

2SHB 3254 - H AMD 1120

By Representative Lantz

ADOPTED 2/18/2008

1 On page 28, beginning on line 14, strike all of subsection (4)
2 and insert the following:

3 "(4) A person who is convicted of a violation of RCW 46.61.502
4 or 46.61.504 (~~(and who)~~) shall be punished under chapter 9.94A RCW
5 if: (a) The person has four or more prior offenses within ten
6 years(~~(7)~~); or (~~who~~) (b) the person has ever previously been
7 convicted of: (i) A violation of RCW 46.61.520 committed while
8 under the influence of intoxicating liquor or any drug (~~(or)~~); (ii)
9 a violation of RCW 46.61.522 committed while under the influence of
10 intoxicating liquor or any drug(~~(, shall be punished in accordance~~
11 with chapter 9.94A RCW)); or (iii) an out-of-state offense
12 comparable to the offense specified in (b)(i) or (b)(ii) of this
13 subsection."

14 On page 33, after line 19, insert the following:

15 "**Sec. 14.** RCW 46.61.502 and 2006 c 73 s 1 are each amended to
16 read as follows:

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

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

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

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

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

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

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

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

22 (6) It is a class C felony punishable under chapter 9.94A RCW,
23 or chapter 13.40 RCW if the person is a juvenile, if: (a) The
24 person has four or more prior offenses within ten years as defined
25 in RCW 46.61.5055; or (b) the person has ever previously been
26 convicted of (i) vehicular homicide while under the influence of
27 intoxicating liquor or any drug, RCW 46.61.520(1)(a), (~~or~~) (ii)
28 vehicular assault while under the influence of intoxicating liquor
29 or any drug, RCW 46.61.522(1)(b), or (iii) an out-of-state offense
30 comparable to the offense specified in (b)(i) or (b)(ii) of this
31 subsection.

32 **Sec. 15.** RCW 46.61.504 and 2006 c 73 s 2 are each amended to
33 read as follows:

34 (1) A person is guilty of being in actual physical control of
35 a motor vehicle while under the influence of intoxicating liquor or
36 any drug if the person has actual physical control of a vehicle
37 within this state:

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

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

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

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

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

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

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

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

1 person has four or more prior offenses within ten years as defined
2 in RCW 46.61.5055; or (b) the person has ever previously been
3 convicted of (i) vehicular homicide while under the influence of
4 intoxicating liquor or any drug, RCW 46.61.520(1)(a), ((or)) (ii)
5 vehicular assault while under the influence of intoxicating liquor
6 or any drug, RCW 46.61.522(1)(b), or (iii) an out-of-state offense
7 comparable to the offense specified in (b)(i) or (b)(ii) of this
8 subsection.
9

10 **Sec. 16.** RCW 9.94A.533 and 2007 c 368 s 9 are each amended to
11 read as follows:

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

14 (2) For persons convicted of the anticipatory offenses of
15 criminal attempt, solicitation, or conspiracy under chapter 9A.28
16 RCW, the standard sentence range is determined by locating the
17 sentencing grid sentence range defined by the appropriate offender
18 score and the seriousness level of the completed crime, and
19 multiplying the range by seventy-five percent.

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

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

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

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

10 (d) If the offender is being sentenced for any firearm
11 enhancements under (a), (b), and/or (c) of this subsection and the
12 offender has previously been sentenced for any deadly weapon
13 enhancements after July 23, 1995, under (a), (b), and/or (c) of
14 this subsection or subsection (4)(a), (b), and/or (c) of this
15 section, or both, all firearm enhancements under this subsection
16 shall be twice the amount of the enhancement listed;

17 (e) Notwithstanding any other provision of law, all firearm
18 enhancements under this section are mandatory, shall be served in
19 total confinement, and shall run consecutively to all other
20 sentencing provisions, including other firearm or deadly weapon
21 enhancements, for all offenses sentenced under this chapter.
22 However, whether or not a mandatory minimum term has expired, an
23 offender serving a sentence under this subsection may be granted an
24 extraordinary medical placement when authorized under RCW
25 9.94A.728(4);

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

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

38 (4) The following additional times shall be added to the
39 standard sentence range for felony crimes committed after July 23,

1 1995, if the offender or an accomplice was armed with a deadly
2 weapon other than a firearm as defined in RCW 9.41.010 and the
3 offender is being sentenced for one of the crimes listed in this
4 subsection as eligible for any deadly weapon enhancements based on
5 the classification of the completed felony crime. If the offender
6 is being sentenced for more than one offense, the deadly weapon
7 enhancement or enhancements must be added to the total period of
8 confinement for all offenses, regardless of which underlying
9 offense is subject to a deadly weapon enhancement. If the offender
10 or an accomplice was armed with a deadly weapon other than a
11 firearm as defined in RCW 9.41.010 and the offender is being
12 sentenced for an anticipatory offense under chapter 9A.28 RCW to
13 commit one of the crimes listed in this subsection as eligible for
14 any deadly weapon enhancements, the following additional times
15 shall be added to the standard sentence range determined under
16 subsection (2) of this section based on the felony crime of
17 conviction as classified under RCW 9A.28.020:

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

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

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

27 (d) If the offender is being sentenced under (a), (b), and/or
28 (c) of this subsection for any deadly weapon enhancements and the
29 offender has previously been sentenced for any deadly weapon
30 enhancements after July 23, 1995, under (a), (b), and/or (c) of
31 this subsection or subsection (3)(a), (b), and/or (c) of this
32 section, or both, all deadly weapon enhancements under this
33 subsection shall be twice the amount of the enhancement listed;

34 (e) Notwithstanding any other provision of law, all deadly
35 weapon enhancements under this section are mandatory, shall be
36 served in total confinement, and shall run consecutively to all
37 other sentencing provisions, including other firearm or deadly
38 weapon enhancements, for all offenses sentenced under this chapter.
39 However, whether or not a mandatory minimum term has expired, an

1 offender serving a sentence under this subsection may be granted an
2 extraordinary medical placement when authorized under RCW
3 9.94A.728(4);

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

9 (g) If the standard sentence range under this section exceeds
10 the statutory maximum sentence for the offense, the statutory
11 maximum sentence shall be the presumptive sentence unless the
12 offender is a persistent offender. If the addition of a deadly
13 weapon enhancement increases the sentence so that it would exceed
14 the statutory maximum for the offense, the portion of the sentence
15 representing the enhancement may not be reduced.

16 (5) The following additional times shall be added to the
17 standard sentence range if the offender or an accomplice committed
18 the offense while in a county jail or state correctional facility
19 and the offender is being sentenced for one of the crimes listed in
20 this subsection. If the offender or an accomplice committed one of
21 the crimes listed in this subsection while in a county jail or
22 state correctional facility, and the offender is being sentenced
23 for an anticipatory offense under chapter 9A.28 RCW to commit one
24 of the crimes listed in this subsection, the following additional
25 times shall be added to the standard sentence range determined
26 under subsection (2) of this section:

27 (a) Eighteen months for offenses committed under RCW
28 69.50.401(2) (a) or (b) or 69.50.410;

29 (b) Fifteen months for offenses committed under RCW
30 69.50.401(2) (c), (d), or (e);

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

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

35 (6) An additional twenty-four months shall be added to the
36 standard sentence range for any ranked offense involving a
37 violation of chapter 69.50 RCW if the offense was also a violation
38 of RCW 69.50.435 or 9.94A.605. All enhancements under this

1 subsection shall run consecutively to all other sentencing
2 provisions, for all offenses sentenced under this chapter.

3 (7) An additional two years shall be added to the standard
4 sentence range for vehicular homicide committed while under the
5 influence of intoxicating liquor or any drug as defined by RCW
6 46.61.502 for each prior offense as defined in RCW 46.61.5055.
7 This enhancement is mandatory, shall be served in total
8 confinement, and shall run consecutively to all other sentencing
9 provisions, including other enhancements, for all offenses
10 sentenced under this chapter. However, whether or not a mandatory
11 minimum term has expired, an offender serving a sentence under this
12 subsection may be granted an extraordinary medical placement when
13 authorized under RCW 9.94A.728(4).

14 (8)(a) The following additional times shall be added to the
15 standard sentence range for felony crimes committed on or after
16 July 1, 2006, if the offense was committed with sexual motivation,
17 as that term is defined in RCW 9.94A.030. If the offender is being
18 sentenced for more than one offense, the sexual motivation
19 enhancement must be added to the total period of total confinement
20 for all offenses, regardless of which underlying offense is subject
21 to a sexual motivation enhancement. If the offender committed the
22 offense with sexual motivation and the offender is being sentenced
23 for an anticipatory offense under chapter 9A.28 RCW, the following
24 additional times shall be added to the standard sentence range
25 determined under subsection (2) of this section based on the felony
26 crime of conviction as classified under RCW 9A.28.020:

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

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

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

36 (iv) If the offender is being sentenced for any sexual
37 motivation enhancements under (i), (ii), and/or (iii) of this
38 subsection and the offender has previously been sentenced for any
39 sexual motivation enhancements on or after July 1, 2006, under (i),

1 (ii), and/or (iii) of this subsection, all sexual motivation
2 enhancements under this subsection shall be twice the amount of the
3 enhancement listed;

4 (b) Notwithstanding any other provision of law, all sexual
5 motivation enhancements under this subsection are mandatory, shall
6 be served in total confinement, and shall run consecutively to all
7 other sentencing provisions, including other sexual motivation
8 enhancements, for all offenses sentenced under this chapter.
9 However, whether or not a mandatory minimum term has expired, an
10 offender serving a sentence under this subsection may be granted an
11 extraordinary medical placement when authorized under RCW
12 9.94A.728(4);

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

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

22 (e) The portion of the total confinement sentence which the
23 offender must serve under this subsection shall be calculated
24 before any earned early release time is credited to the offender;

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

28 (9) An additional one-year enhancement shall be added to the
29 standard sentence range for the felony crimes of RCW 9A.44.073,
30 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed
31 on or after July 22, 2007, if the offender engaged, agreed, or
32 offered to engage the victim in the sexual conduct in return for a
33 fee. If the offender is being sentenced for more than one offense,
34 the one-year enhancement must be added to the total period of total
35 confinement for all offenses, regardless of which underlying
36 offense is subject to the enhancement. If the offender is being
37 sentenced for an anticipatory offense for the felony crimes of RCW
38 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or
39 9A.44.089, and the offender attempted, solicited another, or

1 conspired to engage, agree, or offer to engage the victim in
2 (~~(the)~~) the sexual conduct in return for a fee, an additional
3 one-year enhancement shall be added to the standard sentence range
4 determined under subsection (2) of this section. For purposes of
5 this subsection, "sexual conduct" means sexual intercourse or
6 sexual contact, both as defined in chapter 9A.44 RCW.

7 **Sec. 17.** RCW 9.94A.728 and 2007 c 483 s 304 are each amended
8 to read as follows:

9 No person serving a sentence imposed pursuant to this chapter
10 and committed to the custody of the department shall leave the
11 confines of the correctional facility or be released prior to the
12 expiration of the sentence except as follows:

13 (1) Except as otherwise provided for in subsection (2) of this
14 section, the term of the sentence of an offender committed to a
15 correctional facility operated by the department may be reduced by
16 earned release time in accordance with procedures that shall be
17 developed and promulgated by the correctional agency having
18 jurisdiction in which the offender is confined. The earned release
19 time shall be for good behavior and good performance, as determined
20 by the correctional agency having jurisdiction. The correctional
21 agency shall not credit the offender with earned release credits in
22 advance of the offender actually earning the credits. Any program
23 established pursuant to this section shall allow an offender to
24 earn early release credits for presentence incarceration. If an
25 offender is transferred from a county jail to the department, the
26 administrator of a county jail facility shall certify to the
27 department the amount of time spent in custody at the facility and
28 the amount of earned release time. An offender who has been
29 convicted of a felony committed after July 23, 1995, that involves
30 any applicable deadly weapon enhancements under RCW 9.94A.533 (3)
31 or (4), or both, shall not receive any good time credits or earned
32 release time for that portion of his or her sentence that results
33 from any deadly weapon enhancements. An offender convicted of
34 vehicular homicide committed while under the influence of
35 intoxicating liquor or any drug that involves a sentence
36 enhancement under RCW 9.94A.533(7) may not receive any earned early
37 release time for the portion of his or her sentence that results
38 from the enhancement.

1 (a) In the case of an offender convicted of a serious violent
2 offense, or a sex offense that is a class A felony, committed on or
3 after July 1, 1990, and before July 1, 2003, the aggregate earned
4 release time may not exceed fifteen percent of the sentence. In
5 the case of an offender convicted of a serious violent offense, or
6 a sex offense that is a class A felony, committed on or after July
7 1, 2003, the aggregate earned release time may not exceed ten
8 percent of the sentence.

9 (b)(i) In the case of an offender who qualifies under (b)(ii)
10 of this subsection, the aggregate earned release time may not
11 exceed fifty percent of the sentence.

12 (ii) An offender is qualified to earn up to fifty percent of
13 aggregate earned release time under this subsection (1)(b) if he or
14 she:

15 (A) Is classified in one of the two lowest risk categories
16 under (b)(iii) of this subsection;

17 (B) Is not confined pursuant to a sentence for:

18 (I) A sex offense;

19 (II) A violent offense;

20 (III) A crime against persons as defined in RCW 9.94A.411;

21 (IV) A felony that is domestic violence as defined in RCW
22 10.99.020;

23 (V) A violation of RCW 9A.52.025 (residential burglary);

24 (VI) A violation of, or an attempt, solicitation, or conspiracy
25 to violate, RCW 69.50.401 by manufacture or delivery or possession
26 with intent to deliver methamphetamine; or

27 (VII) A violation of, or an attempt, solicitation, or
28 conspiracy to violate, RCW 69.50.406 (delivery of a controlled
29 substance to a minor);

30 (C) Has no prior conviction for:

31 (I) A sex offense;

32 (II) A violent offense;

33 (III) A crime against persons as defined in RCW 9.94A.411;

34 (IV) A felony that is domestic violence as defined in RCW
35 10.99.020;

36 (V) A violation of RCW 9A.52.025 (residential burglary);

37 (VI) A violation of, or an attempt, solicitation, or conspiracy
38 to violate, RCW 69.50.401 by manufacture or delivery or possession
39 with intent to deliver methamphetamine; or

1 (VII) A violation of, or an attempt, solicitation, or
2 conspiracy to violate, RCW 69.50.406 (delivery of a controlled
3 substance to a minor);

4 (D) Participates in programming or activities as directed by
5 the offender's individual reentry plan as provided under RCW
6 72.09.270 to the extent that such programming or activities are
7 made available by the department; and

8 (E) Has not committed a new felony after July 22, 2007, while
9 under community supervision, community placement, or community
10 custody.

11 (iii) For purposes of determining an offender's eligibility
12 under this subsection (1)(b), the department shall perform a risk
13 assessment of every offender committed to a correctional facility
14 operated by the department who has no current or prior conviction
15 for a sex offense, a violent offense, a crime against persons as
16 defined in RCW 9.94A.411, a felony that is domestic violence as
17 defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential
18 burglary), a violation of, or an attempt, solicitation, or
19 conspiracy to violate, RCW 69.50.401 by manufacture or delivery or
20 possession with intent to deliver methamphetamine, or a violation
21 of, or an attempt, solicitation, or conspiracy to violate, RCW
22 69.50.406 (delivery of a controlled substance to a minor). The
23 department must classify each assessed offender in one of four risk
24 categories between highest and lowest risk.

25 (iv) The department shall recalculate the earned release time
26 and reschedule the expected release dates for each qualified
27 offender under this subsection (1)(b).

28 (v) This subsection (1)(b) applies retroactively to eligible
29 offenders serving terms of total confinement in a state
30 correctional facility as of July 1, 2003.

31 (vi) This subsection (1)(b) does not apply to offenders
32 convicted after July 1, 2010.

33 (c) In no other case shall the aggregate earned release time
34 exceed one-third of the total sentence;

35 (2)(a) A person convicted of a sex offense or an offense
36 categorized as a serious violent offense, assault in the second
37 degree, vehicular homicide, vehicular assault, assault of a child
38 in the second degree, any crime against persons where it is
39 determined in accordance with RCW 9.94A.602 that the offender or an

1 accomplice was armed with a deadly weapon at the time of
2 commission, or any felony offense under chapter 69.50 or 69.52 RCW,
3 committed before July 1, 2000, may become eligible, in accordance
4 with a program developed by the department, for transfer to
5 community custody status in lieu of earned release time pursuant to
6 subsection (1) of this section;

7 (b) A person convicted of a sex offense, a violent offense, any
8 crime against persons under RCW 9.94A.411(2), or a felony offense
9 under chapter 69.50 or 69.52 RCW, committed on or after July 1,
10 2000, may become eligible, in accordance with a program developed
11 by the department, for transfer to community custody status in lieu
12 of earned release time pursuant to subsection (1) of this section;

13 (c) The department shall, as a part of its program for release
14 to the community in lieu of earned release, require the offender to
15 propose a release plan that includes an approved residence and
16 living arrangement. All offenders with community placement or
17 community custody terms eligible for release to community custody
18 status in lieu of earned release shall provide an approved
19 residence and living arrangement prior to release to the community;

20 (d) The department may deny transfer to community custody
21 status in lieu of earned release time pursuant to subsection (1) of
22 this section if the department determines an offender's release
23 plan, including proposed residence location and living
24 arrangements, may violate the conditions of the sentence or
25 conditions of supervision, place the offender at risk to violate
26 the conditions of the sentence, place the offender at risk to
27 reoffend, or present a risk to victim safety or community safety.
28 The department's authority under this section is independent of any
29 court-ordered condition of sentence or statutory provision
30 regarding conditions for community custody or community placement;

31 (e) If the department denies transfer to community custody
32 status in lieu of earned early release pursuant to (d) of this
33 subsection, the department may transfer an offender to partial
34 confinement in lieu of earned early release up to three months.
35 The three months in partial confinement is in addition to that
36 portion of the offender's term of confinement that may be served in
37 partial confinement as provided in this section;

1 (f) An offender serving a term of confinement imposed under RCW
2 9.94A.670(4)(a) is not eligible for earned release credits under
3 this section;

4 (3) An offender may leave a correctional facility pursuant to
5 an authorized furlough or leave of absence. In addition, offenders
6 may leave a correctional facility when in the custody of a
7 corrections officer or officers;

8 (4)(a) The secretary may authorize an extraordinary medical
9 placement for an offender when all of the following conditions
10 exist:

11 (i) The offender has a medical condition that is serious enough
12 to require costly care or treatment;

13 (ii) The offender poses a low risk to the community because he
14 or she is physically incapacitated due to age or the medical
15 condition; and

16 (iii) Granting the extraordinary medical placement will result
17 in a cost savings to the state.

18 (b) An offender sentenced to death or to life imprisonment
19 without the possibility of release or parole is not eligible for an
20 extraordinary medical placement.

21 (c) The secretary shall require electronic monitoring for all
22 offenders in extraordinary medical placement unless the electronic
23 monitoring equipment interferes with the function of the offender's
24 medical equipment or results in the loss of funding for the
25 offender's medical care. The secretary shall specify who shall
26 provide the monitoring services and the terms under which the
27 monitoring shall be performed.

28 (d) The secretary may revoke an extraordinary medical placement
29 under this subsection at any time;

30 (5) The governor, upon recommendation from the clemency and
31 pardons board, may grant an extraordinary release for reasons of
32 serious health problems, senility, advanced age, extraordinary
33 meritorious acts, or other extraordinary circumstances;

34 (6) No more than the final six months of the offender's term of
35 confinement may be served in partial confinement designed to aid
36 the offender in finding work and reestablishing himself or herself
37 in the community. This is in addition to that period of earned
38 early release time that may be exchanged for partial confinement
39 pursuant to subsection (2)(e) of this section;

1 (7) The governor may pardon any offender;

2 (8) The department may release an offender from confinement any
3 time within ten days before a release date calculated under this
4 section; and

5 (9) An offender may leave a correctional facility prior to
6 completion of his or her sentence if the sentence has been reduced
7 as provided in RCW 9.94A.870.

8 Notwithstanding any other provisions of this section, an
9 offender sentenced for a felony crime listed in RCW 9.94A.540 as
10 subject to a mandatory minimum sentence of total confinement shall
11 not be released from total confinement before the completion of the
12 listed mandatory minimum sentence for that felony crime of
13 conviction unless allowed under RCW 9.94A.540, however persistent
14 offenders are not eligible for extraordinary medical placement.
15

16 NEW SECTION. **Sec. 18.** Sections 16 and 17 of this act apply
17 prospectively only and not retroactively. Those provisions apply
18 only to convictions occurring on or after the effective date of
19 this act."

20 Renumber the remaining sections consecutively, correct any
21 internal references accordingly, and correct the title.

EFFECT: Makes DUI a felony if the person has an out-of-state conviction for an offense that is comparable to Washington's DUI-related vehicular assault or DUI-related vehicular homicide.

Specifies that the two year sentencing enhancement for DUI-related vehicular homicide is not subject to earned early release time, and is mandatory, must be served in total confinement, and must run consecutive to all other sentences.