
HOUSE BILL 3076

State of Washington 59th Legislature 2006 Regular Session

By Representatives Ahern, Lantz, McCoy, Nixon, Simpson, Woods, Serben, Springer, Conway, Kessler, Green and Morrell

Read first time 01/19/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to making it a felony to drive or be in physical
2 control of a vehicle while under the influence of intoxicating liquor
3 or any drug when the person has three prior offenses within seven years
4 or has a prior conviction for vehicular homicide or vehicular assault;
5 amending RCW 46.61.502, 46.61.504, 46.61.5055, 46.61.5151, 9.94A.030,
6 9.94A.030, 9.94A.640, and 13.40.0357; reenacting and amending RCW
7 9.94A.505; adding a new section to chapter 46.61 RCW; prescribing
8 penalties; providing an effective date; and providing an expiration
9 date.

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

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

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

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

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

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

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

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

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

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

29 (6) It is a class C felony punishable under section 3 of this act
30 if: (a) The person has three or more prior offenses within seven years
31 as defined in RCW 46.61.5055; or (b) the person has ever previously
32 been convicted of a violation of RCW 46.61.520 committed while under
33 the influence of intoxicating liquor or any drug or RCW 46.61.522
34 committed while under the influence of intoxicating liquor or any drug.

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

37 (1) A person is guilty of being in actual physical control of a

1 motor vehicle while under the influence of intoxicating liquor or any
2 drug if the person has actual physical control of a vehicle within this
3 state:

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

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

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

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

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

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

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

1 (6) It is a class C felony punishable under section 3 of this act
2 if: (a) The person has three or more prior offenses within seven years
3 as defined in RCW 46.61.5055; or (b) the person has ever previously
4 been convicted of a violation of RCW 46.61.520 committed while under
5 the influence of intoxicating liquor or any drug or RCW 46.61.522
6 committed while under the influence of intoxicating liquor or any drug.

7 **NEW SECTION. Sec. 3.** A new section is added to chapter 46.61 RCW
8 to read as follows:

9 (1) A violation of RCW 46.61.502(6) or 46.61.504(6) is punishable
10 under this section and is not subject to the sentencing provisions of
11 chapter 9.94A RCW.

12 (2) A person who is convicted of a violation of RCW 46.61.502(6) or
13 46.61.504(6) shall be punished as follows:

14 (a) By a term of total confinement of not less than fifteen months
15 but no more than five years. Fifteen months of the offender's sentence
16 may not be suspended or deferred. In exercising its discretion to
17 sentence an offender under this section, the court shall consider
18 whether the offender has prior convictions for other misdemeanors and
19 felonies; and

20 (b) By a fine of not less than one thousand five hundred dollars
21 nor more than ten thousand dollars. One thousand five hundred dollars
22 of the fine may not be suspended or deferred unless the court finds the
23 offender indigent.

24 (3) The court shall order the offender to undergo chemical
25 dependency assessment and receive, within available resources, chemical
26 dependency treatment services during incarceration. The offender shall
27 pay for the cost of treatment unless the court finds that the offender
28 is indigent and no third-party insurance coverage is available.

29 (4) The department shall apply the provisions under RCW 46.61.5055
30 (8) and (9) regarding the suspension, revocation, or denial of a
31 person's license, permit, or nonresident privilege to drive.

32 (5) The department shall apply the provisions under RCW 46.20.720
33 regarding ignition interlock devices. If applicable, the court shall
34 impose the provision under RCW 46.61.5055(5) regarding ignition
35 interlock devices.

36 (6) When the court imposes a period of confinement less than five

1 years, the court shall apply provisions under RCW 46.61.5055(10)
2 regarding probation.

3 (7) The offender's sentence may be reduced by earned release time
4 under procedures developed by the correctional agency having
5 jurisdiction in which the offender is confined. However, in no case
6 may the aggregate earned release time exceed one-third of the
7 offender's sentence. The earned release time shall be for good
8 behavior, good performance, and, if applicable, progress in chemical
9 dependency treatment, as determined by the correctional agency having
10 jurisdiction. The correctional agency shall not credit the offender
11 with earned release credits in advance of the offender actually earning
12 the credits.

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

15 (1) Except as provided in section 3 of this act, a person who is
16 convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no
17 prior offense within seven years shall be punished as follows:

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

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

1 alcohol the offender may consume during the time the offender is on
2 electronic home monitoring; and

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

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

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

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

31 (2) Except as provided in section 3 of this act, a person who is
32 convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one
33 prior offense within seven years shall be punished as follows:

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

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

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

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

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

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

5 (3) Except as provided in section 3 of this act, a person who is
6 convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two
7 (~~or more~~) prior offenses within seven years shall be punished as
8 follows:

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

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

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

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

37 (i) By imprisonment for not less than one hundred twenty days nor
38 more than one year and one hundred fifty days of electronic home

1 monitoring. The offender shall pay for the cost of the electronic
2 monitoring. The county or municipality where the penalty is being
3 imposed shall determine the cost. The court may also require the
4 offender's electronic home monitoring device include an alcohol
5 detection breathalyzer, and may restrict the amount of alcohol the
6 offender may consume during the time the offender is on electronic home
7 monitoring. One hundred twenty days of imprisonment and one hundred
8 fifty days of electronic home monitoring may not be suspended or
9 deferred unless the court finds that the imposition of this mandatory
10 minimum sentence would impose a substantial risk to the offender's
11 physical or mental well-being. Whenever the mandatory minimum sentence
12 is suspended or deferred, the court shall state in writing the reason
13 for granting the suspension or deferral and the facts upon which the
14 suspension or deferral is based; and

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

19 (4) A person who is convicted of a violation of RCW 46.61.502 or
20 46.61.504 and who has three or more prior offenses within seven years,
21 or who has ever previously been convicted of a violation of RCW
22 46.61.520 committed while under the influence of intoxicating liquor or
23 any drug or RCW 46.61.522 committed while under the influence of
24 intoxicating liquor or any drug, shall be punished in accordance with
25 section 3 of this act.

26 (5) If a person who is convicted of a violation of RCW 46.61.502 or
27 46.61.504 committed the offense while a passenger under the age of
28 sixteen was in the vehicle, the court shall:

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

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

37 ((+5)) (6) In exercising its discretion in setting penalties

1 within the limits allowed by this section and section 3 of this act,
2 the court shall particularly consider the following:

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

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

7 ~~((+6+))~~ (7) An offender punishable under this section is subject to
8 the alcohol assessment and treatment provisions of RCW 46.61.5056.
9 This subsection does not apply to an offender punishable under section
10 3 of this act.

11 ~~((+7+))~~ (8) The license, permit, or nonresident privilege of a
12 person convicted of driving or being in physical control of a motor
13 vehicle while under the influence of intoxicating liquor or drugs must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (~~((8))~~) (9) After expiration of any period of suspension,
11 revocation, or denial of the offender's license, permit, or privilege
12 to drive required by this section, the department shall place the
13 offender's driving privilege in probationary status pursuant to RCW
14 46.20.355.

15 (~~((9))~~) (10)(a) In addition to any nonsuspendable and nondeferrable
16 jail sentence required by this section, whenever the court imposes less
17 than one year in jail, or when imposing a sentence under section 3 of
18 this act, whenever the court imposes less than five years in prison,
19 the court shall also suspend but shall not defer a period of
20 confinement for a period not exceeding five years. The court shall
21 impose conditions of probation that include: (i) Not driving a motor
22 vehicle within this state without a valid license to drive and proof of
23 financial responsibility for the future; (ii) not driving a motor
24 vehicle within this state while having an alcohol concentration of 0.08
25 or more within two hours after driving; and (iii) not refusing to
26 submit to a test of his or her breath or blood to determine alcohol
27 concentration upon request of a law enforcement officer who has
28 reasonable grounds to believe the person was driving or was in actual
29 physical control of a motor vehicle within this state while under the
30 influence of intoxicating liquor. The court may impose conditions of
31 probation that include nonrepetition, installation of an ignition
32 interlock device on the probationer's motor vehicle, alcohol or drug
33 treatment, supervised probation, or other conditions that may be
34 appropriate. The sentence may be imposed in whole or in part upon
35 violation of a condition of probation during the suspension period.

36 (b) For each violation of mandatory conditions of probation under
37 (a)(i), (ii), or (iii) of this subsection, the court shall order the

1 convicted person to be confined for thirty days, which shall not be
2 suspended or deferred.

3 (c) For each incident involving a violation of a mandatory
4 condition of probation imposed under this subsection, the license,
5 permit, or privilege to drive of the person shall be suspended by the
6 court for thirty days or, if such license, permit, or privilege to
7 drive already is suspended, revoked, or denied at the time the finding
8 of probation violation is made, the suspension, revocation, or denial
9 then in effect shall be extended by thirty days. The court shall
10 notify the department of any suspension, revocation, or denial or any
11 extension of a suspension, revocation, or denial imposed under this
12 subsection.

13 ~~((+10))~~ (11) A court may waive the electronic home monitoring
14 requirements of this chapter when:

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

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

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

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

27 Whenever the combination of jail time and electronic home
28 monitoring or alternative sentence would exceed three hundred sixty-
29 five days, the offender shall serve the jail portion of the sentence
30 first, and the electronic home monitoring or alternative portion of the
31 sentence shall be reduced so that the combination does not exceed three
32 hundred sixty-five days.

33 ~~((+11))~~ (12) An offender serving a sentence under this section or
34 section 3 of this act, whether or not a mandatory minimum term has
35 expired, may be granted an extraordinary medical placement by the jail
36 administrator subject to the standards and limitations set forth in RCW
37 9.94A.728(4).

1 (~~(12)~~) (13) For purposes of this section and RCW 46.61.502 and
2 46.61.504:

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

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

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

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

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

12 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
13 9A.36.050 or an equivalent local ordinance, if the conviction is the
14 result of a charge that was originally filed as a violation of RCW
15 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
16 46.61.520 or 46.61.522;

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

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

23 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
24 prosecution for a violation of RCW 46.61.5249, or an equivalent local
25 ordinance, if the charge under which the deferred prosecution was
26 granted was originally filed as a violation of RCW 46.61.502 or
27 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
28 46.61.522; and

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

31 **Sec. 5.** RCW 46.61.5151 and 1995 c 332 s 15 are each amended to
32 read as follows:

33 A sentencing court may allow (~~(persons)~~) a person convicted of
34 (~~(violating)~~) a nonfelony violation of RCW 46.61.502 or 46.61.504 to
35 fulfill the terms of the sentence provided in RCW 46.61.5055 in
36 nonconsecutive or intermittent time periods. However, any mandatory

1 minimum sentence under RCW 46.61.5055 or section 3 of this act shall be
2 served consecutively unless suspended or deferred as otherwise provided
3 by law.

4 **Sec. 6.** RCW 9.94A.030 and 2005 c 436 s 1 are each amended to read
5 as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

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

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

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

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

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

33 (6) "Community custody range" means the minimum and maximum period
34 of community custody included as part of a sentence under RCW
35 9.94A.715, as established by the commission or the legislature under
36 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

1 (7) "Community placement" means that period during which the
2 offender is subject to the conditions of community custody and/or
3 postrelease supervision, which begins either upon completion of the
4 term of confinement (postrelease supervision) or at such time as the
5 offender is transferred to community custody in lieu of earned release.
6 Community placement may consist of entirely community custody, entirely
7 postrelease supervision, or a combination of the two.

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

11 (9) "Community restitution" means compulsory service, without
12 compensation, performed for the benefit of the community by the
13 offender.

14 (10) "Community supervision" means a period of time during which a
15 convicted offender is subject to crime-related prohibitions and other
16 sentence conditions imposed by a court pursuant to this chapter or RCW
17 16.52.200(6) or 46.61.524. Where the court finds that any offender has
18 a chemical dependency that has contributed to his or her offense, the
19 conditions of supervision may, subject to available resources, include
20 treatment. For purposes of the interstate compact for out-of-state
21 supervision of parolees and probationers, RCW 9.95.270, community
22 supervision is the functional equivalent of probation and should be
23 considered the same as probation by other states.

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

25 (12) "Conviction" means an adjudication of guilt pursuant to Titles
26 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
27 acceptance of a plea of guilty.

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

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

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

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

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

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

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

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

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

32 (19) "Disposable earnings" means that part of the earnings of an
33 offender remaining after the deduction from those earnings of any
34 amount required by law to be withheld. For the purposes of this
35 definition, "earnings" means compensation paid or payable for personal
36 services, whether denominated as wages, salary, commission, bonuses, or
37 otherwise, and, notwithstanding any other provision of law making the
38 payments exempt from garnishment, attachment, or other process to

1 satisfy a court-ordered legal financial obligation, specifically
2 includes periodic payments pursuant to pension or retirement programs,
3 or insurance policies of any type, but does not include payments made
4 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
5 or Title 74 RCW.

6 (20) "Drug offender sentencing alternative" is a sentencing option
7 available to persons convicted of a felony offense other than a violent
8 offense or a sex offense and who are eligible for the option under RCW
9 9.94A.660.

10 (21) "Drug offense" means:

11 (a) Any felony violation of chapter 69.50 RCW except possession of
12 a controlled substance (RCW 69.50.4013) or forged prescription for a
13 controlled substance (RCW 69.50.403);

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

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

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

22 (23) "Escape" means:

23 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
24 first degree (RCW 9A.76.110), escape in the second degree (RCW
25 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
26 willful failure to return from work release (RCW 72.65.070), or willful
27 failure to be available for supervision by the department while in
28 community custody (RCW 72.09.310); or

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

32 (24) "Felony traffic offense" means:

33 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
34 46.61.522), eluding a police officer (RCW 46.61.024), ~~((e))~~ felony
35 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while
36 under the influence of intoxicating liquor or any drug (RCW
37 46.61.502(6)), or felony physical control of a vehicle while under the
38 influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

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

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

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

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

32 (b) Assault in the second degree;

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

34 (d) Child molestation in the second degree;

35 (e) Controlled substance homicide;

36 (f) Extortion in the first degree;

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

38 (h) Indecent liberties;

1 (i) Kidnapping in the second degree;
2 (j) Leading organized crime;
3 (k) Manslaughter in the first degree;
4 (l) Manslaughter in the second degree;
5 (m) Promoting prostitution in the first degree;
6 (n) Rape in the third degree;
7 (o) Robbery in the second degree;
8 (p) Sexual exploitation;
9 (q) Vehicular assault, when caused by the operation or driving of
10 a vehicle by a person while under the influence of intoxicating liquor
11 or any drug or by the operation or driving of a vehicle in a reckless
12 manner;
13 (r) Vehicular homicide, when proximately caused by the driving of
14 any vehicle by any person while under the influence of intoxicating
15 liquor or any drug as defined by RCW 46.61.502, or by the operation of
16 any vehicle in a reckless manner;
17 (s) Any other class B felony offense with a finding of sexual
18 motivation;
19 (t) Any other felony with a deadly weapon verdict under RCW
20 9.94A.602;
21 (u) Any felony offense in effect at any time prior to December 2,
22 1993, that is comparable to a most serious offense under this
23 subsection, or any federal or out-of-state conviction for an offense
24 that under the laws of this state would be a felony classified as a
25 most serious offense under this subsection;
26 (v)(i) A prior conviction for indecent liberties under RCW
27 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
28 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
29 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
30 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
31 (ii) A prior conviction for indecent liberties under RCW
32 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
33 if: (A) The crime was committed against a child under the age of
34 fourteen; or (B) the relationship between the victim and perpetrator is
35 included in the definition of indecent liberties under RCW
36 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
37 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
38 through July 27, 1997.

1 (30) "Nonviolent offense" means an offense which is not a violent
2 offense.

3 (31) "Offender" means a person who has committed a felony
4 established by state law and is eighteen years of age or older or is
5 less than eighteen years of age but whose case is under superior court
6 jurisdiction under RCW 13.04.030 or has been transferred by the
7 appropriate juvenile court to a criminal court pursuant to RCW
8 13.40.110. Throughout this chapter, the terms "offender" and
9 "defendant" are used interchangeably.

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

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

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

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

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

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

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

15 (35) "Private school" means a school regulated under chapter
16 28A.195 or 28A.205 RCW.

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

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

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

30 (39) "Serious traffic offense" means:

31 (a) Nonfelony driving while under the influence of intoxicating
32 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
33 while under the influence of intoxicating liquor or any drug (RCW
34 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
35 attended vehicle (RCW 46.52.020(5)); or

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

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

1 for which an offender may be confined as punishment for a crime as
2 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
3 crime, or other statute defining the maximum penalty for a crime.

4 (45) "Total confinement" means confinement inside the physical
5 boundaries of a facility or institution operated or utilized under
6 contract by the state or any other unit of government for twenty-four
7 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

8 (46) "Transition training" means written and verbal instructions
9 and assistance provided by the department to the offender during the
10 two weeks prior to the offender's successful completion of the work
11 ethic camp program. The transition training shall include instructions
12 in the offender's requirements and obligations during the offender's
13 period of community custody.

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

17 (48) "Violent offense" means:

18 (a) Any of the following felonies:

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

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

23 (iii) Manslaughter in the first degree;

24 (iv) Manslaughter in the second degree;

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

26 (vi) Kidnapping in the second degree;

27 (vii) Arson in the second degree;

28 (viii) Assault in the second degree;

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

30 (x) Extortion in the first degree;

31 (xi) Robbery in the second degree;

32 (xii) Drive-by shooting;

33 (xiii) Vehicular assault, when caused by the operation or driving
34 of a vehicle by a person while under the influence of intoxicating
35 liquor or any drug or by the operation or driving of a vehicle in a
36 reckless manner; and

37 (xiv) Vehicular homicide, when proximately caused by the driving of

1 any vehicle by any person while under the influence of intoxicating
2 liquor or any drug as defined by RCW 46.61.502, or by the operation of
3 any vehicle in a reckless manner;

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

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

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

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

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

23 **Sec. 7.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
24 as follows:

25 Unless the context clearly requires otherwise, the definitions in
26 this section apply throughout this chapter.

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

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

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

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

5 (5) "Community custody" means that portion of an offender's
6 sentence of confinement in lieu of earned release time or imposed
7 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
8 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
9 community subject to controls placed on the offender's movement and
10 activities by the department. For offenders placed on community
11 custody for crimes committed on or after July 1, 2000, the department
12 shall assess the offender's risk of reoffense and may establish and
13 modify conditions of community custody, in addition to those imposed by
14 the court, based upon the risk to community safety.

15 (6) "Community custody range" means the minimum and maximum period
16 of community custody included as part of a sentence under RCW
17 9.94A.715, as established by the commission or the legislature under
18 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

26 (8) "Community restitution" means compulsory service, without
27 compensation, performed for the benefit of the community by the
28 offender.

29 (9) "Community supervision" means a period of time during which a
30 convicted offender is subject to crime-related prohibitions and other
31 sentence conditions imposed by a court pursuant to this chapter or RCW
32 16.52.200(6) or 46.61.524. Where the court finds that any offender has
33 a chemical dependency that has contributed to his or her offense, the
34 conditions of supervision may, subject to available resources, include
35 treatment. For purposes of the interstate compact for out-of-state
36 supervision of parolees and probationers, RCW 9.95.270, community
37 supervision is the functional equivalent of probation and should be
38 considered the same as probation by other states.

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

2 (11) "Conviction" means an adjudication of guilt pursuant to Titles
3 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
4 acceptance of a plea of guilty.

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

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

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

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

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

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

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

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

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

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

21 (19) "Drug offender sentencing alternative" is a sentencing option
22 available to persons convicted of a felony offense other than a violent
23 offense or a sex offense and who are eligible for the option under RCW
24 9.94A.660.

25 (20) "Drug offense" means:

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

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

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

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

37 (22) "Escape" means:

1 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
2 first degree (RCW 9A.76.110), escape in the second degree (RCW
3 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
4 willful failure to return from work release (RCW 72.65.070), or willful
5 failure to be available for supervision by the department while in
6 community custody (RCW 72.09.310); or

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

10 (23) "Felony traffic offense" means:

11 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
12 46.61.522), eluding a police officer (RCW 46.61.024), ~~((e))~~ felony
13 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while
14 under the influence of intoxicating liquor or any drug (RCW
15 46.61.502(6)), or felony physical control of a vehicle while under the
16 influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

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

29 (27) "Legal financial obligation" means a sum of money that is
30 ordered by a superior court of the state of Washington for legal
31 financial obligations which may include restitution to the victim,
32 statutorily imposed crime victims' compensation fees as assessed
33 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
34 court-appointed attorneys' fees, and costs of defense, fines, and any
35 other financial obligation that is assessed to the offender as a result
36 of a felony conviction. Upon conviction for vehicular assault while
37 under the influence of intoxicating liquor or any drug, RCW
38 46.61.522(1)(b), or vehicular homicide while under the influence of

1 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
2 obligations may also include payment to a public agency of the expense
3 of an emergency response to the incident resulting in the conviction,
4 subject to RCW 38.52.430.

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

7 (a) Any felony defined under any law as a class A felony or
8 criminal solicitation of or criminal conspiracy to commit a class A
9 felony;

10 (b) Assault in the second degree;

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

12 (d) Child molestation in the second degree;

13 (e) Controlled substance homicide;

14 (f) Extortion in the first degree;

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

16 (h) Indecent liberties;

17 (i) Kidnapping in the second degree;

18 (j) Leading organized crime;

19 (k) Manslaughter in the first degree;

20 (l) Manslaughter in the second degree;

21 (m) Promoting prostitution in the first degree;

22 (n) Rape in the third degree;

23 (o) Robbery in the second degree;

24 (p) Sexual exploitation;

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

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

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

35 (t) Any other felony with a deadly weapon verdict under RCW
36 9.94A.602;

37 (u) Any felony offense in effect at any time prior to December 2,
38 1993, that is comparable to a most serious offense under this

1 subsection, or any federal or out-of-state conviction for an offense
2 that under the laws of this state would be a felony classified as a
3 most serious offense under this subsection;

4 (v)(i) A prior conviction for indecent liberties under RCW
5 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
6 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
7 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
8 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

9 (ii) A prior conviction for indecent liberties under RCW
10 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
11 if: (A) The crime was committed against a child under the age of
12 fourteen; or (B) the relationship between the victim and perpetrator is
13 included in the definition of indecent liberties under RCW
14 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
15 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
16 through July 27, 1997.

17 (29) "Nonviolent offense" means an offense which is not a violent
18 offense.

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

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

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

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

37 (ii) Has, before the commission of the offense under (a) of this
38 subsection, been convicted as an offender on at least two separate

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

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

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

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

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

35 (35) "Risk assessment" means the application of an objective
36 instrument supported by research and adopted by the department for the
37 purpose of assessing an offender's risk of reoffense, taking into
38 consideration the nature of the harm done by the offender, place and

1 circumstances of the offender related to risk, the offender's
2 relationship to any victim, and any information provided to the
3 department by victims. The results of a risk assessment shall not be
4 based on unconfirmed or unconfirmable allegations.

5 (36) "Serious traffic offense" means:

6 (a) Nonfelony driving while under the influence of intoxicating
7 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
8 while under the influence of intoxicating liquor or any drug (RCW
9 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
10 attended vehicle (RCW 46.52.020(5)); or

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

14 (37) "Serious violent offense" is a subcategory of violent offense
15 and means:

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

17 (ii) Homicide by abuse;

18 (iii) Murder in the second degree;

19 (iv) Manslaughter in the first degree;

20 (v) Assault in the first degree;

21 (vi) Kidnapping in the first degree;

22 (vii) Rape in the first degree;

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

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

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

29 (38) "Sex offense" means:

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

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

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

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

37 (b) Any conviction for a felony offense in effect at any time prior

1 to July 1, 1976, that is comparable to a felony classified as a sex
2 offense in (a) of this subsection;

3 (c) A felony with a finding of sexual motivation under RCW
4 9.94A.835 or 13.40.135; or

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

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

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

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

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

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

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

30 (45) "Violent offense" means:

31 (a) Any of the following felonies:

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

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

36 (iii) Manslaughter in the first degree;

37 (iv) Manslaughter in the second degree;

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

1 (vi) Kidnapping in the second degree;
2 (vii) Arson in the second degree;
3 (viii) Assault in the second degree;
4 (ix) Assault of a child in the second degree;
5 (x) Extortion in the first degree;
6 (xi) Robbery in the second degree;
7 (xii) Drive-by shooting;
8 (xiii) Vehicular assault, when caused by the operation or driving
9 of a vehicle by a person while under the influence of intoxicating
10 liquor or any drug or by the operation or driving of a vehicle in a
11 reckless manner; and

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

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

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

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

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

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

35 **Sec. 8.** RCW 9.94A.640 and 1987 c 486 s 7 are each amended to read
36 as follows:

37 (1) Every offender who has been discharged under RCW 9.94A.637 may

1 apply to the sentencing court for a vacation of the offender's record
2 of conviction. If the court finds the offender meets the tests
3 prescribed in subsection (2) of this section, the court may clear the
4 record of conviction by: (a) Permitting the offender to withdraw the
5 offender's plea of guilty and to enter a plea of not guilty; or (b) if
6 the offender has been convicted after a plea of not guilty, by the
7 court setting aside the verdict of guilty; and (c) by the court
8 dismissing the information or indictment against the offender.

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

24 (3) Once the court vacates a record of conviction under subsection
25 (1) of this section, the fact that the offender has been convicted of
26 the offense shall not be included in the offender's criminal history
27 for purposes of determining a sentence in any subsequent conviction,
28 and the offender shall be released from all penalties and disabilities
29 resulting from the offense. For all purposes, including responding to
30 questions on employment applications, an offender whose conviction has
31 been vacated may state that the offender has never been convicted of
32 that crime. Nothing in this section affects or prevents the use of an
33 offender's prior conviction in a later criminal prosecution.

34 **Sec. 9.** RCW 9.94A.505 and 2002 c 290 s 17, 2002 c 289 s 6, and
35 2002 c 175 s 6 are each reenacted and amended to read as follows:

36 (1) When a person is convicted of a felony other than a felony

1 under RCW 46.61.502(6) or 46.61.504(6), the court shall impose
2 punishment as provided in this chapter.

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

5 (i) Unless another term of confinement applies, the court shall
6 impose a sentence within the standard sentence range established in RCW
7 9.94A.510 or 9.94A.517;

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

9 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

10 (iv) RCW 9.94A.545, relating to community custody for offenders
11 whose term of confinement is one year or less;

12 (v) RCW 9.94A.570, relating to persistent offenders;

13 (vi) RCW 9.94A.540, relating to mandatory minimum terms;

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

15 (viii) RCW 9.94A.660, relating to the drug offender sentencing
16 alternative;

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

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

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

21 (xii) RCW 9.94A.589, relating to consecutive and concurrent
22 sentences.

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

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

1 (4) If a sentence imposed includes payment of a legal financial
2 obligation, it shall be imposed as provided in RCW 9.94A.750,
3 9.94A.753, 9.94A.760, and 43.43.7541.

4 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
5 court may not impose a sentence providing for a term of confinement or
6 community supervision, community placement, or community custody which
7 exceeds the statutory maximum for the crime as provided in chapter
8 9A.20 RCW.

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

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

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

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

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

33 (11) In sentencing an offender convicted of a crime of domestic
34 violence, as defined in RCW 10.99.020, if the offender has a minor
35 child, or if the victim of the offense for which the offender was
36 convicted has a minor child, the court may, as part of any term of
37 community supervision, community placement, or community custody, order

1 the offender to participate in a domestic violence perpetrator program
2 approved under RCW 26.50.150.

3 **Sec. 10.** RCW 13.40.0357 and 2004 c 117 s 1 are each amended to
4 read as follows:

5 **DESCRIPTION AND OFFENSE CATEGORY**

6 JUVENILE DISPOSITION
7 JUVENILE CATEGORY FOR
8 DISPOSITION ATTEMPT, BAILJUMP,
9 OFFENSE CONSPIRACY, OR
10 CATEGORY DESCRIPTION (RCW CITATION) SOLICITATION

11

12 **Arson and Malicious Mischief**

13 A Arson 1 (9A.48.020) B+
14 B Arson 2 (9A.48.030) C
15 C Reckless Burning 1 (9A.48.040) D
16 D Reckless Burning 2 (9A.48.050) E
17 B Malicious Mischief 1 (9A.48.070) C
18 C Malicious Mischief 2 (9A.48.080) D
19 D Malicious Mischief 3 (9A.48.090(2) (a) and
20 (c)) E
21 E Malicious Mischief 3 (9A.48.090(2)(b)) E
22 E Tampering with Fire Alarm Apparatus
23 (9.40.100) E
24 E Tampering with Fire Alarm Apparatus with
25 Intent to Commit Arson (9.40.105) E
26 A Possession of Incendiary Device (9.40.120) B+

27 **Assault and Other Crimes Involving**

28 **Physical Harm**

29 A Assault 1 (9A.36.011) B+
30 B+ Assault 2 (9A.36.021) C+
31 C+ Assault 3 (9A.36.031) D+
32 D+ Assault 4 (9A.36.041) E
33 B+ Drive-By Shooting (9A.36.045) C+
34 D+ Reckless Endangerment (9A.36.050) E
35 C+ Promoting Suicide Attempt (9A.36.060) D+

1	D+	Coercion (9A.36.070)	E
2	C+	Custodial Assault (9A.36.100)	D+
3		Burglary and Trespass	
4	B+	Burglary 1 (9A.52.020)	C+
5	B	Residential Burglary (9A.52.025)	C
6	B	Burglary 2 (9A.52.030)	C
7	D	Burglary Tools (Possession of) (9A.52.060)	E
8	D	Criminal Trespass 1 (9A.52.070)	E
9	E	Criminal Trespass 2 (9A.52.080)	E
10	C	Mineral Trespass (78.44.330)	C
11	C	Vehicle Prowling 1 (9A.52.095)	D
12	D	Vehicle Prowling 2 (9A.52.100)	E
13		Drugs	
14	E	Possession/Consumption of Alcohol	
15		(66.44.270)	E
16	C	Illegally Obtaining Legend Drug	
17		(69.41.020)	D
18	C+	Sale, Delivery, Possession of Legend Drug	
19		with Intent to Sell (69.41.030(2)(a))	D+
20	E	Possession of Legend Drug	
21		(69.41.030(2)(b))	E
22	B+	Violation of Uniform Controlled Substances	
23		Act - Narcotic, Methamphetamine, or	
24		Flunitrazepam Sale (69.50.401(2) (a) or	
25		(b))	B+
26	C	Violation of Uniform Controlled Substances	
27		Act - Nonnarcotic Sale (69.50.401(2)(c))	C
28	E	Possession of Marihuana <40 grams	
29		(69.50.4014)	E
30	C	Fraudulently Obtaining Controlled	
31		Substance (69.50.403)	C
32	C+	Sale of Controlled Substance for Profit	
33		(69.50.410)	C+
34	E	Unlawful Inhalation (9.47A.020)	E

1	B	Violation of Uniform Controlled Substances	
2		Act - Narcotic, Methamphetamine, or	
3		Flunitrazepam Counterfeit Substances	
4		(69.50.4011(2) (a) or (b))	B
5	C	Violation of Uniform Controlled Substances	
6		Act - Nonnarcotic Counterfeit Substances	
7		(69.50.4011(2) (c), (d), or (e))	C
8	C	Violation of Uniform Controlled Substances	
9		Act - Possession of a Controlled Substance	
10		(69.50.4013)	C
11	C	Violation of Uniform Controlled Substances	
12		Act - Possession of a Controlled Substance	
13		(69.50.4012)	C
14		Firearms and Weapons	
15	B	Theft of Firearm (9A.56.300)	C
16	B	Possession of Stolen Firearm (9A.56.310)	C
17	E	Carrying Loaded Pistol Without Permit	
18		(9.41.050)	E
19	C	Possession of Firearms by Minor (<18)	
20		(9.41.040(2)(a)(iii))	C
21	D+	Possession of Dangerous Weapon	
22		(9.41.250)	E
23	D	Intimidating Another Person by use of	
24		Weapon (9.41.270)	E
25		Homicide	
26	A+	Murder 1 (9A.32.030)	A
27	A+	Murder 2 (9A.32.050)	B+
28	B+	Manslaughter 1 (9A.32.060)	C+
29	C+	Manslaughter 2 (9A.32.070)	D+
30	B+	Vehicular Homicide (46.61.520)	C+
31		Kidnapping	
32	A	Kidnap 1 (9A.40.020)	B+
33	B+	Kidnap 2 (9A.40.030)	C+
34	C+	Unlawful Imprisonment (9A.40.040)	D+
35		Obstructing Governmental Operation	

1	D	Obstructing a Law Enforcement Officer (9A.76.020)	E
2			
3	E	Resisting Arrest (9A.76.040)	E
4	B	Introducing Contraband 1 (9A.76.140)	C
5	C	Introducing Contraband 2 (9A.76.150)	D
6	E	Introducing Contraband 3 (9A.76.160)	E
7	B+	Intimidating a Public Servant (9A.76.180)	C+
8	B+	Intimidating a Witness (9A.72.110)	C+
9		Public Disturbance	
10	C+	Riot with Weapon (9A.84.010(2)(b))	D+
11	D+	Riot Without Weapon (9A.84.010(2)(a))	E
12	E	Failure to Disperse (9A.84.020)	E
13	E	Disorderly Conduct (9A.84.030)	E
14		Sex Crimes	
15	A	Rape 1 (9A.44.040)	B+
16	A-	Rape 2 (9A.44.050)	B+
17	C+	Rape 3 (9A.44.060)	D+
18	A-	Rape of a Child 1 (9A.44.073)	B+
19	B+	Rape of a Child 2 (9A.44.076)	C+
20	B	Incest 1 (9A.64.020(1))	C
21	C	Incest 2 (9A.64.020(2))	D
22	D+	Indecent Exposure (Victim <14)	
23		(9A.88.010)	E
24	E	Indecent Exposure (Victim 14 or over)	
25		(9A.88.010)	E
26	B+	Promoting Prostitution 1 (9A.88.070)	C+
27	C+	Promoting Prostitution 2 (9A.88.080)	D+
28	E	O & A (Prostitution) (9A.88.030)	E
29	B+	Indecent Liberties (9A.44.100)	C+
30	A-	Child Molestation 1 (9A.44.083)	B+
31	B	Child Molestation 2 (9A.44.086)	C+
32		Theft, Robbery, Extortion, and Forgery	
33	B	Theft 1 (9A.56.030)	C
34	C	Theft 2 (9A.56.040)	D
35	D	Theft 3 (9A.56.050)	E

1	B	Theft of Livestock 1 and 2 (9A.56.080 and	
2		9A.56.083)	C
3	C	Forgery (9A.60.020)	D
4	A	Robbery 1 (9A.56.200)	B+
5	B+	Robbery 2 (9A.56.210)	C+
6	B+	Extortion 1 (9A.56.120)	C+
7	C+	Extortion 2 (9A.56.130)	D+
8	C	Identity Theft 1 (9.35.020(2))	D
9	D	Identity Theft 2 (9.35.020(3))	E
10	D	Improperly Obtaining Financial Information	
11		(9.35.010)	E
12	B	Possession of Stolen Property 1	
13		(9A.56.150)	C
14	C	Possession of Stolen Property 2	
15		(9A.56.160)	D
16	D	Possession of Stolen Property 3	
17		(9A.56.170)	E
18	C	Taking Motor Vehicle Without Permission	
19		1 and 2 (9A.56.070 and 9A.56.075)	D
20		Motor Vehicle Related Crimes	
21	E	Driving Without a License (46.20.005)	E
22	B+	Hit and Run - Death (46.52.020(4)(a))	C+
23	C	Hit and Run - Injury (46.52.020(4)(b))	D
24	D	Hit and Run-Attended (46.52.020(5))	E
25	E	Hit and Run-Unattended (46.52.010)	E
26	C	Vehicular Assault (46.61.522)	D
27	C	Attempting to Elude Pursuing Police	
28		Vehicle (46.61.024)	D
29	E	Reckless Driving (46.61.500)	E
30	D	Driving While Under the Influence	
31		(46.61.502 and 46.61.504)	E
32	<u>B+</u>	<u>Felony Driving While Under the Influence</u>	
33		<u>(46.61.502(6) and 46.61.504(6))</u>	<u>B</u>
34		Other	
35	B	Animal Cruelty 1 (16.52.205)	C
36	B	Bomb Threat (9.61.160)	C
37	C	Escape 1 ¹ (9A.76.110)	C

1	C	Escape 2 ¹ (9A.76.120)	C
2	D	Escape 3 (9A.76.130)	E
3	E	Obscene, Harassing, Etc., Phone Calls	
4		(9.61.230)	E
5	A	Other Offense Equivalent to an Adult Class	
6		A Felony	B+
7	B	Other Offense Equivalent to an Adult Class	
8		B Felony	C
9	C	Other Offense Equivalent to an Adult Class	
10		C Felony	D
11	D	Other Offense Equivalent to an Adult Gross	
12		Misdemeanor	E
13	E	Other Offense Equivalent to an Adult	
14		Misdemeanor	E
15	V	Violation of Order of Restitution,	
16		Community Supervision, or Confinement	
17		(13.40.200) ²	V

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

20 1st escape or attempted escape during 12-month period - 4 weeks
21 confinement

22 2nd escape or attempted escape during 12-month period - 8 weeks
23 confinement

24 3rd and subsequent escape or attempted escape during 12-month
25 period - 12 weeks confinement

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

28 **JUVENILE SENTENCING STANDARDS**

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

31	OPTION A	
32	JUVENILE OFFENDER SENTENCING GRID	
33	STANDARD RANGE	
34	-----	
	A+	180 WEEKS TO AGE 21 YEARS

A 103 WEEKS TO 129 WEEKS

A-	15-36 WEEKS EXCEPT 30-40 WEEKS FOR 15-17 YEAR OLDS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS
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Current Offense Category	B+	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS
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B	LOCAL SANCTIONS (LS)	15-36 WEEKS	52-65 WEEKS
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C+	LS	15-36 WEEKS
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C	LS	15-36 WEEKS
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Local Sanctions:

0 to 30 Days

D+ LS 0 to 12 Months Community Supervision

0 to 150 Hours Community Restitution

D LS \$0 to \$500 Fine

E LS

0 1 2 3 4
or more

PRIOR ADJUDICATIONS

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

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

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

(3) The standard range disposition for each offense is determined

1 by the intersection of the column defined by the prior adjudications
2 and the row defined by the current offense category.

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

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

8 OR

9 OPTION B

10 SUSPENDED DISPOSITION ALTERNATIVE

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

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

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

- 24 (a) Adjudicated of an A+ offense;
- 25 (b) Fourteen years of age or older and is adjudicated of one or
26 more of the following offenses:

- 27 (i) A class A offense, or an attempt, conspiracy, or solicitation
28 to commit a class A offense;

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

- 30 (iii) Assault in the second degree (RCW 9A.36.021), extortion in
31 the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW
32 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential
33 burglary (RCW 9A.52.025), burglary in the second degree (RCW
34 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW
35 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a
36 witness (RCW 9A.72.110), violation of the uniform controlled substances
37 act (RCW 69.50.401 (2)(a) and (b)), or manslaughter 2 (RCW 9A.32.070),

1 when the offense includes infliction of bodily harm upon another or
2 when during the commission or immediate withdrawal from the offense the
3 respondent was armed with a deadly weapon;

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

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

7 OR

8 OPTION C

9 CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE

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

14 OR

15 OPTION D

16 MANIFEST INJUSTICE

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

20 NEW SECTION. **Sec. 11.** Section 6 of this act expires July 1, 2006.

21 NEW SECTION. **Sec. 12.** Section 7 of this act takes effect July 1,
22 2006.

--- END ---