 46.20.3101, or
6 has had his or her license suspended, revoked, or denied under RCW
7 46.61.5055(11)(c)(i), or who is otherwise permitted under subsection
8 (8) of this section, may submit to the department an application for
9 an ignition interlock driver's license. The department, upon receipt
10 of the prescribed fee and upon determining that the petitioner is
11 eligible to receive the license, may issue an ignition interlock
12 driver's license.

13 (b) A person may apply for an ignition interlock driver's license
14 anytime, including immediately after receiving the notices under RCW
15 46.20.308 or after his or her license is suspended, revoked, or
16 denied.

17 (c) An applicant under this subsection shall provide proof to the
18 satisfaction of the department that a functioning ignition interlock
19 device has been installed on all vehicles operated by the person.

20 (i) The department shall require the person to maintain the
21 device on all vehicles operated by the person and shall restrict the
22 person to operating only vehicles equipped with the device, for the
23 remainder of the period of suspension, revocation, or denial, unless
24 otherwise permitted under RCW 46.20.720(6).

25 (ii) Subject to any periodic renewal requirements established by
26 the department under this section and subject to any applicable
27 compliance requirements under this chapter or other law, an ignition
28 interlock driver's license granted upon a suspension or revocation
29 under RCW 46.61.5055 or 46.20.3101 extends through the remaining
30 portion of any concurrent or consecutive suspension or revocation
31 that may be imposed as the result of administrative action and
32 criminal conviction arising out of the same incident.

33 (2) An applicant for an ignition interlock driver's license who
34 qualifies under subsection (1) of this section is eligible to receive
35 a license only if the applicant files satisfactory proof of financial
36 responsibility under chapter 46.29 RCW.

37 (3) Upon receipt of evidence that a holder of an ignition
38 interlock driver's license granted under this subsection no longer
39 has a functioning ignition interlock device installed on all vehicles
40 operated by the driver, the director shall give written notice by

1 first-class mail to the driver that the ignition interlock driver's
2 license shall be canceled. If at any time before the cancellation
3 goes into effect the driver submits evidence that a functioning
4 ignition interlock device has been installed on all vehicles operated
5 by the driver, the cancellation shall be stayed. If the cancellation
6 becomes effective, the driver may obtain, at no additional charge, a
7 new ignition interlock driver's license upon submittal of evidence
8 that a functioning ignition interlock device has been installed on
9 all vehicles operated by the driver.

10 (4) A person aggrieved by the decision of the department on the
11 application for an ignition interlock driver's license may request a
12 hearing as provided by rule of the department.

13 (5) The director shall cancel an ignition interlock driver's
14 license after receiving notice that the holder thereof has been
15 convicted of operating a motor vehicle in violation of its
16 restrictions, no longer meets the eligibility requirements, or has
17 been convicted of or found to have committed a separate offense or
18 any other act or omission that under this chapter would warrant
19 suspension or revocation of a regular driver's license. The
20 department must give notice of the cancellation as provided under RCW
21 46.20.245. A person whose ignition interlock driver's license has
22 been canceled under this section may reapply for a new ignition
23 interlock driver's license if he or she is otherwise qualified under
24 this section and pays the fee required under RCW 46.20.380.

25 (6) (a) Unless costs are waived by the ignition interlock company
26 or the person is indigent under RCW 10.101.010, the applicant shall
27 pay the cost of installing, removing, and leasing the ignition
28 interlock device and shall pay an additional fee of twenty-one
29 dollars per month. Payments shall be made directly to the ignition
30 interlock company. The company shall remit the additional fee to the
31 department, except that the company may retain (~~twenty-five~~) 25
32 cents per month of the additional fee to cover the expenses
33 associated with administering the fee.

34 (b) The department shall deposit the proceeds of the twenty-one
35 dollar fee into the ignition interlock device revolving account.
36 Expenditures from the account may be used only to administer and
37 operate the ignition interlock device revolving account program. The
38 department shall adopt rules to provide monetary assistance according
39 to greatest need and when funds are available.

1 (7) The department shall adopt rules to implement ignition
2 interlock licensing. The department shall consult with the
3 administrative office of the courts, the state patrol, the Washington
4 association of sheriffs and police chiefs, ignition interlock
5 companies, and any other organization or entity the department deems
6 appropriate.

7 (8) (a) Any person licensed under this chapter who is convicted of
8 a violation of RCW 46.61.500 when the charge was originally filed as
9 a violation of RCW 46.61.502 or 46.61.504, or an equivalent local
10 ordinance, may submit to the department an application for an
11 ignition interlock driver's license under this section.

12 (b) A person who does not have any driver's license under this
13 chapter, but who would otherwise be eligible under this section to
14 apply for an ignition interlock license, may submit to the department
15 an application for an ignition interlock license. The department may
16 require the person to take any driver's licensing examination under
17 this chapter and may require the person to also apply and qualify for
18 a temporary restricted driver's license under RCW 46.20.391.

19 **Sec. 28.** RCW 46.20.720 and 2020 c 330 s 10 are each amended to
20 read as follows:

21 (1) **Ignition interlock restriction.** The department shall require
22 that a person may drive only a motor vehicle equipped with a
23 functioning ignition interlock device:

24 (a) **Pretrial release.** Upon receipt of notice from a court that an
25 ignition interlock device restriction has been imposed under RCW
26 10.21.055;

27 (b) **Ignition interlock driver's license.** As required for issuance
28 of an ignition interlock driver's license under RCW 46.20.385;

29 (c) **Deferred prosecution.** Upon receipt of notice from a court
30 that the person is participating in a deferred prosecution program
31 under RCW 10.05.020 for a violation of:

32 (i) RCW 46.61.502 or 46.61.504 or an equivalent local ordinance;
33 or

34 (ii) RCW 46.61.5249 or 46.61.500 or an equivalent local ordinance
35 if the person would be required under RCW 46.61.5249(4) or
36 46.61.500(3) (a) or (b) to install an ignition interlock device on
37 all vehicles operated by the person in the event of a conviction;

38 (d) **Post conviction.** After any applicable period of mandatory
39 suspension, revocation, or denial of driving privileges, or upon

1 fulfillment of day-for-day credit under RCW 46.61.5055(9)(b)(ii) for
2 a suspension, revocation, or denial of driving privileges:

3 (i) Due to a conviction of a violation of RCW 46.61.502 or
4 46.61.504 or an equivalent local or out-of-state statute or
5 ordinance; or

6 (ii) Due to a conviction of a violation of RCW 46.61.5249 or
7 46.61.500 or an equivalent local ordinance if the person is required
8 under RCW 46.61.5249(4) or 46.61.500(3)(a) or (b) to install an
9 ignition interlock device on all vehicles operated by the person; or

10 (e) **Court order.** Upon receipt of an order by a court having
11 jurisdiction that a person charged or convicted of any offense
12 involving the use, consumption, or possession of alcohol while
13 operating a motor vehicle may drive only a motor vehicle equipped
14 with a functioning ignition interlock. The court shall establish a
15 specific alcohol set point at which the ignition interlock will
16 prevent the vehicle from being started. The court shall also
17 establish the period of time for which ignition interlock use will be
18 required.

19 (2) **Alcohol set point.** Unless otherwise specified by the court
20 for a restriction imposed under subsection (1)(e) of this section,
21 the ignition interlock device shall have an alcohol set point that
22 prevents the motor vehicle from being started when the breath sample
23 provided has an alcohol concentration of 0.020 or more.

24 (3) **Duration of restriction.** A restriction imposed under:

25 (a) Subsection (1)(a) of this section shall remain in effect
26 until:

27 (i) The court has authorized the removal of the device under RCW
28 10.21.055; or

29 (ii) The department has imposed a restriction under subsection
30 (1)(b), (c), or (d) of this section arising out of the same incident.

31 (b) Subsection (1)(b) of this section remains in effect during
32 the validity of any ignition interlock driver's license that has been
33 issued to the person.

34 (c) Subsection (1)(c)(i) or (d)(i) of this section shall be for
35 no less than:

36 (i) For a person who has not previously been restricted under
37 this subsection, a period of one year;

38 (ii) For a person who has previously been restricted under (c)(i)
39 of this subsection, a period of five years;

1 (iii) For a person who has previously been restricted under
2 (c)(ii) of this subsection, a period of (~~ten~~) 10 years.

3 The restriction of a person who is convicted of a violation of
4 RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and who
5 committed the offense while one or more passengers under the age of
6 (~~sixteen~~) 16 were in the vehicle shall be extended for an
7 additional period as required by RCW 46.61.5055(6) (a).

8 For purposes of determining a period of restriction for a person
9 restricted pursuant to a conviction under (d) of this subsection, a
10 restriction based on a deferred prosecution under subsection (1)(c)
11 of this section arising out of the same incident is not considered a
12 prior restriction for purposes of this subsection.

13 (d) Subsection (1)(c)(ii) or (d)(ii) of this section shall be for
14 a period of no less than six months.

15 (e) The period of restriction under (c) or (d) of this subsection
16 shall be extended by (~~one hundred eighty~~) 180 days whenever the
17 department receives notice that the restricted person has been
18 convicted under RCW 46.20.740 or 46.20.750. If the period of
19 restriction under (c) or (d) of this subsection has been fulfilled
20 and cannot be extended, the department must add a new (~~one hundred~~
21 ~~eighty-day~~) 180-day restriction that is imposed from the date of
22 conviction and is subject to the requirements for removal under
23 subsection (4) of this section.

24 (f) Subsection (1)(e) of this section shall remain in effect for
25 the period of time specified by the court.

26 (g) The period of restriction under (c) and (d) of this
27 subsection based on incidents occurring on or after June 9, 2016,
28 must be tolled for any period in which the person does not have an
29 ignition interlock device installed on a vehicle owned or operated by
30 the person unless the person receives a determination from the
31 department that the person is unable to operate an ignition interlock
32 device due to a physical disability. For all drivers restricted under
33 this section with incidents and restriction start dates prior to June
34 9, 2016, a driver may apply to waive the restriction by applying for
35 a determination from the department that the person is unable to
36 operate an ignition interlock device due to a physical disability.
37 The department's determination that a person is unable to operate an
38 ignition interlock device must be reasonable and be based upon good
39 and substantial evidence. This determination is subject to review by
40 a court of competent jurisdiction. The department may charge a person

1 seeking a medical exemption under this subsection a reasonable fee
2 for the assessment.

3 (4) **Requirements for removal.** A restriction imposed under
4 subsection (1)(c) or (d) of this section shall remain in effect until
5 the department receives a declaration from the person's ignition
6 interlock device vendor, in a form provided or approved by the
7 department, certifying the following:

8 (a) That there have been none of the following incidents in the
9 (~~one hundred eighty~~) 180 consecutive days prior to the date of
10 release:

11 (i) Any attempt to start the vehicle with a breath alcohol
12 concentration of 0.04 or more unless a subsequent test performed
13 within (~~ten~~) 10 minutes registers a breath alcohol concentration
14 lower than 0.04 and the digital image confirms the same person
15 provided both samples;

16 (ii) Failure to take any random test unless a review of the
17 digital image confirms that the vehicle was not occupied by the
18 driver at the time of the missed test;

19 (iii) Failure to pass any random retest with a breath alcohol
20 concentration of lower than 0.020 unless a subsequent test performed
21 within (~~ten~~) 10 minutes registers a breath alcohol concentration
22 lower than 0.020, and the digital image confirms the same person
23 provided both samples;

24 (iv) Failure of the person to appear at the ignition interlock
25 device vendor when required for maintenance, repair, calibration,
26 monitoring, inspection, or replacement of the device; or

27 (v) Removal of the ignition interlock device by a person other
28 than an ignition interlock technician certified by the Washington
29 state patrol; and

30 (b) That the ignition interlock device was inspected at the
31 conclusion of the (~~one hundred eighty-day~~) 180-day period by an
32 ignition interlock technician certified by the Washington state
33 patrol and no evidence was found that the device was tampered with in
34 the manner described in RCW 46.20.750.

35 (5) **Day-for-day credit.** (a) The time period during which a person
36 has an ignition interlock device installed in order to meet the
37 requirements of subsection (1)(b) of this section shall apply on a
38 day-for-day basis toward satisfying the period of time the ignition
39 interlock device restriction is imposed under subsection (1)(c) or
40 (d) of this section arising out of the same incident.

1 (b) The department must also give the person a day-for-day credit
2 for any time period, beginning from the date of the incident, during
3 which the person kept an ignition interlock device installed on all
4 vehicles the person operates, other than those subject to the
5 employer exemption under subsection (6) of this section.

6 (c) If the day-for-day credit granted under this subsection
7 equals or exceeds the period of time the ignition interlock device
8 restriction is imposed under subsection (1)(c) or (d) of this section
9 arising out of the same incident, and the person has already met the
10 requirements for removal of the device under subsection (4) of this
11 section, the department may waive the requirement that a device be
12 installed or that the person again meet the requirements for removal.

13 (6) **Employer exemption.** (a) Except as provided in (b) of this
14 subsection, the installation of an ignition interlock device is not
15 necessary on vehicles owned, leased, or rented by a person's employer
16 and on those vehicles whose care and/or maintenance is the temporary
17 responsibility of the employer, and driven at the direction of a
18 person's employer as a requirement of employment during working
19 hours. The person must provide the department with a declaration
20 pursuant to chapter 5.50 RCW from his or her employer stating that
21 the person's employment requires the person to operate a vehicle
22 owned by the employer or other persons during working hours. When the
23 department receives a declaration under this subsection, it shall
24 attach or imprint a notation on the person's driving record stating
25 that the employer exemption applies.

26 (b) The employer exemption does not apply when the employer's
27 vehicle is assigned exclusively to the restricted driver and used
28 solely for commuting to and from employment.

29 (c) The employer exemption does not apply to a person who is
30 self-employed unless the person's vehicle is used exclusively for the
31 person's employment.

32 (7) **Ignition interlock device revolving account.** In addition to
33 any other costs associated with the use of an ignition interlock
34 device imposed on the person restricted under this section, the
35 person shall pay an additional fee of (~~twenty-one dollars~~) \$21 per
36 month. Payments must be made directly to the ignition interlock
37 company. The company shall remit the additional fee to the department
38 to be deposited into the ignition interlock device revolving account,
39 except that the company may retain (~~twenty-five~~) 25 cents per month
40 of the additional fee to cover the expenses associated with

1 administering the fee. The department may waive the monthly fee if
2 the person is indigent under RCW 10.101.010.

3 (8) **Foreign jurisdiction.** For a person restricted under this
4 section who is residing outside of the state of Washington, the
5 department may accept verification of installation of an ignition
6 interlock device by an ignition interlock company authorized to do
7 business in the jurisdiction in which the person resides, provided
8 the device meets any applicable requirements of that jurisdiction.
9 The department may waive one or more requirements for removal under
10 subsection (4) of this section if compliance with the requirement or
11 requirements would be impractical in the case of a person residing in
12 another jurisdiction, provided the person is in compliance with any
13 equivalent requirement of that jurisdiction. The department may waive
14 the monthly fee required by subsection (7) of this section if
15 collection of the fee would be impractical in the case of a person
16 residing in another jurisdiction.

17 **Sec. 29.** RCW 46.20.740 and 2020 c 330 s 11 are each amended to
18 read as follows:

19 (1) The department shall attach or imprint a notation on the
20 driving record of any person restricted under RCW 46.20.720,
21 46.61.5055, or 10.05.140 stating that the person may operate only a
22 motor vehicle equipped with a functioning ignition interlock device.
23 The department shall determine the person's eligibility for licensing
24 based upon written verification by a company doing business in the
25 state that it has installed the required device on a vehicle owned or
26 operated by the person seeking reinstatement. If, based upon
27 notification from the interlock provider or otherwise, the department
28 determines that an ignition interlock required under this section is
29 no longer installed or functioning as required, the department shall
30 suspend the person's license or privilege to drive. Whenever the
31 license or driving privilege of any person is suspended or revoked as
32 a result of noncompliance with an ignition interlock requirement, the
33 suspension shall remain in effect until the person provides notice
34 issued by a company doing business in the state that a vehicle owned
35 or operated by the person is equipped with a functioning ignition
36 interlock device.

37 (2) It is a gross misdemeanor for a person with such a notation
38 on his or her driving record to operate a motor vehicle that is not
39 so equipped, unless the notation resulted from a restriction imposed

1 as a condition of release and the restriction has been released by
2 the court prior to driving. Any time a person is convicted under this
3 section, the court shall immediately notify the department for
4 purposes of RCW 46.20.720(3)(e). It is an affirmative defense, which
5 the defendant must prove by a preponderance of the evidence, that the
6 employer exemption in RCW 46.20.720(6) applies. The court shall not
7 admit evidence of this defense unless the defendant notifies the
8 prosecution prior to the omnibus or pretrial hearing in the case of
9 the defendant's intent to assert the affirmative defense.

10 (3) Any sentence imposed for a violation of subsection (2) of
11 this section shall be served consecutively with any sentence imposed
12 under RCW 46.20.750, 46.61.502, 46.61.504, or 46.61.5055.

13 **Sec. 30.** RCW 46.61.502 and 2022 c 16 s 40 are each amended to
14 read as follows:

15 (1) A person is guilty of driving while under the influence of
16 intoxicating liquor, cannabis, or any drug if the person drives a
17 vehicle within this state:

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

21 (b) The person has, within two hours after driving, a THC
22 concentration of 5.00 or higher as shown by analysis of the person's
23 blood made under RCW 46.61.506; or

24 (c) While the person is under the influence of or affected by
25 intoxicating liquor, cannabis, or any drug; or

26 (d) While the person is under the combined influence of or
27 affected by intoxicating liquor, cannabis, and any drug.

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

32 (3)(a) It is an affirmative defense to a violation of subsection
33 (1)(a) of this section, which the defendant must prove by a
34 preponderance of the evidence, that the defendant consumed a
35 sufficient quantity of alcohol after the time of driving and before
36 the administration of an analysis of the person's breath or blood to
37 cause the defendant's alcohol concentration to be 0.08 or more within
38 two hours after driving. The court shall not admit evidence of this
39 defense unless the defendant notifies the prosecution prior to the

1 omnibus or pretrial hearing in the case of the defendant's intent to
2 assert the affirmative defense.

3 (b) It is an affirmative defense to a violation of subsection
4 (1)(b) of this section, which the defendant must prove by a
5 preponderance of the evidence, that the defendant consumed a
6 sufficient quantity of cannabis after the time of driving and before
7 the administration of an analysis of the person's blood to cause the
8 defendant's THC concentration to be 5.00 or more within two hours
9 after driving. The court shall not admit evidence of this defense
10 unless the defendant notifies the prosecution prior to the omnibus or
11 pretrial hearing in the case of the defendant's intent to assert the
12 affirmative defense.

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

21 (b) Analyses of blood samples obtained more than two hours after
22 the alleged driving may be used as evidence that within two hours of
23 the alleged driving, a person had a THC concentration of 5.00 or more
24 in violation of subsection (1)(b) of this section, and in any case in
25 which the analysis shows a THC concentration above 0.00 may be used
26 as evidence that a person was under the influence of or affected by
27 cannabis in violation of subsection (1)(c) or (d) of this section.

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

30 (6) It is a class B felony punishable under chapter 9.94A RCW, or
31 chapter 13.40 RCW if the person is a juvenile, if:

32 (a) The person has three or more prior offenses within ~~((ten))~~ 15
33 years as defined in RCW 46.61.5055; or

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

35 (i) Vehicular homicide while under the influence of intoxicating
36 liquor or any drug, RCW 46.61.520(1)(a);

37 (ii) Vehicular assault while under the influence of intoxicating
38 liquor or any drug, RCW 46.61.522(1)(b);

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

1 (iv) A violation of this subsection (6) or RCW 46.61.504(6).

2 **Sec. 31.** RCW 46.61.5055 and 2020 c 330 s 15 are each amended to
3 read as follows:

4 (1) **No prior offenses in seven years.** Except as provided in RCW
5 46.61.502(6) or 46.61.504(6), a person who is convicted of a
6 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
7 within seven years shall be punished as follows:

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

13 (i) By imprisonment for not less than (~~twenty-four~~) 24
14 consecutive hours nor more than (~~three hundred sixty-four~~) 364
15 days. In lieu of the mandatory minimum term of imprisonment required
16 under this subsection (1)(a)(i), the court, in its discretion, may
17 order not less than (~~fifteen~~) 15 days of electronic home monitoring
18 or a (~~ninety-day~~) 90-day period of 24/7 sobriety program
19 monitoring. The court may consider the offender's pretrial 24/7
20 sobriety program monitoring as fulfilling a portion of posttrial
21 sentencing. The offender shall pay the cost of electronic home
22 monitoring. The county or municipality in which the penalty is being
23 imposed shall determine the cost. The court may also require the
24 offender's electronic home monitoring device or other separate
25 alcohol monitoring device to include an alcohol detection
26 breathalyzer, and the court may restrict the amount of alcohol the
27 offender may consume during the time the offender is on electronic
28 home monitoring; and

29 (ii) By a fine of not less than (~~three hundred fifty dollars~~)
30 \$350 nor more than (~~five thousand dollars~~) \$5,000. (~~Three hundred~~
31 ~~fifty dollars~~) \$350 of the fine may not be suspended unless the
32 court finds the offender to be indigent; or

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

38 (i) By imprisonment for not less than (~~forty-eight~~) 48
39 consecutive hours nor more than (~~three hundred sixty-four~~) 364

1 days. In lieu of the mandatory minimum term of imprisonment required
2 under this subsection (1)(b)(i), the court, in its discretion, may
3 order not less than (~~(thirty)~~) 30 days of electronic home monitoring
4 or a (~~(one hundred twenty day)~~) 120-day period of 24/7 sobriety
5 program monitoring. The court may consider the offender's pretrial
6 24/7 sobriety program testing as fulfilling a portion of posttrial
7 sentencing. The offender shall pay the cost of electronic home
8 monitoring. The county or municipality in which the penalty is being
9 imposed shall determine the cost. The court may also require the
10 offender's electronic home monitoring device to include an alcohol
11 detection breathalyzer or other separate alcohol monitoring device,
12 and the court may restrict the amount of alcohol the offender may
13 consume during the time the offender is on electronic home
14 monitoring; and

15 (ii) By a fine of not less than (~~(five hundred dollars)~~) \$500 nor
16 more than (~~(five thousand dollars)~~) \$5,000. (~~(Five hundred dollars)~~)
17 \$500 of the fine may not be suspended unless the court finds the
18 offender to be indigent.

19 (2) **One prior offense in seven years.** Except as provided in RCW
20 46.61.502(6) or 46.61.504(6), a person who is convicted of a
21 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense
22 within seven years shall be punished as follows:

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

28 (i) By imprisonment for not less than (~~(thirty)~~) 30 days nor more
29 than (~~(three hundred sixty four)~~) 364 days and (~~(sixty)~~) 60 days of
30 electronic home monitoring. Thirty days of imprisonment and (~~(sixty)~~)
31 60 days of electronic home monitoring may not be suspended or
32 converted unless the court finds that the imposition of this
33 mandatory minimum sentence would impose a substantial risk to the
34 offender's physical or mental well-being. If the offender shows that
35 the imposition of this mandatory minimum sentence would impose a
36 substantial risk to the offender's physical or mental well-being, in
37 lieu of the mandatory term of imprisonment and electronic home
38 monitoring under this subsection (2)(a)(i), the court may order a
39 minimum of either (~~(one hundred eighty)~~) 180 days of electronic home
40 monitoring or a (~~(one hundred twenty day)~~) 120-day period of 24/7

1 sobriety program monitoring pursuant to RCW 36.28A.300 through
2 36.28A.390. Whenever the mandatory minimum sentence is suspended or
3 converted, the court shall state in writing the reason for granting
4 the suspension or conversion and the facts upon which the suspension
5 or conversion is based. The court may consider the offender's
6 pretrial 24/7 sobriety program monitoring as fulfilling a portion of
7 posttrial sentencing. The court shall order an expanded substance use
8 disorder assessment and treatment, if deemed appropriate by the
9 assessment. The offender shall pay for the cost of the electronic
10 monitoring. The county or municipality where the penalty is being
11 imposed shall determine the cost. The court may also require the
12 offender's electronic home monitoring device include an alcohol
13 detection breathalyzer or other separate alcohol monitoring device,
14 and may restrict the amount of alcohol the offender may consume
15 during the time the offender is on electronic home monitoring; and

16 (ii) By a fine of not less than (~~five hundred dollars~~) \$500 nor
17 more than (~~five thousand dollars~~) \$5,000. (~~Five hundred dollars~~)
18 \$500 of the fine may not be suspended unless the court finds the
19 offender to be indigent; or

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

25 (i) By imprisonment for not less than (~~forty-five~~) 45 days nor
26 more than (~~three hundred sixty-four~~) 364 days and (~~ninety~~) 90
27 days of electronic home monitoring. Forty-five days of imprisonment
28 and (~~ninety~~) 90 days of electronic home monitoring may not be
29 suspended or converted unless the court finds that the imposition of
30 this mandatory minimum sentence would impose a substantial risk to
31 the offender's physical or mental well-being. If the offender shows
32 that the imposition of this mandatory minimum sentence would impose a
33 substantial risk to the offender's physical or mental well-being, in
34 lieu of the mandatory minimum term of imprisonment and electronic
35 home monitoring under this subsection (2)(b)(i), the court may order
36 a minimum of either six months of electronic home monitoring or a
37 (~~one hundred twenty-day~~) 120-day period of 24/7 sobriety program
38 monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever
39 the mandatory minimum sentence is suspended or converted, the court
40 shall state in writing the reason for granting the suspension or

1 conversion and the facts upon which the suspension or conversion is
2 based. The court may consider the offender's pretrial 24/7 sobriety
3 program monitoring as fulfilling a portion of posttrial sentencing.
4 The court shall order an expanded substance use disorder assessment
5 and treatment, if deemed appropriate by the assessment. The offender
6 shall pay for the cost of the electronic monitoring. The county or
7 municipality where the penalty is being imposed shall determine the
8 cost. The court may also require the offender's electronic home
9 monitoring device include an alcohol detection breathalyzer or other
10 separate alcohol monitoring device, and may restrict the amount of
11 alcohol the offender may consume during the time the offender is on
12 electronic home monitoring; and

13 (ii) By a fine of not less than (~~seven hundred fifty dollars~~)
14 \$750 nor more than (~~five thousand dollars~~) \$5,000. (~~Seven hundred~~
15 ~~fifty dollars~~) \$750 of the fine may not be suspended unless the
16 court finds the offender to be indigent.

17 (3) **Two prior offenses in seven years.** Except as provided in RCW
18 46.61.502(6) or 46.61.504(6), a person who is convicted of a
19 violation of RCW 46.61.502 or 46.61.504 and who has two prior
20 offenses within seven years shall be punished as follows:

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

26 (i) By imprisonment for not less than (~~ninety~~) 90 days nor more
27 than (~~three hundred sixty-four~~) 364 days, if available in that
28 county or city, a six-month period of 24/7 sobriety program
29 monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and (~~one~~
30 ~~hundred twenty~~) 120 days of electronic home monitoring. Ninety days
31 of imprisonment and (~~one hundred twenty~~) 120 days of electronic
32 home monitoring may not be suspended or converted unless the court
33 finds that the imposition of this mandatory minimum sentence would
34 impose a substantial risk to the offender's physical or mental well-
35 being. If the offender shows that the imposition of this mandatory
36 minimum sentence would impose a substantial risk to the offender's
37 physical or mental well-being, in lieu of the mandatory minimum term
38 of (~~ninety~~) 90 days of imprisonment and (~~one hundred twenty~~) 120
39 days of electronic home monitoring, the court may order (~~three~~
40 ~~hundred sixty~~) 360 days of electronic home monitoring or a (~~three~~

1 ~~hundred sixty day~~) 360-day period of 24/7 sobriety monitoring
2 pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory
3 minimum sentence is suspended or converted, the court shall state in
4 writing the reason for granting the suspension or conversion and the
5 facts upon which the suspension or conversion is based. The court
6 shall order an expanded substance use disorder assessment and
7 treatment, if deemed appropriate by the assessment. The offender
8 shall pay for the cost of the electronic monitoring. The county or
9 municipality where the penalty is being imposed shall determine the
10 cost. The court may also require the offender's electronic home
11 monitoring device include an alcohol detection breathalyzer or other
12 separate alcohol monitoring device, and may restrict the amount of
13 alcohol the offender may consume during the time the offender is on
14 electronic home monitoring; and

15 (ii) By a fine of not less than (~~one thousand dollars~~) \$1,000
16 nor more than (~~five thousand dollars~~) \$5,000. (~~One thousand~~
17 ~~dollars~~) \$1,000 of the fine may not be suspended unless the court
18 finds the offender to be indigent; or

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

24 (i) By imprisonment for not less than (~~one hundred twenty~~) 120
25 days nor more than (~~three hundred sixty four~~) 364 days, if
26 available in that county or city, a six-month period of 24/7 sobriety
27 program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and
28 (~~one hundred fifty~~) 150 days of electronic home monitoring. One
29 hundred twenty days of imprisonment and (~~one hundred fifty~~) 150
30 days of electronic home monitoring may not be suspended or converted
31 unless the court finds that the imposition of this mandatory minimum
32 sentence would impose a substantial risk to the offender's physical
33 or mental well-being. If the offender shows that the imposition of
34 this mandatory minimum sentence would impose a substantial risk to
35 the offender's physical or mental well-being, in lieu of the
36 mandatory minimum term of (~~one hundred twenty~~) 120 days of
37 imprisonment and (~~one hundred fifty~~) 150 days of electronic home
38 monitoring, the court may order (~~three hundred sixty~~) 360 days of
39 electronic home monitoring or a (~~three hundred sixty day~~) 360-day
40 period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through

1 36.28A.390. Whenever the mandatory minimum sentence is suspended or
2 converted, the court shall state in writing the reason for granting
3 the suspension or conversion and the facts upon which the suspension
4 or conversion is based. The offender shall pay for the cost of the
5 electronic monitoring. The court shall order an expanded substance
6 use disorder assessment and treatment, if deemed appropriate by the
7 assessment. The county or municipality where the penalty is being
8 imposed shall determine the cost. The court may also require the
9 offender's electronic home monitoring device include an alcohol
10 detection breathalyzer or other separate alcohol monitoring device,
11 and may restrict the amount of alcohol the offender may consume
12 during the time the offender is on electronic home monitoring; and

13 (ii) By a fine of not less than (~~one thousand five hundred~~
14 ~~dollars~~) \$1,500 nor more than (~~five thousand dollars~~) \$5,000.
15 (~~One thousand five hundred~~) \$1,500 dollars of the fine may not be
16 suspended unless the court finds the offender to be indigent.

17 (4) **Three or more prior offenses in ((ten)) 15 years.** A person
18 who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall
19 be punished under chapter 9.94A RCW if:

20 (a) The person has three or more prior offenses within (~~ten~~) 15
21 years; or

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

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

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

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

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

30 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall
31 require any person convicted of a violation of RCW 46.61.502 or
32 46.61.504 or an equivalent local ordinance to comply with the rules
33 and requirements of the department regarding the installation and use
34 of a functioning ignition interlock device installed on all motor
35 vehicles operated by the person.

36 (b) **Monitoring devices.** If the court orders that a person refrain
37 from consuming any alcohol, the court may order the person to submit
38 to alcohol monitoring through an alcohol detection breathalyzer
39 device, transdermal sensor device, or other technology designed to
40 detect alcohol in a person's system. The person shall pay for the

1 cost of the monitoring, unless the court specifies that the cost of
2 monitoring will be paid with funds that are available from an
3 alternative source identified by the court. The county or
4 municipality where the penalty is being imposed shall determine the
5 cost.

6 (c) **24/7 sobriety program monitoring.** In any county or city where
7 a 24/7 sobriety program is available and verified by the Washington
8 association of sheriffs and police chiefs, the court shall:

9 (i) Order the person to install and use a functioning ignition
10 interlock or other device in lieu of such period of 24/7 sobriety
11 program monitoring;

12 (ii) Order the person to a period of 24/7 sobriety program
13 monitoring pursuant to subsections (1) through (3) of this section;
14 or

15 (iii) Order the person to install and use a functioning ignition
16 interlock or other device in addition to a period of 24/7 sobriety
17 program monitoring pursuant to subsections (1) through (3) of this
18 section.

19 (6) **Penalty for having a minor passenger in vehicle.** If a person
20 who is convicted of a violation of RCW 46.61.502 or 46.61.504
21 committed the offense while one or more passengers under the age of
22 (~~sixteen~~) 16 were in the vehicle, the court shall:

23 (a) Order the use of an ignition interlock or other device for an
24 additional (~~twelve~~) 12 months for each passenger under the age of
25 (~~sixteen~~) 16 when the person is subject to the penalties under
26 subsection (1)(a), (2)(a), or (3)(a) of this section; and order the
27 use of an ignition interlock device for an additional (~~eighteen~~) 18
28 months for each passenger under the age of (~~sixteen~~) 16 when the
29 person is subject to the penalties under subsection (1)(b), (2)(b),
30 (3)(b), or (4) of this section;

31 (b) In any case in which the person has no prior offenses within
32 seven years, and except as provided in RCW 46.61.502(6) or
33 46.61.504(6), order an additional (~~twenty-four~~) 24 hours of
34 imprisonment to be served consecutively for each passenger under the
35 age of (~~sixteen~~) 16, and a fine of not less than (~~one-thousand~~
36 ~~dollars~~) \$1,000 and not more than (~~five-thousand-dollars~~) \$5,000
37 for each passenger under the age of (~~sixteen~~) 16. (~~One-thousand~~
38 ~~dollars~~) \$1,000 of the fine for each passenger under the age of
39 (~~sixteen~~) 16 may not be suspended unless the court finds the
40 offender to be indigent;

1 (c) In any case in which the person has one prior offense within
2 seven years, and except as provided in RCW 46.61.502(6) or
3 46.61.504(6), order an additional five days of imprisonment to be
4 served consecutively for each passenger under the age of (~~sixteen~~)
5 16, and a fine of not less than (~~two thousand dollars~~) \$2,000 and
6 not more than (~~five thousand dollars~~) \$5,000 for each passenger
7 under the age of (~~sixteen~~) 16. One thousand dollars of the fine for
8 each passenger under the age of (~~sixteen~~) 16 may not be suspended
9 unless the court finds the offender to be indigent;

10 (d) In any case in which the person has two prior offenses within
11 seven years, and except as provided in RCW 46.61.502(6) or
12 46.61.504(6), order an additional ten days of imprisonment to be
13 served consecutively for each passenger under the age of (~~sixteen~~)
14 16, and a fine of not less than (~~three thousand dollars~~) \$3,000 and
15 not more than (~~ten thousand dollars~~) \$10,000 for each passenger
16 under the age of (~~sixteen~~) 16. (~~One thousand dollars~~) \$1,000 of
17 the fine for each passenger under the age of (~~sixteen~~) 16 may not
18 be suspended unless the court finds the offender to be indigent.

19 (7) **Other items courts must consider while setting penalties.** In
20 exercising its discretion in setting penalties within the limits
21 allowed by this section, the court shall particularly consider the
22 following:

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

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

27 (c) Whether the driver was driving in the opposite direction of
28 the normal flow of traffic on a multiple lane highway, as defined by
29 RCW 46.04.350, with a posted speed limit of (~~forty-five~~) 45 miles
30 per hour or greater; and

31 (d) Whether a child passenger under the age of (~~sixteen~~) 16 was
32 an occupant in the driver's vehicle.

33 (8) **Treatment and information school.** An offender punishable
34 under this section is subject to the substance use disorder
35 assessment and treatment provisions of RCW 46.61.5056.

36 (9) **Driver's license privileges of the defendant.** (a) The
37 license, permit, or nonresident privilege of a person convicted of
38 driving or being in physical control of a motor vehicle while under
39 the influence of intoxicating liquor or drugs must:

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

6 (A) Where there has been no prior offense within seven years, be
7 suspended or denied by the department for (~~ninety~~) 90 days or until
8 the person is evaluated by a substance use disorder agency or
9 probation department pursuant to RCW 46.20.311 and the person
10 completes or is enrolled in a (~~ninety-day~~) 90-day period of 24/7
11 sobriety program monitoring. In no circumstances shall the license
12 suspension be for fewer than two days;

13 (B) Where there has been one prior offense within seven years, be
14 revoked or denied by the department for two years or until the person
15 is evaluated by a substance use disorder agency or probation
16 department pursuant to RCW 46.20.311 and the person completes or is
17 enrolled in a six-month period of 24/7 sobriety program monitoring.
18 In no circumstances shall the license suspension be for less than one
19 year; or

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

22 (ii) **Penalty for alcohol concentration at least 0.15.** If the
23 person's alcohol concentration was at least 0.15:

24 (A) Where there has been no prior offense within seven years, be
25 revoked or denied by the department for one year or until the person
26 is evaluated by a substance use disorder agency or probation
27 department pursuant to RCW 46.20.311 and the person completes or is
28 enrolled in a one hundred twenty day period of 24/7 sobriety program
29 monitoring. In no circumstances shall the license revocation be for
30 fewer than four days;

31 (B) Where there has been one prior offense within seven years, be
32 revoked or denied by the department for (~~nine-hundred~~) 900 days; or

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

35 (iii) **Penalty for refusing to take test.** If by reason of the
36 person's refusal to take a test offered under RCW 46.20.308, there is
37 no test result indicating the person's alcohol concentration:

38 (A) Where there have been no prior offenses within seven years,
39 be revoked or denied by the department for two years;

1 (B) Where there has been one prior offense within seven years, be
2 revoked or denied by the department for three years; or

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

5 (b) (i) The department shall grant credit on a day-for-day basis
6 for a suspension, revocation, or denial imposed under this subsection
7 (9) for any portion of a suspension, revocation, or denial already
8 served under RCW 46.20.3101 arising out of the same incident.

9 (ii) If a person has already served a suspension, revocation, or
10 denial under RCW 46.20.3101 for a period equal to or greater than the
11 period imposed under this subsection (9), the department shall
12 provide notice of full credit, shall provide for no further
13 suspension or revocation under this subsection provided the person
14 has completed the requirements under RCW 46.20.311 and paid the
15 probationary license fee under RCW 46.20.355 by the date specified in
16 the notice under RCW 46.20.245, and shall impose no additional
17 reissue fees for this credit.

18 (c) Upon receipt of a notice from the court under RCW 36.28A.390
19 that a participant has been removed from a 24/7 sobriety program, the
20 department must resume any suspension, revocation, or denial that had
21 been terminated early under this subsection due to participation in
22 the program, granting credit on a day-for-day basis for any portion
23 of a suspension, revocation, or denial already served under RCW
24 46.20.3101 or this section arising out of the same incident.

25 (d) Upon its own motion or upon motion by a person, a court may
26 find, on the record, that notice to the department under RCW
27 46.20.270 has been delayed for three years or more as a result of a
28 clerical or court error. If so, the court may order that the person's
29 license, permit, or nonresident privilege shall not be revoked,
30 suspended, or denied for that offense. The court shall send notice of
31 the finding and order to the department and to the person. Upon
32 receipt of the notice from the court, the department shall not
33 revoke, suspend, or deny the license, permit, or nonresident
34 privilege of the person for that offense.

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

38 (10) **Probation of driving privilege.** After expiration of any
39 period of suspension, revocation, or denial of the offender's
40 license, permit, or privilege to drive required by this section, the

1 department shall place the offender's driving privilege in
2 probationary status pursuant to RCW 46.20.355.

3 (11) **Conditions of probation.** (a) In addition to any
4 nonsuspendable and nondeferrable jail sentence required by this
5 section, whenever the court imposes up to (~~three hundred sixty~~
6 ~~four~~) 364 days in jail, the court shall also suspend but shall not
7 defer a period of confinement for a period not exceeding five years.
8 The court shall impose conditions of probation that include: (i) Not
9 driving a motor vehicle within this state without a valid license to
10 drive; (ii) not driving a motor vehicle within this state without
11 proof of liability insurance or other financial responsibility for
12 the future pursuant to RCW 46.30.020; (iii) not driving or being in
13 physical control of a motor vehicle within this state while having an
14 alcohol concentration of 0.08 or more or a THC concentration of 5.00
15 nanograms per milliliter of whole blood or higher, within two hours
16 after driving; (iv) not refusing to submit to a test of his or her
17 breath or blood to determine alcohol or drug concentration upon
18 request of a law enforcement officer who has reasonable grounds to
19 believe the person was driving or was in actual physical control of a
20 motor vehicle within this state while under the influence of
21 intoxicating liquor or drug; and (v) not driving a motor vehicle in
22 this state without a functioning ignition interlock device as
23 required by the department under RCW 46.20.720. The court may impose
24 conditions of probation that include nonrepetition, installation of
25 an ignition interlock device on the probationer's motor vehicle,
26 substance use disorder treatment, supervised probation, or other
27 conditions that may be appropriate. The sentence may be imposed in
28 whole or in part upon violation of a condition of probation during
29 the suspension period.

30 (b) For each violation of mandatory conditions of probation under
31 (a)(i), (ii), (iii), (iv), or (v) of this subsection, the court shall
32 order the convicted person to be confined for (~~thirty~~) 30 days,
33 which shall not be suspended or deferred.

34 (c) (~~For~~) (i) Except as provided in (c)(ii) of this subsection,
35 for each incident involving a violation of a mandatory condition of
36 probation imposed under this subsection, the license, permit, or
37 privilege to drive of the person shall be suspended by the court for
38 (~~thirty~~) 30 days or, if such license, permit, or privilege to drive
39 already is suspended, revoked, or denied at the time the finding of
40 probation violation is made, the suspension, revocation, or denial

1 then in effect shall be extended by (~~thirty~~) 30 days. The court
2 shall notify the department of any suspension, revocation, or denial
3 or any extension of a suspension, revocation, or denial imposed under
4 this subsection. The person may apply for an ignition interlock
5 driver's license under RCW 46.20.385 during the suspension period.

6 (ii) For each incident involving a violation of RCW
7 46.20.342(1)(c), the court has discretion not to impose a suspension
8 when the person provides the court with proof that the violation has
9 been cured within 30 days. The court is not required to notify the
10 department of the violation unless it is not cured within 30 days.

11 **(12) Waiver of electronic home monitoring.** A court may waive the
12 electronic home monitoring requirements of this chapter when:

13 (a) The offender does not have a dwelling, telephone service, or
14 any other necessity to operate an electronic home monitoring system.
15 However, if a court determines that an alcohol monitoring device
16 utilizing wireless reporting technology is reasonably available, the
17 court may require the person to obtain such a device during the
18 period of required electronic home monitoring;

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

20 (c) The court determines that there is reason to believe that the
21 offender would violate the conditions of the electronic home
22 monitoring penalty.

23 Whenever the mandatory minimum term of electronic home monitoring
24 is waived, the court shall state in writing the reason for granting
25 the waiver and the facts upon which the waiver is based, and shall
26 impose an alternative sentence with similar punitive consequences.
27 The alternative sentence may include, but is not limited to, use of
28 an ignition interlock device, the 24/7 sobriety program monitoring,
29 additional jail time, work crew, or work camp.

30 Whenever the combination of jail time and electronic home
31 monitoring or alternative sentence would exceed (~~three hundred~~
32 ~~sixty-four~~) 364 days, the offender shall serve the jail portion of
33 the sentence first, and the electronic home monitoring or alternative
34 portion of the sentence shall be reduced so that the combination does
35 not exceed (~~three hundred sixty-four~~) 364 days.

36 **(13) Extraordinary medical placement.** An offender serving a
37 sentence under this section, whether or not a mandatory minimum term
38 has expired, may be granted an extraordinary medical placement by the
39 jail administrator subject to the standards and limitations set forth
40 in RCW 9.94A.728(1)(c).

1 (14) **Definitions.** For purposes of this section and RCW 46.61.502
2 and 46.61.504:

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

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

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

8 (iii) A conviction for a violation of RCW 46.25.110 or an
9 equivalent local ordinance;

10 (iv) A conviction for a violation of RCW 79A.60.040(2) or an
11 equivalent local ordinance;

12 (v) A conviction for a violation of RCW 79A.60.040(1) or an
13 equivalent local ordinance committed in a reckless manner if the
14 conviction is the result of a charge that was originally filed as a
15 violation of RCW 79A.60.040(2) or an equivalent local ordinance;

16 (vi) A conviction for a violation of RCW 47.68.220 or an
17 equivalent local ordinance committed while under the influence of
18 intoxicating liquor or any drug;

19 (vii) A conviction for a violation of RCW 47.68.220 or an
20 equivalent local ordinance committed in a careless or reckless manner
21 if the conviction is the result of a charge that was originally filed
22 as a violation of RCW 47.68.220 or an equivalent local ordinance
23 while under the influence of intoxicating liquor or any drug;

24 (viii) A conviction for a violation of RCW 46.09.470(2) or an
25 equivalent local ordinance;

26 (ix) A conviction for a violation of RCW 46.10.490(2) or an
27 equivalent local ordinance;

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

35 (xi) A conviction for a violation of RCW 46.61.522 committed
36 while under the influence of intoxicating liquor or any drug, or a
37 conviction for a violation of RCW 46.61.522 committed in a reckless
38 manner or with the disregard for the safety of others if the
39 conviction is the result of a charge that was originally filed as a

1 violation of RCW 46.61.522 committed while under the influence of
2 intoxicating liquor or any drug;

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

8 (xiii) An out-of-state conviction for a violation that would have
9 been a violation of (a)(i), (ii), (x), (xi), or (xii) of this
10 subsection if committed in this state;

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

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

20 (xvi) A deferred prosecution granted in another state for a
21 violation of driving or having physical control of a vehicle while
22 under the influence of intoxicating liquor or any drug if the out-of-
23 state deferred prosecution is equivalent to the deferred prosecution
24 under chapter 10.05 RCW, including a requirement that the defendant
25 participate in a chemical dependency treatment program; or

26 (xvii) A deferred sentence imposed in a prosecution for a
27 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
28 equivalent local ordinance, if the charge under which the deferred
29 sentence was imposed was originally filed as a violation of RCW
30 46.61.502 or 46.61.504, or an equivalent local ordinance, or a
31 violation of RCW 46.61.520 or 46.61.522;

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

36 (b) "Treatment" means substance use disorder treatment licensed
37 or certified by the department of health;

38 (c) "Within seven years" means that the arrest for a prior
39 offense occurred within seven years before or after the arrest for
40 the current offense; and

1 (d) "Within (~~ten~~) 15 years" means that the arrest for a prior
2 offense occurred within (~~ten~~) 15 years before or after the arrest
3 for the current offense.

4 (15) All fines imposed by this section apply to adult offenders
5 only.

6 **Sec. 32.** RCW 46.61.504 and 2022 c 16 s 42 are each amended to
7 read as follows:

8 (1) A person is guilty of being in actual physical control of a
9 motor vehicle while under the influence of intoxicating liquor or any
10 drug if the person has actual physical control of a vehicle within
11 this state:

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

16 (b) The person has, within two hours after being in actual
17 physical control of a vehicle, a THC concentration of 5.00 or higher
18 as shown by analysis of the person's blood made under RCW 46.61.506;
19 or

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

22 (d) While the person is under the combined influence of or
23 affected by intoxicating liquor and any drug.

24 (2) The fact that a person charged with a violation of this
25 section is or has been entitled to use a drug under the laws of this
26 state does not constitute a defense against any charge of violating
27 this section. No person may be convicted under this section and it is
28 an affirmative defense to any action pursuant to RCW 46.20.308 to
29 suspend, revoke, or deny the privilege to drive if, prior to being
30 pursued by a law enforcement officer, the person has moved the
31 vehicle safely off the roadway.

32 (3) (a) It is an affirmative defense to a violation of subsection
33 (1)(a) of this section which the defendant must prove by a
34 preponderance of the evidence that the defendant consumed a
35 sufficient quantity of alcohol after the time of being in actual
36 physical control of the vehicle and before the administration of an
37 analysis of the person's breath or blood to cause the defendant's
38 alcohol concentration to be 0.08 or more within two hours after being
39 in such control. The court shall not admit evidence of this defense

1 unless the defendant notifies the prosecution prior to the omnibus or
2 pretrial hearing in the case of the defendant's intent to assert the
3 affirmative defense.

4 (b) It is an affirmative defense to a violation of subsection
5 (1)(b) of this section, which the defendant must prove by a
6 preponderance of the evidence, that the defendant consumed a
7 sufficient quantity of cannabis after the time of being in actual
8 physical control of the vehicle and before the administration of an
9 analysis of the person's blood to cause the defendant's THC
10 concentration to be 5.00 or more within two hours after being in
11 control of the vehicle. The court shall not admit evidence of this
12 defense unless the defendant notifies the prosecution prior to the
13 omnibus or pretrial hearing in the case of the defendant's intent to
14 assert the affirmative defense.

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

24 (b) Analyses of blood samples obtained more than two hours after
25 the alleged being in actual physical control of a vehicle may be used
26 as evidence that within two hours of the alleged being in control of
27 the vehicle, a person had a THC concentration of 5.00 or more in
28 violation of subsection (1)(b) of this section, and in any case in
29 which the analysis shows a THC concentration above 0.00 may be used
30 as evidence that a person was under the influence of or affected by
31 cannabis in violation of subsection (1)(c) or (d) of this section.

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

34 (6) It is a class C felony punishable under chapter 9.94A RCW, or
35 chapter 13.40 RCW if the person is a juvenile, if:

36 (a) The person has three or more prior offenses within (~~ten~~) 15
37 years as defined in RCW 46.61.5055; or

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

39 (i) Vehicular homicide while under the influence of intoxicating
40 liquor or any drug, RCW 46.61.520(1)(a);

- 1 (ii) Vehicular assault while under the influence of intoxicating
- 2 liquor or any drug, RCW 46.61.522(1)(b);
- 3 (iii) An out-of-state offense comparable to the offense specified
- 4 in (b)(i) or (ii) of this subsection; or
- 5 (iv) A violation of this subsection (6) or RCW 46.61.502(6).

6 NEW SECTION. **Sec. 33.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

10 NEW SECTION. **Sec. 34.** This act takes effect January 1, 2026."

ESHB 1493 - S COMM AMD
By Committee on Law & Justice

OUT OF ORDER 02/29/2024

11 On page 1, line 1 of the title, after "driving;" strike the
12 remainder of the title and insert "amending RCW 9.94A.030, 9.94A.190,
13 9.94A.501, 9.94A.505, 9.94A.525, 9.94A.633, 9.94A.6332, 9.94A.660,
14 9.94A.701, 10.05.010, 10.05.015, 10.05.020, 10.05.030, 10.05.040,
15 10.05.050, 10.05.060, 10.05.090, 10.05.100, 10.05.120, 10.05.140,
16 10.05.150, 10.05.155, 10.05.170, 46.20.355, 46.20.385, 46.20.720,
17 46.20.740, 46.61.502, 46.61.5055, and 46.61.504; adding a new section
18 to chapter 9.94A RCW; adding a new section to chapter 10.05 RCW;
19 providing an effective date; and prescribing penalties."

EFFECT: (1) Permits a person who participates in a deferred prosecution for a first gross misdemeanor Driving Under the Influence (DUI) or Physical Control of a Vehicle Under the Influence (PC) charge to participate in a second deferred prosecution. Authorizes a second deferred prosecution on a person's subsequent DUI or PC charge if the person has no other prior convictions for prior offenses, or while under the court's jurisdiction for a first deferred prosecution, if the first deferred prosecution is revoked. Modifies requirements for participation in a deferred prosecution depending on the nature of the petitioner's underlying problem. Provides that a second deferred prosecution for a DUI or PC offense counts as one point on a defendant's offender score.

(2) Changes the period for reviewing prior convictions of impaired driving from a 10-year period to a 15-year period for determining whether the current offense of impaired driving is a felony.

(3) Creates a new drug offender sentencing alternative for individuals convicted of felony impaired driving offenses.

--- **END** ---