
HOUSE BILL 1183

State of Washington

58th Legislature

2003 Regular Session

By Representative Delvin

Read first time 01/20/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to driving or physical control of a vehicle while
2 under the influence of intoxicating liquor or any drug; amending RCW
3 9.94A.734, 9.94A.640, 9.94A.650, 46.20.720, 46.61.502, 46.61.504, and
4 46.61.5151; reenacting and amending RCW 9.94A.030, 9.94A.515,
5 9.94A.515, 9.94A.525, and 46.61.5055; prescribing penalties; providing
6 an effective date; and providing an expiration date.

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

8 **Sec. 1.** RCW 9.94A.030 and 2002 c 175 s 5 and 2002 c 107 s 2 are
9 each reenacted and amended to read as follows:

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

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

14 (2) "Collect," or any derivative thereof, "collect and remit," or
15 "collect and deliver," when used with reference to the department,
16 means that the department, either directly or through a collection
17 agreement authorized by RCW 9.94A.760, is responsible for monitoring
18 and enforcing the offender's sentence with regard to the legal

1 financial obligation, receiving payment thereof from the offender, and,
2 consistent with current law, delivering daily the entire payment to the
3 superior court clerk without depositing it in a departmental account.

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

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

9 (5) "Community custody" means that portion of an offender's
10 sentence of confinement in lieu of earned release time or imposed
11 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
12 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
13 community subject to controls placed on the offender's movement and
14 activities by the department. For offenders placed on community
15 custody for crimes committed on or after July 1, 2000, the department
16 shall assess the offender's risk of reoffense and may establish and
17 modify conditions of community custody, in addition to those imposed by
18 the court, based upon the risk to community safety.

19 (6) "Community custody range" means the minimum and maximum period
20 of community custody included as part of a sentence under RCW
21 9.94A.715, as established by the commission or the legislature under
22 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

23 (7) "Community placement" means that period during which the
24 offender is subject to the conditions of community custody and/or
25 postrelease supervision, which begins either upon completion of the
26 term of confinement (postrelease supervision) or at such time as the
27 offender is transferred to community custody in lieu of earned release.
28 Community placement may consist of entirely community custody, entirely
29 postrelease supervision, or a combination of the two.

30 (8) "Community restitution" means compulsory service, without
31 compensation, performed for the benefit of the community by the
32 offender.

33 (9) "Community supervision" means a period of time during which a
34 convicted offender is subject to crime-related prohibitions and other
35 sentence conditions imposed by a court pursuant to this chapter or RCW
36 16.52.200(6) or 46.61.524. Where the court finds that any offender has
37 a chemical dependency that has contributed to his or her offense, the
38 conditions of supervision may, subject to available resources, include

1 treatment. For purposes of the interstate compact for out-of-state
2 supervision of parolees and probationers, RCW 9.95.270, community
3 supervision is the functional equivalent of probation and should be
4 considered the same as probation by other states.

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

6 (11) "Conviction" means an adjudication of guilt pursuant to Titles
7 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
8 acceptance of a plea of guilty.

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

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

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

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

27 (c) The determination of a defendant's criminal history is distinct
28 from the determination of an offender score. A prior conviction that
29 was not included in an offender score calculated pursuant to a former
30 version of the sentencing reform act remains part of the defendant's
31 criminal history.

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

36 (15) "Day reporting" means a program of enhanced supervision
37 designed to monitor the offender's daily activities and compliance with

1 sentence conditions, and in which the offender is required to report
2 daily to a specific location designated by the department or the
3 sentencing court.

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

5 (17) "Determinate sentence" means a sentence that states with
6 exactitude the number of actual years, months, or days of total
7 confinement, of partial confinement, of community supervision, the
8 number of actual hours or days of community restitution work, or
9 dollars or terms of a legal financial obligation. The fact that an
10 offender through earned release can reduce the actual period of
11 confinement shall not affect the classification of the sentence as a
12 determinate sentence.

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

25 (19) "Drug offender sentencing alternative" is a sentencing option
26 available to persons convicted of a felony offense other than a violent
27 offense or a sex offense and who are eligible for the option under RCW
28 9.94A.660.

29 (20) "Drug offense" means:

30 (a) Any felony violation of chapter 69.50 RCW except possession of
31 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
32 controlled substance (RCW 69.50.403);

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

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

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

3 (22) "Escape" means:

4 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
5 first degree (RCW 9A.76.110), escape in the second degree (RCW
6 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
7 willful failure to return from work release (RCW 72.65.070), or willful
8 failure to be available for supervision by the department while in
9 community custody (RCW 72.09.310); or

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

13 (23) "Felony traffic offense" means:

14 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
15 46.61.522), eluding a police officer (RCW 46.61.024), ~~((ϵ))~~ felony
16 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while
17 under the influence of intoxicating liquor or any drug (RCW
18 46.61.502(6)), or felony physical control of a vehicle while under the
19 influence of intoxicating liquor or any drug (RCW 46.61.504(6)); 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 a felony
22 traffic offense under (a) of this subsection.

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

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

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

32 (27) "Legal financial obligation" means a sum of money that is
33 ordered by a superior court of the state of Washington for legal
34 financial obligations which may include restitution to the victim,
35 statutorily imposed crime victims' compensation fees as assessed
36 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
37 court-appointed attorneys' fees, and costs of defense, fines, and any
38 other financial obligation that is assessed to the offender as a result

1 of a felony conviction. Upon conviction for vehicular assault while
2 under the influence of intoxicating liquor or any drug, RCW
3 46.61.522(1)(b), or vehicular homicide while under the influence of
4 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
5 obligations may also include payment to a public agency of the expense
6 of an emergency response to the incident resulting in the conviction,
7 subject to RCW 38.52.430.

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

10 (a) Any felony defined under any law as a class A felony or
11 criminal solicitation of or criminal conspiracy to commit a class A
12 felony;

13 (b) Assault in the second degree;

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

15 (d) Child molestation in the second degree;

16 (e) Controlled substance homicide;

17 (f) Extortion in the first degree;

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

19 (h) Indecent liberties;

20 (i) Kidnapping in the second degree;

21 (j) Leading organized crime;

22 (k) Manslaughter in the first degree;

23 (l) Manslaughter in the second degree;

24 (m) Promoting prostitution in the first degree;

25 (n) Rape in the third degree;

26 (o) Robbery in the second degree;

27 (p) Sexual exploitation;

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

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

36 (s) Any other class B felony offense with a finding of sexual
37 motivation;

1 (t) Any other felony with a deadly weapon verdict under RCW
2 9.94A.602;

3 (u) Any felony offense in effect at any time prior to December 2,
4 1993, that is comparable to a most serious offense under this
5 subsection, or any federal or out-of-state conviction for an offense
6 that under the laws of this state would be a felony classified as a
7 most serious offense under this subsection;

8 (v)(i) A prior conviction for indecent liberties under RCW
9 (~~9A.88.100~~) 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975
10 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a),
11 (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and
12 RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
13 until July 1, 1988;

14 (ii) A prior conviction for indecent liberties under RCW
15 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
16 if: (A) The crime was committed against a child under the age of
17 fourteen; or (B) the relationship between the victim and perpetrator is
18 included in the definition of indecent liberties under RCW
19 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
20 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
21 through July 27, 1997.

22 (29) "Nonviolent offense" means an offense which is not a violent
23 offense.

24 (30) "Offender" means a person who has committed a felony
25 established by state law and is eighteen years of age or older or is
26 less than eighteen years of age but whose case is under superior court
27 jurisdiction under RCW 13.04.030 or has been transferred by the
28 appropriate juvenile court to a criminal court pursuant to RCW
29 13.40.110. Throughout this chapter, the terms "offender" and
30 "defendant" are used interchangeably.

31 (31) "Partial confinement" means confinement for no more than one
32 year in a facility or institution operated or utilized under contract
33 by the state or any other unit of government, or, if home detention or
34 work crew has been ordered by the court, in an approved residence, for
35 a substantial portion of each day with the balance of the day spent in
36 the community. Partial confinement includes work release, home
37 detention, work crew, and a combination of work crew and home
38 detention.

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

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

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

12 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
13 of a child in the first degree, child molestation in the first degree,
14 rape in the second degree, rape of a child in the second degree, or
15 indecent liberties by forcible compulsion; (B) any of the following
16 offenses with a finding of sexual motivation: Murder in the first
17 degree, murder in the second degree, homicide by abuse, kidnapping in
18 the first degree, kidnapping in the second degree, assault in the first
19 degree, assault in the second degree, assault of a child in the first
20 degree, or burglary in the first degree; or (C) an attempt to commit
21 any crime listed in this subsection (32)(b)(i); and

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

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

36 (34) "Restitution" means a specific sum of money ordered by the
37 sentencing court to be paid by the offender to the court over a

1 specified period of time as payment of damages. The sum may include
2 both public and private costs.

3 (35) "Risk assessment" means the application of an objective
4 instrument supported by research and adopted by the department for the
5 purpose of assessing an offender's risk of reoffense, taking into
6 consideration the nature of the harm done by the offender, place and
7 circumstances of the offender related to risk, the offender's
8 relationship to any victim, and any information provided to the
9 department by victims. The results of a risk assessment shall not be
10 based on unconfirmed or unconfirmable allegations.

11 (36) "Serious traffic offense" means:

12 (a) Nonfelony driving while under the influence of intoxicating
13 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
14 while under the influence of intoxicating liquor or any drug (RCW
15 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
16 attended vehicle (RCW 46.52.020(5)); or

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

20 (37) "Serious violent offense" is a subcategory of violent offense
21 and means:

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

23 (ii) Homicide by abuse;

24 (iii) Murder in the second degree;

25 (iv) Manslaughter in the first degree;

26 (v) Assault in the first degree;

27 (vi) Kidnapping in the first degree;

28 (vii) Rape in the first degree;

29 (viii) Assault of a child in the first degree; or

30 (ix) An attempt, criminal solicitation, or criminal conspiracy to
31 commit one of these felonies; or

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

35 (38) "Sex offense" means:

36 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
37 RCW 9A.44.130(11);

38 (ii) A violation of RCW 9A.64.020;

1 (iii) A felony that is a violation of chapter 9.68A RCW other than
2 RCW 9.68A.070 or 9.68A.080; or

3 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
4 criminal solicitation, or criminal conspiracy to commit such crimes;

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

8 (c) A felony with a finding of sexual motivation under RCW
9 9.94A.835 or 13.40.135; or

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

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

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

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

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

26 (43) "Transition training" means written and verbal instructions
27 and assistance provided by the department to the offender during the
28 two weeks prior to the offender's successful completion of the work
29 ethic camp program. The transition training shall include instructions
30 in the offender's requirements and obligations during the offender's
31 period of community custody.

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

35 (45) "Violent offense" means:

36 (a) Any of the following felonies:

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

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

3 (iii) Manslaughter in the first degree;

4 (iv) Manslaughter in the second degree;

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

6 (vi) Kidnapping in the second degree;

7 (vii) Arson in the second degree;

8 (viii) Assault in the second degree;

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

10 (x) Extortion in the first degree;

11 (xi) Robbery in the second degree;

12 (xii) Drive-by shooting;

13 (xiii) Vehicular assault, when caused by the operation or driving
14 of a vehicle by a person while under the influence of intoxicating
15 liquor or any drug or by the operation or driving of a vehicle in a
16 reckless manner; and

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

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

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

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

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

37 (48) "Work release" means a program of partial confinement

1 available to offenders who are employed or engaged as a student in a
2 regular course of study at school.

3 **Sec. 2.** RCW 9.94A.734 and 2000 c 28 s 30 are each amended to read
4 as follows:

5 (1) Home detention may not be imposed for offenders convicted of:

6 (a) A violent offense;

7 (b) Any sex offense;

8 (c) Any drug offense;

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

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

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

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

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

15 Home detention may be imposed for offenders convicted of possession of
16 a controlled substance under RCW 69.50.401(d) or forged prescription
17 for a controlled substance under RCW 69.50.403 if the offender fulfills
18 the participation conditions set forth in this section and is monitored
19 for drug use by a treatment alternatives to street crime program or a
20 comparable court or agency-referred program.

21 (2) Home detention may be imposed for offenders:

22 (a) Convicted of burglary in the second degree as defined in RCW
23 9A.52.030 or residential burglary conditioned upon the offender:

24 ((+a)) (i) Successfully completing twenty-one days in a work
25 release program;

26 ((+b)) (ii) Having no convictions for burglary in the second
27 degree or residential burglary during the preceding two years and not
28 more than two prior convictions for burglary or residential burglary;

29 ((+c)) (iii) Having no convictions for a violent felony offense
30 during the preceding two years and not more than two prior convictions
31 for a violent felony offense;

32 ((+d)) (iv) Having no prior charges of escape; and

33 ((+e)) (v) Fulfilling the other conditions of the home detention
34 program.

35 (b) Convicted of felony driving while under the influence of
36 intoxicating liquor or any drug as defined in RCW 46.61.502(6) or

1 felony physical control of a vehicle while under the influence of
2 intoxicating liquor or any drug as defined in RCW 46.61.504(6).

3 (3) Participation in a home detention program shall be conditioned
4 upon:

5 (a) The offender obtaining or maintaining current employment or
6 attending a regular course of school study at regularly defined hours,
7 or the offender performing parental duties to offspring or minors
8 normally in the custody of the offender;

9 (b) Abiding by the rules of the home detention program; and

10 (c) Compliance with court-ordered legal financial obligations. The
11 home detention program may also be made available to offenders whose
12 charges and convictions do not otherwise disqualify them if medical or
13 health-related conditions, concerns or treatment would be better
14 addressed under the home detention program, or where the health and
15 welfare of the offender, other inmates, or staff would be jeopardized
16 by the offender's incarceration. Participation in the home detention
17 program for medical or health-related reasons is conditioned on the
18 offender abiding by the rules of the home detention program and
19 complying with court-ordered restitution.

20 **Sec. 3.** RCW 9.94A.640 and 1987 c 486 s 7 are each amended to read
21 as follows:

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

31 (2) An offender may not have the record of conviction cleared if:
32 (a) There are any criminal charges against the offender pending in any
33 court of this state or another state, or in any federal court; (b) the
34 offense was a violent offense as defined in RCW 9.94A.030; (c) the
35 offense was a crime against persons as defined in RCW 43.43.830; (d)
36 the offender has been convicted of a new crime in this state, another
37 state, or federal court since the date of the offender's discharge

1 under RCW 9.94A.637; (e) the offense is a class B felony and less than
2 ten years have passed since the date the applicant was discharged under
3 RCW 9.94A.637; (~~and~~) (f) the offense was a class C felony, other than
4 a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and
5 less than five years have passed since the date the applicant was
6 discharged under RCW 9.94A.637; or (g) the offense was a class C felony
7 described in RCW 46.61.502(6) or 46.61.504(6) and less than seven years
8 have passed since the applicant was discharged under RCW 9.94A.637.

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

19 **Sec. 4.** RCW 9.94A.515 and 2002 c 340 s 2, 2002 c 324 s 2, 2002 c
20 290 s 2, 2002 c 253 s 4, 2002 c 229 s 2, 2002 c 134 s 2, and 2002 c 133
21 s 4 are each reenacted and amended to read as follows:

22

23

24

25

26

27

28

29

30

31

32

33

34

35

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))

1 XII Assault 1 (RCW 9A.36.011)
2 Assault of a Child 1 (RCW 9A.36.120)
3 Malicious placement of an imitation
4 device 1 (RCW 70.74.272(1)(a))
5 Rape 1 (RCW 9A.44.040)
6 Rape of a Child 1 (RCW 9A.44.073)
7 XI Manslaughter 1 (RCW 9A.32.060)
8 Rape 2 (RCW 9A.44.050)
9 Rape of a Child 2 (RCW 9A.44.076)
10 X Child Molestation 1 (RCW 9A.44.083)
11 Indecent Liberties (with forcible
12 compulsion) (RCW
13 9A.44.100(1)(a))
14 Kidnapping 1 (RCW 9A.40.020)
15 Leading Organized Crime (RCW
16 9A.82.060(1)(a))
17 Malicious explosion 3 (RCW
18 70.74.280(3))
19 Manufacture of methamphetamine
20 (RCW 69.50.401(a)(1)(ii))
21 Over 18 and deliver heroin,
22 methamphetamine, a narcotic
23 from Schedule I or II, or
24 flunitrazepam from Schedule IV
25 to someone under 18 (RCW
26 69.50.406)
27 Sexually Violent Predator Escape
28 (RCW 9A.76.115)
29 IX Assault of a Child 2 (RCW 9A.36.130)
30 Controlled Substance Homicide (RCW
31 69.50.415)
32 Explosive devices prohibited (RCW
33 70.74.180)
34 Hit and Run--Death (RCW
35 46.52.020(4)(a))

1 Homicide by Watercraft, by being
2 under the influence of intoxicating
3 liquor or any drug (RCW
4 79A.60.050)
5 Inciting Criminal Profiteering (RCW
6 9A.82.060(1)(b))
7 Malicious placement of an explosive 2
8 (RCW 70.74.270(2))
9 Over 18 and deliver narcotic from
10 Schedule III, IV, or V or a
11 nonnarcotic, except flunitrazepam
12 or methamphetamine, from
13 Schedule I-V to someone under 18
14 and 3 years junior (RCW
15 69.50.406)
16 Robbery 1 (RCW 9A.56.200)
17 Sexual Exploitation (RCW 9.68A.040)
18 Vehicular Homicide, by being under
19 the influence of intoxicating
20 liquor or any drug (RCW
21 46.61.520)
22 VIII Arson 1 (RCW 9A.48.020)
23 Deliver or possess with intent to
24 deliver methamphetamine (RCW
25 69.50.401(a)(1)(ii))
26 Homicide by Watercraft, by the
27 operation of any vessel in a
28 reckless manner (RCW
29 79A.60.050)
30 Manslaughter 2 (RCW 9A.32.070)
31 Manufacture, deliver, or possess with
32 intent to deliver amphetamine
33 (RCW 69.50.401(a)(1)(ii))

1 Manufacture, deliver, or possess with
2 intent to deliver heroin or cocaine
3 (when the offender has a criminal
4 history in this state or any other
5 state that includes a sex offense or
6 serious violent offense or the
7 Washington equivalent) (RCW
8 69.50.401(a)(1)(i))
9 Possession of Ephedrine or any of its
10 Salts or Isomers or Salts of
11 Isomers, Pseudoephedrine or any
12 of its Salts or Isomers or Salts of
13 Isomers, Pressurized Ammonia
14 Gas, or Pressurized Ammonia Gas
15 Solution with intent to
16 manufacture methamphetamine
17 (RCW 69.50.440)
18 Promoting Prostitution 1 (RCW
19 9A.88.070)
20 Selling for profit (controlled or
21 counterfeit) any controlled
22 substance (RCW 69.50.410)
23 Theft of Ammonia (RCW 69.55.010)
24 Vehicular Homicide, by the operation
25 of any vehicle in a reckless
26 manner (RCW 46.61.520)
27 VII Burglary 1 (RCW 9A.52.020)
28 Child Molestation 2 (RCW 9A.44.086)
29 Civil Disorder Training (RCW
30 9A.48.120)
31 Dealing in depictions of minor
32 engaged in sexually explicit
33 conduct (RCW 9.68A.050)
34 Drive-by Shooting (RCW 9A.36.045)
35 Homicide by Watercraft, by disregard
36 for the safety of others (RCW
37 79A.60.050)

1 Indecent Liberties (without forcible
2 compulsion) (RCW 9A.44.100(1)
3 (b) and (c))
4 Introducing Contraband 1 (RCW
5 9A.76.140)
6 Involving a minor in drug dealing
7 (RCW 69.50.401(f))
8 Malicious placement of an explosive 3
9 (RCW 70.74.270(3))
10 Manufacture, deliver, or possess with
11 intent to deliver heroin or cocaine
12 (except when the offender has a
13 criminal history in this state or
14 any other state that includes a sex
15 offense or serious violent offense
16 or the Washington equivalent)
17 (RCW 69.50.401(a)(1)(i))
18 Sending, bringing into state depictions
19 of minor engaged in sexually
20 explicit conduct (RCW
21 9.68A.060)
22 Unlawful Possession of a Firearm in
23 the first degree (RCW
24 9.41.040(1)(a))
25 Use of a Machine Gun in Commission
26 of a Felony (RCW 9.41.225)
27 Vehicular Homicide, by disregard for
28 the safety of others (RCW
29 46.61.520)
30 VI Bail Jumping with Murder 1 (RCW
31 9A.76.170(3)(a))
32 Bribery (RCW 9A.68.010)
33 Incest 1 (RCW 9A.64.020(1))
34 Intimidating a Judge (RCW
35 9A.72.160)
36 Intimidating a Juror/Witness (RCW
37 9A.72.110, 9A.72.130)

1 Malicious placement of an imitation
2 device 2 (RCW 70.74.272(1)(b))
3 Manufacture, deliver, or possess with
4 intent to deliver narcotics from
5 Schedule I or II (except heroin or
6 cocaine) or flunitrazepam from
7 Schedule IV (RCW
8 69.50.401(a)(1)(i))
9 Rape of a Child 3 (RCW 9A.44.079)
10 Theft of a Firearm (RCW 9A.56.300)
11 Unlawful Storage of Ammonia (RCW
12 69.55.020)
13 V Abandonment of dependent person 1
14 (RCW 9A.42.060)
15 Advancing money or property for
16 extortionate extension of credit
17 (RCW 9A.82.030)
18 Bail Jumping with class A Felony
19 (RCW 9A.76.170(3)(b))
20 Child Molestation 3 (RCW 9A.44.089)
21 Criminal Mistreatment 1 (RCW
22 9A.42.020)
23 Custodial Sexual Misconduct 1 (RCW
24 9A.44.160)
25 Delivery of imitation controlled
26 substance by person eighteen or
27 over to person under eighteen
28 (RCW 69.52.030(2))
29 Domestic Violence Court Order
30 Violation (RCW 10.99.040,
31 10.99.050, 26.09.300, 26.10.220,
32 26.26.138, 26.50.110, 26.52.070,
33 or 74.34.145)
34 Extortion 1 (RCW 9A.56.120)
35 Extortionate Extension of Credit
36 (RCW 9A.82.020)

1 Extortionate Means to Collect
2 Extensions of Credit (RCW
3 9A.82.040)
4 Incest 2 (RCW 9A.64.020(2))
5 Kidnapping 2 (RCW 9A.40.030)
6 Perjury 1 (RCW 9A.72.020)
7 Persistent prison misbehavior (RCW
8 9.94.070)
9 Possession of a Stolen Firearm (RCW
10 9A.56.310)
11 Rape 3 (RCW 9A.44.060)
12 Rendering Criminal Assistance 1
13 (RCW 9A.76.070)
14 Sexual Misconduct with a Minor 1
15 (RCW 9A.44.093)
16 Sexually Violating Human Remains
17 (RCW 9A.44.105)
18 Stalking (RCW 9A.46.110)
19 Taking Motor Vehicle Without
20 Permission 1 (RCW
21 9A.56.070(1))
22 IV Arson 2 (RCW 9A.48.030)
23 Assault 2 (RCW 9A.36.021)
24 Assault by Watercraft (RCW
25 79A.60.060)
26 Bribing a Witness/Bribe Received by
27 Witness (RCW 9A.72.090,
28 9A.72.100)
29 Cheating 1 (RCW 9.46.1961)
30 Commercial Bribery (RCW
31 9A.68.060)
32 Counterfeiting (RCW 9.16.035(4))
33 Driving While Under the Influence
34 (RCW 46.61.502(6))
35 Endangerment with a Controlled
36 Substance (RCW 9A.42.100)
37 Escape 1 (RCW 9A.76.110)

1 Hit and Run--Injury (RCW
2 46.52.020(4)(b))
3 Hit and Run with Vessel--Injury
4 Accident (RCW 79A.60.200(3))
5 Identity Theft 1 (RCW 9.35.020(2)(a))
6 Indecent Exposure to Person Under
7 Age Fourteen (subsequent sex
8 offense) (RCW 9A.88.010)
9 Influencing Outcome of Sporting
10 Event (RCW 9A.82.070)
11 Knowingly Trafficking in Stolen
12 Property (RCW 9A.82.050(2))
13 Malicious Harassment (RCW
14 9A.36.080)
15 Manufacture, deliver, or possess with
16 intent to deliver narcotics from
17 Schedule III, IV, or V or
18 nonnarcotics from Schedule I-V
19 (except marijuana, amphetamine,
20 methamphetamines, or
21 flunitrazepam) (RCW
22 69.50.401(a)(1) (iii) through (v))
23 Physical Control of a Vehicle While
24 Under the Influence (RCW
25 46.61.504(6))
26 Residential Burglary (RCW
27 9A.52.025)
28 Robbery 2 (RCW 9A.56.210)
29 Theft of Livestock 1 (RCW 9A.56.080)
30 Threats to Bomb (RCW 9.61.160)
31 Use of Proceeds of Criminal
32 Profiteering (RCW 9A.82.080 (1)
33 and (2))

1 Vehicular Assault, by being under the
2 influence of intoxicating liquor or
3 any drug, or by the operation or
4 driving of a vehicle in a reckless
5 manner (RCW 46.61.522)
6 Willful Failure to Return from
7 Furlough (RCW 72.66.060)
8 III Abandonment of dependent person 2
9 (RCW 9A.42.070)
10 Assault 3 (RCW 9A.36.031)
11 Assault of a Child 3 (RCW 9A.36.140)
12 Bail Jumping with class B or C Felony
13 (RCW 9A.76.170(3)(c))
14 Burglary 2 (RCW 9A.52.030)
15 Communication with a Minor for
16 Immoral Purposes (RCW
17 9.68A.090)
18 Criminal Gang Intimidation (RCW
19 9A.46.120)
20 Criminal Mistreatment 2 (RCW
21 9A.42.030)
22 Custodial Assault (RCW 9A.36.100)
23 Delivery of a material in lieu of a
24 controlled substance (RCW
25 69.50.401(c))
26 Escape 2 (RCW 9A.76.120)
27 Extortion 2 (RCW 9A.56.130)
28 Harassment (RCW 9A.46.020)
29 Intimidating a Public Servant (RCW
30 9A.76.180)
31 Introducing Contraband 2 (RCW
32 9A.76.150)
33 Maintaining a Dwelling or Place for
34 Controlled Substances (RCW
35 69.50.402(a)(6))
36 Malicious Injury to Railroad Property
37 (RCW 81.60.070)

1 Manufacture, deliver, or possess with
2 intent to deliver marijuana (RCW
3 69.50.401(a)(1)(iii))
4 Manufacture, distribute, or possess
5 with intent to distribute an
6 imitation controlled substance
7 (RCW 69.52.030(1))
8 Patronizing a Juvenile Prostitute
9 (RCW 9.68A.100)
10 Perjury 2 (RCW 9A.72.030)
11 Possession of Incendiary Device (RCW
12 9.40.120)
13 Possession of Machine Gun or Short-
14 Barreled Shotgun or Rifle (RCW
15 9.41.190)
16 Promoting Prostitution 2 (RCW
17 9A.88.080)
18 Recklessly Trafficking in Stolen
19 Property (RCW 9A.82.050(1))
20 Securities Act violation (RCW
21 21.20.400)
22 Tampering with a Witness (RCW
23 9A.72.120)
24 Telephone Harassment (subsequent
25 conviction or threat of death)
26 (RCW 9.61.230)
27 Theft of Livestock 2 (RCW 9A.56.080)
28 Unlawful Imprisonment (RCW
29 9A.40.040)
30 Unlawful possession of firearm in the
31 second degree (RCW
32 9.41.040(1)(b))
33 Unlawful Use of Building for Drug
34 Purposes (RCW 69.53.010)

1 Vehicular Assault, by the operation or
2 driving of a vehicle with disregard
3 for the safety of others (RCW
4 46.61.522)
5 Willful Failure to Return from Work
6 Release (RCW 72.65.070)
7 II Computer Trespass 1 (RCW
8 9A.52.110)
9 Counterfeiting (RCW 9.16.035(3))
10 Create, deliver, or possess a counterfeit
11 controlled substance (RCW
12 69.50.401(b))
13 Escape from Community Custody
14 (RCW 72.09.310)
15 Health Care False Claims (RCW
16 48.80.030)
17 Identity Theft 2 (RCW 9.35.020(2)(b))
18 Improperly Obtaining Financial
19 Information (RCW 9.35.010)
20 Malicious Mischief 1 (RCW
21 9A.48.070)
22 Possession of controlled substance that
23 is either heroin or narcotics from
24 Schedule I or II or flunitrazepam
25 from Schedule IV (RCW
26 69.50.401(d))
27 Possession of phencyclidine (PCP)
28 (RCW 69.50.401(d))
29 Possession of Stolen Property 1 (RCW
30 9A.56.150)
31 Theft 1 (RCW 9A.56.030)
32 Theft of Rental, Leased, or Lease-
33 purchased Property (valued at one
34 thousand five hundred dollars or
35 more) (RCW 9A.56.096(4))
36 Trafficking in Insurance Claims (RCW
37 48.30A.015)

1 Unlawful Practice of Law (RCW
2 2.48.180)
3 Unlicensed Practice of a Profession or
4 Business (RCW 18.130.190(7))
5 I Attempting to Elude a Pursuing Police
6 Vehicle (RCW 46.61.024)
7 False Verification for Welfare (RCW
8 74.08.055)
9 Forged Prescription (RCW 69.41.020)
10 Forged Prescription for a Controlled
11 Substance (RCW 69.50.403)
12 Forgery (RCW 9A.60.020)
13 Malicious Mischief 2 (RCW
14 9A.48.080)
15 Possess Controlled Substance that is a
16 Narcotic from Schedule III, IV, or
17 V or Non-narcotic from Schedule
18 I-V (except phencyclidine or
19 flunitrazepam) (RCW
20 69.50.401(d))
21 Possession of Stolen Property 2 (RCW
22 9A.56.160)
23 Reckless Burning 1 (RCW 9A.48.040)
24 Taking Motor Vehicle Without
25 Permission 2 (RCW
26 9A.56.070(2))
27 Theft 2 (RCW 9A.56.040)
28 Theft of Rental, Leased, or Lease-
29 purchased Property (valued at two
30 hundred fifty dollars or more but
31 less than one thousand five
32 hundred dollars) (RCW
33 9A.56.096(4))
34 Unlawful Issuance of Checks or Drafts
35 (RCW 9A.56.060)
36 Unlawful Use of Food Stamps (RCW
37 9.91.140 (2) and (3))

Sec. 5. RCW 9.94A.515 and 2002 c 340 s 2, 2002 c 324 s 2, 2002 c 290 s 7, 2002 c 253 s 4, 2002 c 229 s 2, 2002 c 134 s 2, and 2002 c 133 s 4 are each reenacted and amended to read as follows:

TABLE 2	
CRIMES INCLUDED WITHIN	
EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
XIII	Malicious explosion 2 (RCW 70.74.280(2))
	Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011)
	Assault of a Child 1 (RCW 9A.36.120)
	Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
	Rape 1 (RCW 9A.44.040)
	Rape of a Child 1 (RCW 9A.44.073)
XI	Manslaughter 1 (RCW 9A.32.060)
	Rape 2 (RCW 9A.44.050)
	Rape of a Child 2 (RCW 9A.44.076)
X	Child Molestation 1 (RCW 9A.44.083)
	Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
	Kidnapping 1 (RCW 9A.40.020)
	Leading Organized Crime (RCW 9A.82.060(1)(a))

1 Malicious explosion 3 (RCW
2 70.74.280(3))
3 Sexually Violent Predator Escape
4 (RCW 9A.76.115)
5 IX Assault of a Child 2 (RCW 9A.36.130)
6 Explosive devices prohibited (RCW
7 70.74.180)
8 Hit and Run--Death (RCW
9 46.52.020(4)(a))
10 Homicide by Watercraft, by being
11 under the influence of intoxicating
12 liquor or any drug (RCW
13 79A.60.050)
14 Inciting Criminal Profiteering (RCW
15 9A.82.060(1)(b))
16 Malicious placement of an explosive 2
17 (RCW 70.74.270(2))
18 Robbery 1 (RCW 9A.56.200)
19 Sexual Exploitation (RCW 9.68A.040)
20 Vehicular Homicide, by being under
21 the influence of intoxicating
22 liquor or any drug (RCW
23 46.61.520)
24 VIII Arson 1 (RCW 9A.48.020)
25 Homicide by Watercraft, by the
26 operation of any vessel in a
27 reckless manner (RCW
28 79A.60.050)
29 Manslaughter 2 (RCW 9A.32.070)
30 Promoting Prostitution 1 (RCW
31 9A.88.070)
32 Theft of Ammonia (RCW 69.55.010)
33 Vehicular Homicide, by the operation
34 of any vehicle in a reckless
35 manner (RCW 46.61.520)
36 VII Burglary 1 (RCW 9A.52.020)
37 Child Molestation 2 (RCW 9A.44.086)

1 Civil Disorder Training (RCW
2 9A.48.120)
3 Dealing in depictions of minor
4 engaged in sexually explicit
5 conduct (RCW 9.68A.050)
6 Drive-by Shooting (RCW 9A.36.045)
7 Homicide by Watercraft, by disregard
8 for the safety of others (RCW
9 79A.60.050)
10 Indecent Liberties (without forcible
11 compulsion) (RCW 9A.44.100(1)
12 (b) and (c))
13 Introducing Contraband 1 (RCW
14 9A.76.140)
15 Malicious placement of an explosive 3
16 (RCW 70.74.270(3))
17 Sending, bringing into state depictions
18 of minor engaged in sexually
19 explicit conduct (RCW
20 9.68A.060)
21 Unlawful Possession of a Firearm in
22 the first degree (RCW
23 9.41.040(1)(a))
24 Use of a Machine Gun in Commission
25 of a Felony (RCW 9.41.225)
26 Vehicular Homicide, by disregard for
27 the safety of others (RCW
28 46.61.520)
29 VI Bail Jumping with Murder 1 (RCW
30 9A.76.170(3)(a))
31 Bribery (RCW 9A.68.010)
32 Incest 1 (RCW 9A.64.020(1))
33 Intimidating a Judge (RCW
34 9A.72.160)
35 Intimidating a Juror/Witness (RCW
36 9A.72.110, 9A.72.130)

1 Malicious placement of an imitation
2 device 2 (RCW 70.74.272(1)(b))
3 Rape of a Child 3 (RCW 9A.44.079)
4 Theft of a Firearm (RCW 9A.56.300)
5 Unlawful Storage of Ammonia (RCW
6 69.55.020)
7 V Abandonment of dependent person 1
8 (RCW 9A.42.060)
9 Advancing money or property for
10 extortionate extension of credit
11 (RCW 9A.82.030)
12 Bail Jumping with class A Felony
13 (RCW 9A.76.170(3)(b))
14 Child Molestation 3 (RCW 9A.44.089)
15 Criminal Mistreatment 1 (RCW
16 9A.42.020)
17 Custodial Sexual Misconduct 1 (RCW
18 9A.44.160)
19 Domestic Violence Court Order
20 Violation (RCW 10.99.040,
21 10.99.050, 26.09.300, 26.10.220,
22 26.26.138, 26.50.110, 26.52.070,
23 or 74.34.145)
24 Extortion 1 (RCW 9A.56.120)
25 Extortionate Extension of Credit
26 (RCW 9A.82.020)
27 Extortionate Means to Collect
28 Extensions of Credit (RCW
29 9A.82.040)
30 Incest 2 (RCW 9A.64.020(2))
31 Kidnapping 2 (RCW 9A.40.030)
32 Perjury 1 (RCW 9A.72.020)
33 Persistent prison misbehavior (RCW
34 9.94.070)
35 Possession of a Stolen Firearm (RCW
36 9A.56.310)
37 Rape 3 (RCW 9A.44.060)

1 Rendering Criminal Assistance 1
2 (RCW 9A.76.070)
3 Sexual Misconduct with a Minor 1
4 (RCW 9A.44.093)
5 Sexually Violating Human Remains
6 (RCW 9A.44.105)
7 Stalking (RCW 9A.46.110)
8 Taking Motor Vehicle Without
9 Permission 1 (RCW
10 9A.56.070(1))
11 IV Arson 2 (RCW 9A.48.030)
12 Assault 2 (RCW 9A.36.021)
13 Assault by Watercraft (RCW
14 79A.60.060)
15 Bribing a Witness/Bribe Received by
16 Witness (RCW 9A.72.090,
17 9A.72.100)
18 Cheating 1 (RCW 9.46.1961)
19 Commercial Bribery (RCW
20 9A.68.060)
21 Counterfeiting (RCW 9.16.035(4))
22 Driving While Under the Influence
23 (RCW 46.61.502(6))
24 Endangerment with a Controlled
25 Substance (RCW 9A.42.100)
26 Escape 1 (RCW 9A.76.110)
27 Hit and Run--Injury (RCW
28 46.52.020(4)(b))
29 Hit and Run with Vessel--Injury
30 Accident (RCW 79A.60.200(3))
31 Identity Theft 1 (RCW 9.35.020(2)(a))
32 Indecent Exposure to Person Under
33 Age Fourteen (subsequent sex
34 offense) (RCW 9A.88.010)
35 Influencing Outcome of Sporting
36 Event (RCW 9A.82.070)

1 Knowingly Trafficking in Stolen
2 Property (RCW 9A.82.050(2))
3 Malicious Harassment (RCW
4 9A.36.080)
5 Physical Control of a Vehicle While
6 Under the Influence (RCW
7 46.61.504(6))
8 Residential Burglary (RCW
9 9A.52.025)
10 Robbery 2 (RCW 9A.56.210)
11 Theft of Livestock 1 (RCW 9A.56.080)
12 Threats to Bomb (RCW 9.61.160)
13 Use of Proceeds of Criminal
14 Profiteering (RCW 9A.82.080 (1)
15 and (2))
16 Vehicular Assault, by being under the
17 influence of intoxicating liquor or
18 any drug, or by the operation or
19 driving of a vehicle in a reckless
20 manner (RCW 46.61.522)
21 Willful Failure to Return from
22 Furlough (RCW 72.66.060)
23 III Abandonment of dependent person 2
24 (RCW 9A.42.070)
25 Assault 3 (RCW 9A.36.031)
26 Assault of a Child 3 (RCW 9A.36.140)
27 Bail Jumping with class B or C Felony
28 (RCW 9A.76.170(3)(c))
29 Burglary 2 (RCW 9A.52.030)
30 Communication with a Minor for
31 Immoral Purposes (RCW
32 9.68A.090)
33 Criminal Gang Intimidation (RCW
34 9A.46.120)
35 Criminal Mistreatment 2 (RCW
36 9A.42.030)
37 Custodial Assault (RCW 9A.36.100)

1 Escape 2 (RCW 9A.76.120)
2 Extortion 2 (RCW 9A.56.130)
3 Harassment (RCW 9A.46.020)
4 Intimidating a Public Servant (RCW
5 9A.76.180)
6 Introducing Contraband 2 (RCW
7 9A.76.150)
8 Malicious Injury to Railroad Property
9 (RCW 81.60.070)
10 Patronizing a Juvenile Prostitute
11 (RCW 9.68A.100)
12 Perjury 2 (RCW 9A.72.030)
13 Possession of Incendiary Device (RCW
14 9.40.120)
15 Possession of Machine Gun or Short-
16 Barreled Shotgun or Rifle (RCW
17 9.41.190)
18 Promoting Prostitution 2 (RCW
19 9A.88.080)
20 Recklessly Trafficking in Stolen
21 Property (RCW 9A.82.050(1))
22 Securities Act violation (RCW
23 21.20.400)
24 Tampering with a Witness (RCW
25 9A.72.120)
26 Telephone Harassment (subsequent
27 conviction or threat of death)
28 (RCW 9.61.230)
29 Theft of Livestock 2 (RCW 9A.56.080)
30 Unlawful Imprisonment (RCW
31 9A.40.040)
32 Unlawful possession of firearm in the
33 second degree (RCW
34 9.41.040(1)(b))

1 Vehicular Assault, by the operation or
2 driving of a vehicle with disregard
3 for the safety of others (RCW
4 46.61.522)
5 Willful Failure to Return from Work
6 Release (RCW 72.65.070)
7 II Computer Trespass 1 (RCW
8 9A.52.110)
9 Counterfeiting (RCW 9.16.035(3))
10 Escape from Community Custody
11 (RCW 72.09.310)
12 Health Care False Claims (RCW
13 48.80.030)
14 Identity Theft 2 (RCW 9.35.020(2)(b))
15 Improperly Obtaining Financial
16 Information (RCW 9.35.010)
17 Malicious Mischief 1 (RCW
18 9A.48.070)
19 Possession of Stolen Property 1 (RCW
20 9A.56.150)
21 Theft 1 (RCW 9A.56.030)
22 Theft of Rental, Leased, or Lease-
23 purchased Property (valued at one
24 thousand five hundred dollars or
25 more) (RCW 9A.56.096(4))
26 Trafficking in Insurance Claims (RCW
27 48.30A.015)
28 Unlawful Practice of Law (RCW
29 2.48.180)
30 Unlicensed Practice of a Profession or
31 Business (RCW 18.130.190(7))
32 I Attempting to Elude a Pursuing Police
33 Vehicle (RCW 46.61.024)
34 False Verification for Welfare (RCW
35 74.08.055)
36 Forgery (RCW 9A.60.020)

1 Malicious Mischief 2 (RCW
2 9A.48.080)
3 Possession of Stolen Property 2 (RCW
4 9A.56.160)
5 Reckless Burning 1 (RCW 9A.48.040)
6 Taking Motor Vehicle Without
7 Permission 2 (RCW
8 9A.56.070(2))
9 Theft 2 (RCW 9A.56.040)
10 Theft of Rental, Leased, or Lease-
11 purchased Property (valued at two
12 hundred fifty dollars or more but
13 less than one thousand five
14 hundred dollars) (RCW
15 9A.56.096(4))
16 Unlawful Issuance of Checks or Drafts
17 (RCW 9A.56.060)
18 Unlawful Use of Food Stamps (RCW
19 9.91.140 (2) and (3))
20 Vehicle Prowl 1 (RCW 9A.52.095)

21 **Sec. 6.** RCW 9.94A.525 and 2002 c 290 s 3 and 2002 c 107 s 3 are
22 each reenacted and amended to read as follows:

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

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

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

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

34 (b) Prior class B (~~(prior)~~) felony convictions other than sex
35 offenses shall not be included in the offender score, if since the last
36 date of release from confinement (including full-time residential
37 treatment) pursuant to a felony conviction, if any, or entry of

1 judgment and sentence, the offender had spent ten consecutive years in
2 the community without committing any crime that subsequently results in
3 a conviction.

4 (c) Prior class C (~~(prior)~~) felony convictions other than sex
5 offenses and other than felony traffic offenses under RCW 46.61.502(6)
6 and 46.61.504(6) shall not be included in the offender score if, since
7 the last date of release from confinement (including full-time
8 residential treatment) pursuant to a felony conviction, if any, or
9 entry of judgment and sentence, the offender had spent five consecutive
10 years in the community without committing any crime that subsequently
11 results in a conviction.

12 (d) Prior class C felony traffic convictions under RCW 46.61.502(6)
13 and 46.61.504(6) and prior serious traffic convictions shall not be
14 included in the offender score if(~~(7)~~): (i) Since the last date of
15 release from confinement (including full-time residential treatment)
16 pursuant to a felony conviction, if any, or entry of judgment and
17 sentence, the offender spent five years in the community without
18 committing any crime that subsequently results in a conviction; and
19 (ii) if the present conviction is a felony traffic offense under RCW
20 46.61.502(6) or 46.61.504(6), the prior traffic or serious traffic
21 conviction is no longer a prior offense "within seven years" for
22 purposes of RCW 46.61.5055. This subsection applies to both adult and
23 juvenile prior convictions.

24 (3) Out-of-state convictions for offenses shall be classified
25 according to the comparable offense definitions and sentences provided
26 by Washington law. Federal convictions for offenses shall be
27 classified according to the comparable offense definitions and
28 sentences provided by Washington law. If there is no clearly
29 comparable offense under Washington law or the offense is one that is
30 usually considered subject to exclusive federal jurisdiction, the
31 offense shall be scored as a class C felony equivalent if it was a
32 felony under the relevant federal statute.

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

36 (5)(a) In the case of multiple prior convictions, for the purpose
37 of computing the offender score, count all convictions separately,
38 except:

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

15 (ii) In the case of multiple prior convictions for offenses
16 committed before July 1, 1986, for the purpose of computing the
17 offender score, count all adult convictions served concurrently as one
18 offense, and count all juvenile convictions entered on the same date as
19 one offense. Use the conviction for the offense that yields the
20 highest offender score.

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

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

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

37 (8) If the present conviction is for a violent offense and not
38 covered in subsection (9), (10), (11), or (12) of this section, count

1 two points for each prior adult and juvenile violent felony conviction,
2 one point for each prior adult nonviolent felony conviction, and 1/2
3 point for each prior juvenile nonviolent felony conviction.

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

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

15 (11) If the present conviction is for a felony traffic offense
16 count two points for each adult or juvenile prior conviction for
17 Vehicular Homicide or Vehicular Assault; for each felony offense count
18 one point for each adult and 1/2 point for each juvenile prior
19 conviction; for each serious traffic offense, other than those used for
20 an enhancement pursuant to RCW 46.61.520(2), count one point for each
21 adult and 1/2 point for each juvenile prior conviction.

22 (12) If the present conviction is for manufacture of
23 methamphetamine count three points for each adult prior manufacture of
24 methamphetamine conviction and two points for each juvenile manufacture
25 of methamphetamine offense. If the present conviction is for a drug
26 offense and the offender has a criminal history that includes a sex
27 offense or serious violent offense, count three points for each adult
28 prior felony drug offense conviction and two points for each juvenile
29 drug offense. All other adult and juvenile felonies are scored as in
30 subsection (8) of this section if the current drug offense is violent,
31 or as in subsection (7) of this section if the current drug offense is
32 nonviolent.

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

37 (14) If the present conviction is for Escape 1, RCW 9A.76.110, or

1 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
2 juvenile prior convictions as 1/2 point.

3 (15) If the present conviction is for Burglary 2 or residential
4 burglary, count priors as in subsection (7) of this section; however,
5 count two points for each adult and juvenile prior Burglary 1
6 conviction, two points for each adult prior Burglary 2 or residential
7 burglary conviction, and one point for each juvenile prior Burglary 2
8 or residential burglary conviction.

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

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

14 (18) The fact that a prior conviction was not included in an
15 offender's offender score or criminal history at a previous sentencing
16 shall have no bearing on whether it is included in the criminal history
17 or offender score for the current offense. Accordingly, prior
18 convictions that were not counted in the offender score or included in
19 criminal history under repealed or previous versions of the sentencing
20 reform act shall be included in criminal history and shall count in the
21 offender score if the current version of the sentencing reform act
22 requires including or counting those convictions.

23 **Sec. 7.** RCW 9.94A.650 and 2002 c 175 s 9 are each amended to read
24 as follows:

25 (1) This section applies to offenders who have never been
26 previously convicted of a felony in this state, federal court, or
27 another state, and who have never participated in a program of deferred
28 prosecution for a felony, and who are convicted of a felony that is
29 not:

30 (a) Classified as a violent offense or a sex offense under this
31 chapter;

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

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

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

4 (e) Driving while under the influence of intoxicating liquor or any
5 drug or physical control of a vehicle while under the influence of
6 intoxicating liquor or any drug.

7 (2) In sentencing a first-time offender the court may waive the
8 imposition of a sentence within the standard sentence range and impose
9 a sentence which may include up to ninety days of confinement in a
10 facility operated or utilized under contract by the county and a
11 requirement that the offender refrain from committing new offenses.
12 The sentence may also include a term of community supervision or
13 community custody as specified in subsection (3) of this section,
14 which, in addition to crime-related prohibitions, may include
15 requirements that the offender perform any one or more of the
16 following:

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

18 (b) Undergo available outpatient treatment for up to the period
19 specified in subsection (3) of this section, or inpatient treatment not
20 to exceed the standard range of confinement for that offense;

21 (c) Pursue a prescribed, secular course of study or vocational
22 training;

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

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

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

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

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

36 (b) For crimes committed on or after July 1, 2000, up to one year
37 of community custody unless treatment is ordered, in which case the
38 period of community custody may include up to the period of treatment,

1 but shall not exceed two years. Any term of community custody imposed
2 under this section is subject to conditions and sanctions as authorized
3 in this section and in RCW 9.94A.715 (2) and (3).

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

8 **Sec. 8.** RCW 46.20.720 and 2001 c 247 s 1 are each amended to read
9 as follows:

10 (1) The court may order that after a period of suspension,
11 revocation, or denial of driving privileges, and for up to as long as
12 the court has jurisdiction, any person convicted of any offense
13 involving the use, consumption, or possession of alcohol while
14 operating a motor vehicle may drive only a motor vehicle equipped with
15 a functioning ignition interlock or other biological or technical
16 device.

17 (2) If a person is convicted of a violation of RCW 46.61.502 or
18 46.61.504 or an equivalent local ordinance and it is: (a) The person's
19 first conviction or a deferred prosecution under chapter 10.05 RCW and
20 his or her alcohol concentration was at least 0.15, or by reason of the
21 person's refusal to take a test offered pursuant to RCW 46.20.308 there
22 is no test result indicating the person's alcohol concentration; or (b)
23 the person's second or subsequent conviction; or (c) the person's first
24 conviction and the person has a previous deferred prosecution under
25 chapter 10.05 RCW or it is a deferred prosecution under chapter 10.05
26 RCW and the person has a previous conviction, the court shall order
27 that after any applicable period of suspension, revocation, or denial
28 of driving privileges, the person may drive only a motor vehicle
29 equipped with a functioning ignition interlock or other biological or
30 technical device. The requirement to drive only a motor vehicle
31 equipped with a functioning ignition interlock or other biological or
32 technical device may not be suspended. The court may waive the
33 requirement for the use of such a device if the court makes a specific
34 finding in writing that such devices are not reasonably available in
35 the local area. Nothing in this section may be interpreted as
36 entitling a person to more than one deferred prosecution.

1 (3) The court shall establish a specific calibration setting at
2 which the ignition interlock or other biological or technical device
3 will prevent the motor vehicle from being started and the period of
4 time that the person shall be subject to the restriction. In the case
5 of a person under subsection (2) of this section, the period of time of
6 the restriction will be as follows:

7 (a) For a person (i) who is subject to RCW 46.61.5055 (1)(b), (2),
8 (~~(3)~~) (3), or (4), or who is subject to a deferred prosecution program
9 under chapter 10.05 RCW, and (ii) who has not previously been
10 restricted under this section, a period of not less than one year;

11 (b) For a person who has previously been restricted under (a) of
12 this subsection, a period of not less than five years;

13 (c) For a person who has previously been restricted under (b) of
14 this subsection, a period of not less than ten years.

15 For purposes of this section, "convicted" means being found guilty
16 of an offense or being placed on a deferred prosecution program under
17 chapter 10.05 RCW.

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

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

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

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

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

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

34 (3) It is an affirmative defense to a violation of subsection
35 (1)(a) of this section which the defendant must prove by a
36 preponderance of the evidence that the defendant consumed a sufficient
37 quantity of alcohol after the time of driving and before the

1 administration of an analysis of the person's breath or blood to cause
2 the defendant's alcohol concentration to be 0.08 or more within two
3 hours after driving. The court shall not admit evidence of this
4 defense unless the defendant notifies the prosecution prior to the
5 omnibus or pretrial hearing in the case of the defendant's intent to
6 assert the affirmative defense.

7 (4) Analyses of blood or breath samples obtained more than two
8 hours after the alleged driving may be used as evidence that within two
9 hours of the alleged driving, a person had an alcohol concentration of
10 0.08 or more in violation of subsection (1)(a) of this section, and in
11 any case in which the analysis shows an alcohol concentration above
12 0.00 may be used as evidence that a person was under the influence of
13 or affected by intoxicating liquor or any drug in violation of
14 subsection (1)(b) or (c) of this section.

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

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

22 **Sec. 10.** RCW 46.61.504 and 1998 c 213 s 5 are each amended to read
23 as follows:

24 (1) A person is guilty of being in actual physical control of a
25 motor vehicle while under the influence of intoxicating liquor or any
26 drug if the person has actual physical control of a vehicle within this
27 state:

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

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

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

36 (2) The fact that a person charged with a violation of this section
37 is or has been entitled to use a drug under the laws of this state does

1 not constitute a defense against any charge of violating this section.
2 No person may be convicted under this section if, prior to being
3 pursued by a law enforcement officer, the person has moved the vehicle
4 safely off the roadway.

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

15 (4) 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 in
19 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)(b) or
23 (c) of this section.

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

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

31 **Sec. 11.** RCW 46.61.5055 and 1999 c 324 s 5, 1999 c 274 s 6, and
32 1999 c 5 s 1 are each reenacted and amended to read as follows:

33 (1) A person who is convicted of a violation of RCW 46.61.502 or
34 46.61.504 and who has no prior offense within seven years shall be
35 punished as follows:

36 (a) In the case of a person whose alcohol concentration was less

1 than 0.15, or for whom for reasons other than the person's refusal to
2 take a test offered pursuant to RCW 46.20.308 there is no test result
3 indicating the person's alcohol concentration:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (3) A person who is convicted of a violation of RCW 46.61.502 or
26 46.61.504 and who has two (~~or more~~) prior offenses within seven years
27 shall be punished as follows:

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

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

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

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

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

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

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

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

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

2 (4) A person who is convicted of a violation of RCW 46.61.502 or
3 46.61.504 and who has three or more prior offenses within seven years
4 shall be punished in accordance with chapter 9.94A RCW. In addition,
5 the court shall impose the restrictions set forth in RCW 46.20.720 and
6 may sentence the offender to a term of home detention, as defined in
7 RCW 9.94A.030. Any term of home detention shall be served
8 consecutively to the term of total confinement.

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

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

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

16 ~~((+5))~~ (6) An offender punishable under this section is subject to
17 the alcohol assessment and treatment provisions of RCW 46.61.5056.

18 ~~((+6))~~ (7) The license, permit, or nonresident privilege of a
19 person convicted of driving or being in physical control of a motor
20 vehicle while under the influence of intoxicating liquor or drugs must:

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

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

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

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

31 (b) If the person's alcohol concentration was at least 0.15, or if
32 by reason of the person's refusal to take a test offered under RCW
33 46.20.308 there is no test result indicating the person's alcohol
34 concentration:

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

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

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

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

6 (~~(7)~~) (8) After expiration of any period of suspension,
7 revocation, or denial of the offender's license, permit, or privilege
8 to drive required by this section, the department shall place the
9 offender's driving privilege in probationary status pursuant to RCW
10 46.20.355.

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

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

35 (c) For each incident involving a violation of a mandatory
36 condition of probation imposed under this subsection, the license,
37 permit, or privilege to drive of the person shall be suspended by the
38 court for thirty days or, if such license, permit, or privilege to

1 drive already is suspended, revoked, or denied at the time the finding
2 of probation violation is made, the suspension, revocation, or denial
3 then in effect shall be extended by thirty days. The court shall
4 notify the department of any suspension, revocation, or denial or any
5 extension of a suspension, revocation, or denial imposed under this
6 subsection.

7 ~~((9))~~ (10) A court may waive the electronic home monitoring
8 requirements of this chapter when:

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

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

12 (c) The court determines that there is reason to believe that the
13 offender would violate the conditions of the electronic home monitoring
14 penalty.

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

21 Whenever the combination of jail time and electronic home
22 monitoring or alternative sentence would exceed three hundred sixty-
23 five days, the offender shall serve the jail portion of the sentence
24 first, and the electronic home monitoring or alternative portion of the
25 sentence shall be reduced so that the combination does not exceed three
26 hundred sixty-five days.

27 ~~((10))~~ (11) An offender serving a sentence under this section,
28 whether or not a mandatory minimum term has expired, may be granted an
29 extraordinary medical placement by the jail administrator subject to
30 the standards and limitations set forth in RCW 9.94A.728(4).

31 ~~((11))~~ (12) For purposes of this section:

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

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

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

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

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

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

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

11 (vii) 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; or

14 (viii) 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; and

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

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

24 A sentencing court may allow (~~(persons convicted of violating))~~ a
25 person who is convicted of a nonfelony violation of RCW 46.61.502 or
26 46.61.504 to fulfill the terms of the sentence provided in RCW
27 46.61.5055 in nonconsecutive or intermittent time periods. However, a
28 term of confinement of more than one year shall be served consecutively
29 and any mandatory minimum sentence under RCW 46.61.5055 shall be served
30 consecutively unless suspended or deferred as otherwise provided by
31 law.

32 NEW SECTION. **Sec. 13.** Section 4 of this act expires July 1, 2004.

33 NEW SECTION. **Sec. 14.** Section 5 of this act takes effect July 1,
34 2004.

--- END ---