
SENATE BILL 5283

State of Washington 59th Legislature 2005 Regular Session

By Senators Kline, Mulliken, Keiser, Carrell, Shin, Stevens, Regala, Doumit, Rasmussen, Oke and Benton

Read first time 01/19/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to driving while under the influence of alcohol or
2 any drug; amending RCW 46.61.502, 46.61.504, 46.61.5055, 46.61.524, and
3 9.94A.030; reenacting and amending RCW 9.94A.515 and 9.94A.525;
4 prescribing penalties; providing an effective date; and declaring an
5 emergency.

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

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

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

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

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

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

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

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

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

23 (5)(a) A violation of this section is a gross misdemeanor except
24 when (b) of this subsection applies.

25 (b) A person is guilty of a class C felony punishable under chapter
26 9A.20 RCW if the person drives while under the influence of
27 intoxicating liquor or any drug as defined by this section and has
28 previously been convicted of driving or being in physical control of a
29 motor vehicle while under the influence of intoxicating liquor or any
30 drug on three or more prior occasions within five years of the current
31 offense, or the person has a previous conviction of felony driving or
32 being in actual physical control while under the influence of
33 intoxicating liquor or any drug, vehicular assault (RCW 46.61.522), or
34 vehicular homicide (RCW 46.61.520).

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)(a) A violation of this section is a gross misdemeanor except
38 when (b) of this subsection applies.

1 (b) A person is guilty of a class C felony punishable under chapter
2 9A.20 RCW if the person is in actual physical control of a motor
3 vehicle while under the influence of intoxicating liquor or any drug as
4 defined by this section and has been previously convicted of being in
5 physical control of a motor vehicle or driving a motor vehicle while
6 under the influence of intoxicating liquor or any drug on three or more
7 occasions within five years of the current offense, or the person has
8 a previous conviction of felony driving or being in actual physical
9 control while under the influence of intoxicating liquor or any drug,
10 vehicular assault (RCW 46.61.522), or vehicular homicide (RCW
11 46.61.520).

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

14 (1) A person who is convicted of a violation of RCW 46.61.502 or
15 46.61.504 and who has no prior offense within seven years shall be
16 punished as follows:

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

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

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

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

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

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

29 (2) A person who is convicted of a violation of RCW 46.61.502 or
30 46.61.504 and who has one prior offense within seven years shall be
31 punished as follows:

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

36 (i) By imprisonment for not less than thirty days nor more than one
37 year and sixty days of electronic home monitoring. The offender shall
38 pay for the cost of the electronic monitoring. The county or

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

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

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

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

36 (ii) By a fine of not less than seven hundred fifty dollars nor
37 more than five thousand dollars. Seven hundred fifty dollars of the

1 fine may not be suspended or deferred unless the court finds the
2 offender to be indigent.

3 (3) A person who is convicted of a violation of RCW 46.61.502 or
4 46.61.504 and who has two or more prior offenses within seven years
5 shall be punished as follows except when subsection (4) of this section
6 applies:

7 (a) In the case of a person whose alcohol concentration was less
8 than 0.15, or for whom for reasons other than the person's refusal to
9 take a 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 ninety days nor more than one
12 year and one hundred twenty days of electronic home monitoring. The
13 offender shall pay for the cost of the electronic monitoring. The
14 county or municipality where the penalty is being imposed shall
15 determine the cost. The court may also require the offender's
16 electronic home monitoring device include an alcohol detection
17 breathalyzer, and may restrict the amount of alcohol the offender may
18 consume during the time the offender is on electronic home monitoring.
19 Ninety days of imprisonment and one hundred twenty days of electronic
20 home monitoring may not be suspended or deferred unless the court finds
21 that the imposition of this mandatory minimum sentence would impose a
22 substantial risk to the offender's physical or mental well-being.
23 Whenever the mandatory minimum sentence is suspended or deferred, the
24 court shall state in writing the reason for granting the suspension or
25 deferral and the facts upon which the suspension or deferral is based;
26 and

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

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

35 (i) By imprisonment for not less than one hundred twenty days nor
36 more than one year and one hundred fifty days of electronic home
37 monitoring. The offender shall pay for the cost of the electronic
38 monitoring. The county or municipality where the penalty is being

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

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

17 (4) A person who is convicted of a class C felony violation of RCW
18 46.61.502(5)(b) or 46.61.504(5)(b) shall be punished in accordance with
19 chapter 9.94A RCW.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (~~(12)~~) (13) For purposes of this section:

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

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

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

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

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

35 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
36 9A.36.050 or an equivalent local ordinance, if the conviction is the
37 result of a charge that was originally filed as a violation of RCW

1 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
2 46.61.520 or 46.61.522;

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

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

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

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

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

19 (1) A person convicted under RCW 46.61.520(1)(a) or 46.61.522(1)(b)
20 or of a felony violation of RCW 46.61.502 or 46.61.504 shall, as a
21 condition of community custody imposed under RCW 9.94A.545 or community
22 placement imposed under RCW 9.94A.660, complete a diagnostic evaluation
23 by an alcohol or drug dependency agency approved by the department of
24 social and health services or a qualified probation department, as
25 defined under RCW 46.61.516 that has been approved by the department of
26 social and health services. This report shall be forwarded to the
27 department of licensing. If the person is found to have an alcohol or
28 drug problem that requires treatment, the person shall complete
29 treatment in a program approved by the department of social and health
30 services under chapter 70.96A RCW. If the person is found not to have
31 an alcohol or drug problem that requires treatment, he or she shall
32 complete a course in an information school approved by the department
33 of social and health services under chapter 70.96A RCW. The convicted
34 person shall pay all costs for any evaluation, education, or treatment
35 required by this section, unless the person is eligible for an existing
36 program offered or approved by the department of social and health
37 services. Nothing in chapter 348, Laws of 1991 requires the addition

1 of new treatment or assessment facilities nor affects the department of
2 social and health services use of existing programs and facilities
3 authorized by law.

4 (2) As provided for under RCW 46.20.285, the department shall
5 revoke the license, permit to drive, or a nonresident privilege of a
6 person convicted of vehicular homicide under RCW 46.61.520 or vehicular
7 assault under RCW 46.61.522. The department shall determine the
8 eligibility of a person convicted of vehicular homicide under RCW
9 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to
10 receive a license based upon the report provided by the designated
11 alcoholism treatment facility or probation department, and shall deny
12 reinstatement until satisfactory progress in an approved program has
13 been established and the person is otherwise qualified.

14 **Sec. 5.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
15 as follows:

16 Unless the context clearly requires otherwise, the definitions in
17 this section apply throughout this chapter.

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

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

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

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

33 (5) "Community custody" means that portion of an offender's
34 sentence of confinement in lieu of earned release time or imposed
35 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
36 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
37 community subject to controls placed on the offender's movement and

1 activities by the department. For offenders placed on community
2 custody for crimes committed on or after July 1, 2000, the department
3 shall assess the offender's risk of reoffense and may establish and
4 modify conditions of community custody, in addition to those imposed by
5 the court, based upon the risk to community safety.

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

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

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

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

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

31 (11) "Conviction" means an adjudication of guilt pursuant to Titles
32 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
33 acceptance of a plea of guilty.

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

1 participate in rehabilitative programs or to otherwise perform
2 affirmative conduct. However, affirmative acts necessary to monitor
3 compliance with the order of a court may be required by the department.

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

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

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

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

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

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

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

30 (17) "Determinate sentence" means a sentence that states with
31 exactitude the number of actual years, months, or days of total
32 confinement, of partial confinement, of community supervision, the
33 number of actual hours or days of community restitution work, or
34 dollars or terms of a legal financial obligation. The fact that an
35 offender through earned release can reduce the actual period of
36 confinement shall not affect the classification of the sentence as a
37 determinate sentence.

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

13 (19) "Drug offender sentencing alternative" is a sentencing option
14 available to persons convicted of a felony offense other than a violent
15 offense or a sex offense and who are eligible for the option under RCW
16 9.94A.660.

17 (20) "Drug offense" means:

18 (a) Any felony violation of chapter 69.50 RCW except possession of
19 a controlled substance (RCW 69.50.4013) or forged prescription for a
20 controlled substance (RCW 69.50.403);

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

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

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

29 (22) "Escape" means:

30 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
31 first degree (RCW 9A.76.110), escape in the second degree (RCW
32 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
33 willful failure to return from work release (RCW 72.65.070), or willful
34 failure to be available for supervision by the department while in
35 community custody (RCW 72.09.310); or

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

1 (23) "Felony traffic offense" means:

2 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
3 46.61.522), eluding a police officer (RCW 46.61.024), (~~(or)~~) felony
4 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while
5 under the influence of intoxicating liquor or any drug (RCW
6 46.61.502(5)(b)), or felony actual physical control of a motor vehicle
7 while under the influence of intoxicating liquor or any drug (RCW
8 46.61.504(5)(b)); or

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

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

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

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

21 (27) "Legal financial obligation" means a sum of money that is
22 ordered by a superior court of the state of Washington for legal
23 financial obligations which may include restitution to the victim,
24 statutorily imposed crime victims' compensation fees as assessed
25 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
26 court-appointed attorneys' fees, and costs of defense, fines, and any
27 other financial obligation that is assessed to the offender as a result
28 of a felony conviction. Upon conviction for vehicular assault while
29 under the influence of intoxicating liquor or any drug, RCW
30 46.61.522(1)(b), or vehicular homicide while under the influence of
31 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
32 obligations may also include payment to a public agency of the expense
33 of an emergency response to the incident resulting in the conviction,
34 subject to RCW 38.52.430.

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

37 (a) Any felony defined under any law as a class A felony or

1 criminal solicitation of or criminal conspiracy to commit a class A
2 felony;

3 (b) Assault in the second degree;

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

5 (d) Child molestation in the second degree;

6 (e) Controlled substance homicide;

7 (f) Extortion in the first degree;

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

9 (h) Indecent liberties;

10 (i) Kidnapping in the second degree;

11 (j) Leading organized crime;

12 (k) Manslaughter in the first degree;

13 (l) Manslaughter in the second degree;

14 (m) Promoting prostitution in the first degree;

15 (n) Rape in the third degree;

16 (o) Robbery in the second degree;

17 (p) Sexual exploitation;

18 (q) Vehicular assault, when caused by the operation or driving of
19 a vehicle by a person while under the influence of intoxicating liquor
20 or any drug or by the operation or driving of a vehicle in a reckless
21 manner;

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

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

28 (t) Any other felony with a deadly weapon verdict under RCW
29 9.94A.602;

30 (u) Any felony offense in effect at any time prior to December 2,
31 1993, that is comparable to a most serious offense under this
32 subsection, or any federal or out-of-state conviction for an offense
33 that under the laws of this state would be a felony classified as a
34 most serious offense under this subsection;

35 (v)(i) A prior conviction for indecent liberties under RCW
36 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
37 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as

1 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
2 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
3 (ii) A prior conviction for indecent liberties under RCW
4 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
5 if: (A) The crime was committed against a child under the age of
6 fourteen; or (B) the relationship between the victim and perpetrator is
7 included in the definition of indecent liberties under RCW
8 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
9 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
10 through July 27, 1997.

11 (29) "Nonviolent offense" means an offense which is not a violent
12 offense.

13 (30) "Offender" means a person who has committed a felony
14 established by state law and is eighteen years of age or older or is
15 less than eighteen years of age but whose case is under superior court
16 jurisdiction under RCW 13.04.030 or has been transferred by the
17 appropriate juvenile court to a criminal court pursuant to RCW
18 13.40.110. Throughout this chapter, the terms "offender" and
19 "defendant" are used interchangeably.

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

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

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

31 (ii) Has, before the commission of the offense under (a) of this
32 subsection, been convicted as an offender on at least two separate
33 occasions, whether in this state or elsewhere, of felonies that under
34 the laws of this state would be considered most serious offenses and
35 would be included in the offender score under RCW 9.94A.525; provided
36 that of the two or more previous convictions, at least one conviction
37 must have occurred before the commission of any of the other most
38 serious offenses for which the offender was previously convicted; or

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

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

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

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

29 (35) "Risk assessment" means the application of an objective
30 instrument supported by research and adopted by the department for the
31 purpose of assessing an offender's risk of reoffense, taking into
32 consideration the nature of the harm done by the offender, place and
33 circumstances of the offender related to risk, the offender's
34 relationship to any victim, and any information provided to the
35 department by victims. The results of a risk assessment shall not be
36 based on unconfirmed or unconfirmable allegations.

37 (36) "Serious traffic offense" means:

1 (a) Nonfelony driving while under the influence of intoxicating
2 liquor or any drug (RCW 46.61.502(5)(a)), nonfelony actual physical
3 control while under the influence of intoxicating liquor or any drug
4 (RCW 46.61.504(5)(a)), reckless driving (RCW 46.61.500), or hit-and-run
5 an attended vehicle (RCW 46.52.020(5)); or

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

9 (37) "Serious violent offense" is a subcategory of violent offense
10 and means:

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

12 (ii) Homicide by abuse;

13 (iii) Murder in the second degree;

14 (iv) Manslaughter in the first degree;

15 (v) Assault in the first degree;

16 (vi) Kidnapping in the first degree;

17 (vii) Rape in the first degree;

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

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

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

24 (38) "Sex offense" means:

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

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

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

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

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

35 (c) A felony with a finding of sexual motivation under RCW
36 9.94A.835 or 13.40.135; or

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

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

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

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

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

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

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

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

25 (45) "Violent offense" means:

26 (a) Any of the following felonies:

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

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

31 (iii) Manslaughter in the first degree;

32 (iv) Manslaughter in the second degree;

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

34 (vi) Kidnapping in the second degree;

35 (vii) Arson in the second degree;

36 (viii) Assault in the second degree;

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

38 (x) Extortion in the first degree;

1 (xi) Robbery in the second degree;
2 (xii) Drive-by shooting;
3 (xiii) Vehicular assault, when caused by the operation or driving
4 of a vehicle by a person while under the influence of intoxicating
5 liquor or any drug or by the operation or driving of a vehicle in a
6 reckless manner; and

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

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

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

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

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

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

30 **Sec. 6.** RCW 9.94A.515 and 2004 c 176 s 2 and 2004 c 94 s 3 are
31 each reenacted and amended to read as follows:

32
33 **TABLE 2**
34 **CRIMES INCLUDED WITHIN**
35 **EACH SERIOUSNESS LEVEL**

1 XVI Aggravated Murder 1 (RCW
2 10.95.020)
3 XV Homicide by abuse (RCW 9A.32.055)
4 Malicious explosion 1 (RCW
5 70.74.280(1))
6 Murder 1 (RCW 9A.32.030)
7 XIV Murder 2 (RCW 9A.32.050)
8 Trafficking 1 (RCW 9A.40.100(1))
9 XIII Malicious explosion 2 (RCW
10 70.74.280(2))
11 Malicious placement of an explosive 1
12 (RCW 70.74.270(1))
13 XII Assault 1 (RCW 9A.36.011)
14 Assault of a Child 1 (RCW 9A.36.120)
15 Malicious placement of an imitation
16 device 1 (RCW 70.74.272(1)(a))
17 Rape 1 (RCW 9A.44.040)
18 Rape of a Child 1 (RCW 9A.44.073)
19 Trafficking 2 (RCW 9A.40.100(2))
20 XI Manslaughter 1 (RCW 9A.32.060)
21 Rape 2 (RCW 9A.44.050)
22 Rape of a Child 2 (RCW 9A.44.076)
23 X Child Molestation 1 (RCW 9A.44.083)
24 Indecent Liberties (with forcible
25 compulsion) (RCW
26 9A.44.100(1)(a))
27 Kidnapping 1 (RCW 9A.40.020)
28 Leading Organized Crime (RCW
29 9A.82.060(1)(a))
30 Malicious explosion 3 (RCW
31 70.74.280(3))
32 Sexually Violent Predator Escape
33 (RCW 9A.76.115)
34 IX Assault of a Child 2 (RCW 9A.36.130)
35 Explosive devices prohibited (RCW
36 70.74.180)

1 Hit and Run--Death (RCW
2 46.52.020(4)(a))
3 Homicide by Watercraft, by being
4 under the influence of intoxicating
5 liquor or any drug (RCW
6 79A.60.050)
7 Inciting Criminal Profiteering (RCW
8 9A.82.060(1)(b))
9 Malicious placement of an explosive 2
10 (RCW 70.74.270(2))
11 Robbery 1 (RCW 9A.56.200)
12 Sexual Exploitation (RCW 9.68A.040)
13 Vehicular Homicide, by being under
14 the influence of intoxicating
15 liquor or any drug (RCW
16 46.61.520)
17 VIII Arson 1 (RCW 9A.48.020)
18 Homicide by Watercraft, by the
19 operation of any vessel in a
20 reckless manner (RCW
21 79A.60.050)
22 Manslaughter 2 (RCW 9A.32.070)
23 Promoting Prostitution 1 (RCW
24 9A.88.070)
25 Theft of Ammonia (RCW 69.55.010)
26 Vehicular Homicide, by the operation
27 of any vehicle in a reckless
28 manner (RCW 46.61.520)
29 VII Burglary 1 (RCW 9A.52.020)
30 Child Molestation 2 (RCW 9A.44.086)
31 Civil Disorder Training (RCW
32 9A.48.120)
33 Dealing in depictions of minor
34 engaged in sexually explicit
35 conduct (RCW 9.68A.050)
36 Drive-by Shooting (RCW 9A.36.045)

1 Homicide by Watercraft, by disregard
2 for the safety of others (RCW
3 79A.60.050)
4 Indecent Liberties (without forcible
5 compulsion) (RCW 9A.44.100(1)
6 (b) and (c))
7 Introducing Contraband 1 (RCW
8 9A.76.140)
9 Malicious placement of an explosive 3
10 (RCW 70.74.270(3))
11 Sending, bringing into state depictions
12 of minor engaged in sexually
13 explicit conduct (RCW
14 9.68A.060)
15 Unlawful Possession of a Firearm in
16 the first degree (RCW
17 9.41.040(1))
18 Use of a Machine Gun in Commission
19 of a Felony (RCW 9.41.225)
20 Vehicular Homicide, by disregard for
21 the safety of others (RCW
22 46.61.520)
23 VI Bail Jumping with Murder 1 (RCW
24 9A.76.170(3)(a))
25 Bribery (RCW 9A.68.010)
26 Incest 1 (RCW 9A.64.020(1))
27 Intimidating a Judge (RCW
28 9A.72.160)
29 Intimidating a Juror/Witness (RCW
30 9A.72.110, 9A.72.130)
31 Malicious placement of an imitation
32 device 2 (RCW 70.74.272(1)(b))
33 Rape of a Child 3 (RCW 9A.44.079)
34 Theft of a Firearm (RCW 9A.56.300)
35 Unlawful Storage of Ammonia (RCW
36 69.55.020)

1 V Abandonment of dependent person 1
2 (RCW 9A.42.060)
3 Advancing money or property for
4 extortionate extension of credit
5 (RCW 9A.82.030)
6 Bail Jumping with class A Felony
7 (RCW 9A.76.170(3)(b))
8 Child Molestation 3 (RCW 9A.44.089)
9 Criminal Mistreatment 1 (RCW
10 9A.42.020)
11 Custodial Sexual Misconduct 1 (RCW
12 9A.44.160)
13 Domestic Violence Court Order
14 Violation (RCW 10.99.040,
15 10.99.050, 26.09.300, 26.10.220,
16 26.26.138, 26.50.110, 26.52.070,
17 or 74.34.145)
18 Extortion 1 (RCW 9A.56.120)
19 Extortionate Extension of Credit
20 (RCW 9A.82.020)
21 Extortionate Means to Collect
22 Extensions of Credit (RCW
23 9A.82.040)
24 Incest 2 (RCW 9A.64.020(2))
25 Kidnapping 2 (RCW 9A.40.030)
26 Perjury 1 (RCW 9A.72.020)
27 Persistent prison misbehavior (RCW
28 9.94.070)
29 Possession of a Stolen Firearm (RCW
30 9A.56.310)
31 Rape 3 (RCW 9A.44.060)
32 Rendering Criminal Assistance 1
33 (RCW 9A.76.070)
34 Sexual Misconduct with a Minor 1
35 (RCW 9A.44.093)
36 Sexually Violating Human Remains
37 (RCW 9A.44.105)

1 Stalking (RCW 9A.46.110)
2 Taking Motor Vehicle Without
3 Permission 1 (RCW 9A.56.070)
4 IV Arson 2 (RCW 9A.48.030)
5 Assault 2 (RCW 9A.36.021)
6 Assault by Watercraft (RCW
7 79A.60.060)
8 Bribing a Witness/Bribe Received by
9 Witness (RCW 9A.72.090,
10 9A.72.100)
11 Cheating 1 (RCW 9.46.1961)
12 Commercial Bribery (RCW
13 9A.68.060)
14 Counterfeiting (RCW 9.16.035(4))
15 Endangerment with a Controlled
16 Substance (RCW 9A.42.100)
17 Escape 1 (RCW 9A.76.110)
18 Hit and Run--Injury (RCW
19 46.52.020(4)(b))
20 Hit and Run with Vessel--Injury
21 Accident (RCW 79A.60.200(3))
22 Identity Theft 1 (RCW 9.35.020(2))
23 Indecent Exposure to Person Under
24 Age Fourteen (subsequent sex
25 offense) (RCW 9A.88.010)
26 Influencing Outcome of Sporting
27 Event (RCW 9A.82.070)
28 Malicious Harassment (RCW
29 9A.36.080)
30 Residential Burglary (RCW
31 9A.52.025)
32 Robbery 2 (RCW 9A.56.210)
33 Theft of Livestock 1 (RCW 9A.56.080)
34 Threats to Bomb (RCW 9.61.160)
35 Trafficking in Stolen Property 1 (RCW
36 9A.82.050)

1 Unlawful factoring of a credit card or
2 payment card transaction (RCW
3 9A.56.290(4)(b))
4 Unlawful transaction of health
5 coverage as a health care service
6 contractor (RCW 48.44.016(3))
7 Unlawful transaction of health
8 coverage as a health maintenance
9 organization (RCW 48.46.033(3))
10 Unlawful transaction of insurance
11 business (RCW 48.15.023(3))
12 Unlicensed practice as an insurance
13 professional (RCW 48.17.063(3))
14 Use of Proceeds of Criminal
15 Profiteering (RCW 9A.82.080 (1)
16 and (2))
17 Vehicular Assault, by being under the
18 influence of intoxicating liquor or
19 any drug, or by the operation or
20 driving of a vehicle in a reckless
21 manner (RCW 46.61.522)
22 Willful Failure to Return from
23 Furlough (RCW 72.66.060)
24 III Abandonment of dependent person 2
25 (RCW 9A.42.070)
26 Assault 3 (RCW 9A.36.031)
27 Assault of a Child 3 (RCW 9A.36.140)
28 Bail Jumping with class B or C Felony
29 (RCW 9A.76.170(3)(c))
30 Burglary 2 (RCW 9A.52.030)
31 Communication with a Minor for
32 Immoral Purposes (RCW
33 9.68A.090)
34 Criminal Gang Intimidation (RCW
35 9A.46.120)
36 Criminal Mistreatment 2 (RCW
37 9A.42.030)

1 Custodial Assault (RCW 9A.36.100)
2 Cyberstalking (subsequent conviction
3 or threat of death) (RCW
4 9.61.260(3))
5 Escape 2 (RCW 9A.76.120)
6 Extortion 2 (RCW 9A.56.130)
7 Felony driving or physical control of a
8 motor vehicle while under the
9 influence of intoxicating liquor or
10 any drug (RCW 46.61.502(5)(b)
11 or 46.61.504(5)(b))
12 Harassment (RCW 9A.46.020)
13 Intimidating a Public Servant (RCW
14 9A.76.180)
15 Introducing Contraband 2 (RCW
16 9A.76.150)
17 Malicious Injury to Railroad Property
18 (RCW 81.60.070)
19 Patronizing a Juvenile Prostitute
20 (RCW 9.68A.100)
21 Perjury 2 (RCW 9A.72.030)
22 Possession of Incendiary Device (RCW
23 9.40.120)
24 Possession of Machine Gun or Short-
25 Barreled Shotgun or Rifle (RCW
26 9.41.190)
27 Promoting Prostitution 2 (RCW
28 9A.88.080)
29 Securities Act violation (RCW
30 21.20.400)
31 Tampering with a Witness (RCW
32 9A.72.120)
33 Telephone Harassment (subsequent
34 conviction or threat of death)
35 (RCW 9.61.230(2))
36 Theft of Livestock 2 (RCW 9A.56.083)

1 Trafficking in Stolen Property 2 (RCW
2 9A.82.055)
3 Unlawful Imprisonment (RCW
4 9A.40.040)
5 Unlawful possession of firearm in the
6 second degree (RCW 9.41.040(2))
7 Vehicular Assault, by the operation or
8 driving of a vehicle with disregard
9 for the safety of others (RCW
10 46.61.522)
11 Willful Failure to Return from Work
12 Release (RCW 72.65.070)
13 II Computer Trespass 1 (RCW
14 9A.52.110)
15 Counterfeiting (RCW 9.16.035(3))
16 Escape from Community Custody
17 (RCW 72.09.310)
18 Health Care False Claims (RCW
19 48.80.030)
20 Identity Theft 2 (RCW 9.35.020(3))
21 Improperly Obtaining Financial
22 Information (RCW 9.35.010)
23 Malicious Mischief 1 (RCW
24 9A.48.070)
25 Possession of Stolen Property 1 (RCW
26 9A.56.150)
27 Theft 1 (RCW 9A.56.030)
28 Theft of Rental, Leased, or Lease-
29 purchased Property (valued at one
30 thousand five hundred dollars or
31 more) (RCW 9A.56.096(5)(a))
32 Trafficking in Insurance Claims (RCW
33 48.30A.015)
34 Unlawful factoring of a credit card or
35 payment card transaction (RCW
36 9A.56.290(4)(a))

1 Unlawful Practice of Law (RCW
2 2.48.180)
3 Unlicensed Practice of a Profession or
4 Business (RCW 18.130.190(7))
5 I Attempting to Elude a Pursuing Police
6 Vehicle (RCW 46.61.024)
7 False Verification for Welfare (RCW
8 74.08.055)
9 Forgery (RCW 9A.60.020)
10 Fraudulent Creation or Revocation of a
11 Mental Health Advance Directive
12 (RCW 9A.60.060)
13 Malicious Mischief 2 (RCW
14 9A.48.080)
15 Mineral Trespass (RCW 78.44.330)
16 Possession of Stolen Property 2 (RCW
17 9A.56.160)
18 Reckless Burning 1 (RCW 9A.48.040)
19 Taking Motor Vehicle Without
20 Permission 2 (RCW 9A.56.075)
21 Theft 2 (RCW 9A.56.040)
22 Theft of Rental, Leased, or Lease-
23 purchased Property (valued at two
24 hundred fifty dollars or more but
25 less than one thousand five
26 hundred dollars) (RCW
27 9A.56.096(5)(b))
28 Transaction of insurance business
29 beyond the scope of licensure
30 (RCW 48.17.063(4))
31 Unlawful Issuance of Checks or Drafts
32 (RCW 9A.56.060)
33 Unlawful Possession of Fictitious
34 Identification (RCW 9A.56.320)
35 Unlawful Possession of Instruments of
36 Financial Fraud (RCW
37 9A.56.320)

1 Unlawful Possession of Payment
2 Instruments (RCW 9A.56.320)
3 Unlawful Possession of a Personal
4 Identification Device (RCW
5 9A.56.320)
6 Unlawful Production of Payment
7 Instruments (RCW 9A.56.320)
8 Unlawful Trafficking in Food Stamps
9 (RCW 9.91.142)
10 Unlawful Use of Food Stamps (RCW
11 9.91.144)
12 Vehicle Prowl 1 (RCW 9A.52.095)

13 **Sec. 7.** RCW 9.94A.525 and 2002 c 290 s 3 and 2002 c 107 s 3 are
14 each reenacted and amended to read as follows:

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

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

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

24 (2) Class A and sex prior felony convictions shall always be
25 included in the offender score. Class B prior felony convictions other
26 than sex offenses shall not be included in the offender score, if since
27 the last date of release from confinement (including full-time
28 residential treatment) pursuant to a felony conviction, if any, or
29 entry of judgment and sentence, the offender had spent ten consecutive
30 years in the community without committing any crime that subsequently
31 results in a conviction. Class C prior felony convictions other than
32 sex offenses shall not be included in the offender score if, since the
33 last date of release from confinement (including full-time residential
34 treatment) pursuant to a felony conviction, if any, or entry of
35 judgment and sentence, the offender had spent five consecutive years in
36 the community without committing any crime that subsequently results in
37 a conviction. Serious traffic convictions shall not be included in the

1 offender score if, since the last date of release from confinement
2 (including full-time residential treatment) pursuant to a felony
3 conviction, if any, or entry of judgment and sentence, the offender
4 spent five years in the community without committing any crime that
5 subsequently results in a conviction. This subsection applies to both
6 adult and juvenile prior convictions.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 one point for each adult and 1/2 point for each juvenile prior
2 conviction; for each serious traffic offense, including those used to
3 elevate a conviction of RCW 46.61.502 or 46.61.504 to a felony pursuant
4 to RCW 46.61.502(5)(b) or 46.61.504(5)(b), other than those used for an
5 enhancement pursuant to RCW 46.61.520(2), count one point for each
6 adult and 1/2 point for each juvenile prior conviction.

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

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

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

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

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

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

36 (18) The fact that a prior conviction was not included in an
37 offender's offender score or criminal history at a previous sentencing
38 shall have no bearing on whether it is included in the criminal history

1 or offender score for the current offense. Accordingly, prior
2 convictions that were not counted in the offender score or included in
3 criminal history under repealed or previous versions of the sentencing
4 reform act shall be included in criminal history and shall count in the
5 offender score if the current version of the sentencing reform act
6 requires including or counting those convictions.

7 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 July 1, 2005.

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