

**ESB 5054** - H COMM AMD

By Committee on Public Safety

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (d) Twelve months of community custody.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **Sec. 2.** RCW 9.94A.030 and 2021 c 237 s 1 and 2021 c 215 s 97 are  
28 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (b) A conviction may be removed from a defendant's criminal  
40 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,

1 9.95.240, or a similar out-of-state statute, or if the conviction has  
2 been vacated pursuant to a governor's pardon. However, when a  
3 defendant is charged with a recidivist offense, "criminal history"  
4 includes a vacated prior conviction for the sole purpose of  
5 establishing that such vacated prior conviction constitutes an  
6 element of the present recidivist offense as provided in RCW  
7 9.94A.640(4)(b) and 9.96.060(7)(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (22) "Drug offense" means:

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

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

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

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

29 (24) "Electronic monitoring" means tracking the location of an  
30 individual through the use of technology that is capable of  
31 determining or identifying the monitored individual's presence or  
32 absence at a particular location including, but not limited to:

33 (a) Radio frequency signaling technology, which detects if the  
34 monitored individual is or is not at an approved location and  
35 notifies the monitoring agency of the time that the monitored  
36 individual either leaves the approved location or tampers with or  
37 removes the monitoring device; or

38 (b) Active or passive global positioning system technology, which  
39 detects the location of the monitored individual and notifies the  
40 monitoring agency of the monitored individual's location and which



1 may also include electronic monitoring with victim notification  
2 technology that is capable of notifying a victim or protected party,  
3 either directly or through a monitoring agency, if the monitored  
4 individual enters within the restricted distance of a victim or  
5 protected party, or within the restricted distance of a designated  
6 location.

7 (25) "Escape" means:

8 (a) Sexually violent predator escape (RCW 9A.76.115), escape in  
9 the first degree (RCW 9A.76.110), escape in the second degree (RCW  
10 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
11 willful failure to return from work release (RCW 72.65.070), or  
12 willful failure to be available for supervision by the department  
13 while in community custody (RCW 72.09.310); or

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

17 (26) "Felony traffic offense" means:

18 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
19 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
20 run injury-accident (RCW 46.52.020(4)), felony driving while under  
21 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),  
22 or felony physical control of a vehicle while under the influence of  
23 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

33 (29) "Home detention" is a subset of electronic monitoring and  
34 means a program of partial confinement available to offenders wherein  
35 the offender is confined in a private residence twenty-four hours a  
36 day, unless an absence from the residence is approved, authorized, or  
37 otherwise permitted in the order by the court or other supervising  
38 agency that ordered home detention, and the offender is subject to  
39 electronic monitoring.

1 (30) "Homelessness" or "homeless" means a condition where an  
2 individual lacks a fixed, regular, and adequate nighttime residence  
3 and who has a primary nighttime residence that is:

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

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

8 (c) A private residence where the individual stays as a transient  
9 invitee.

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

24 (32) "Most serious offense" means any of the following felonies  
25 or a felony attempt to commit any of the following felonies:

26 (a) Any felony defined under any law as a class A felony or  
27 criminal solicitation of or criminal conspiracy to commit a class A  
28 felony;

29 (b) Assault in the second degree;

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

31 (d) Child molestation in the second degree;

32 (e) Controlled substance homicide;

33 (f) Extortion in the first degree;

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

35 (h) Indecent liberties;

36 (i) Kidnapping in the second degree;

37 (j) Leading organized crime;

38 (k) Manslaughter in the first degree;

39 (l) Manslaughter in the second degree;

40 (m) Promoting prostitution in the first degree;

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

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

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

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

25 (36) "Pattern of criminal street gang activity" means:

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

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

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

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

36 (iv) Any violation of the firearms and dangerous weapon act  
37 (chapter 9.41 RCW);

38 (v) Theft of a Firearm (RCW 9A.56.300);

39 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);

40 (vii) Hate Crime (RCW 9A.36.080);

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

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

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

36 (ii) Has, before the commission of the offense under (a) of this  
37 subsection, been convicted as an offender on at least two separate  
38 occasions, whether in this state or elsewhere, of felonies that under  
39 the laws of this state would be considered most serious offenses and  
40 would be included in the offender score under RCW 9.94A.525; provided

1 that of the two or more previous convictions, at least one conviction  
2 must have occurred before the commission of any of the other most  
3 serious offenses for which the offender was previously convicted; or

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

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

27 (38) "Predatory" means: (a) The perpetrator of the crime was a  
28 stranger to the victim, as defined in this section; (b) the  
29 perpetrator established or promoted a relationship with the victim  
30 prior to the offense and the victimization of the victim was a  
31 significant reason the perpetrator established or promoted the  
32 relationship; or (c) the perpetrator was: (i) A teacher, counselor,  
33 volunteer, or other person in authority in any public or private  
34 school and the victim was a student of the school under his or her  
35 authority or supervision. For purposes of this subsection, "school"  
36 does not include home-based instruction as defined in RCW  
37 28A.225.010; (ii) a coach, trainer, volunteer, or other person in  
38 authority in any recreational activity and the victim was a  
39 participant in the activity under his or her authority or  
40 supervision; (iii) a pastor, elder, volunteer, or other person in

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

11 (39) "Private school" means a school regulated under chapter  
12 28A.195 or 28A.205 RCW.

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

14 (41) "Recidivist offense" means a felony offense where a prior  
15 conviction of the same offense or other specified offense is an  
16 element of the crime including, but not limited to:

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

19 (b) Cyberstalking, RCW 9.61.260(3)(a);

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

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

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

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

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

26 (42) "Repetitive domestic violence offense" means any:

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

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

31 (iii) Domestic violence violation of a protection order under  
32 chapter 26.09, 26.26A, or 26.26B RCW or former chapter 26.50 RCW, or  
33 violation of a domestic violence protection order under chapter 7.105  
34 RCW, that is not a felony offense;

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

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

39 (b) Any federal, out-of-state, tribal court, military, county, or  
40 municipal conviction for an offense that under the laws of this state

1 would be classified as a repetitive domestic violence offense under  
2 (a) of this subsection.

3 (43) "Restitution" means a specific sum of money ordered by the  
4 sentencing court to be paid by the offender to the court over a  
5 specified period of time as payment of damages. The sum may include  
6 both public and private costs.

7 (44) "Risk assessment" means the application of the risk  
8 instrument recommended to the department by the Washington state  
9 institute for public policy as having the highest degree of  
10 predictive accuracy for assessing an offender's risk of reoffense.

11 (45) "Serious traffic offense" means:

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

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

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

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

23 (ii) Homicide by abuse;

24 (iii) Murder in the second degree;

25 (iv) Manslaughter in the first degree;

26 (v) Assault in the first degree;

27 (vi) Kidnapping in the first degree;

28 (vii) Rape in the first degree;

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

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

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

35 (47) "Sex offense" means:

36 (a) (i) A felony that is a violation of chapter 9A.44 RCW other  
37 than RCW 9A.44.132;

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

39 (iii) A felony that is a violation of chapter 9.68A RCW other  
40 than RCW 9.68A.080;



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

4 (v) A felony violation of RCW 9A.44.132(1) (failure to register  
5 as a sex offender) if the person has been convicted of violating RCW  
6 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130  
7 prior to June 10, 2010, on at least one prior occasion;

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

11 (c) A felony with a finding of sexual motivation under RCW  
12 9.94A.835 or 13.40.135; or

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

16 (48) "Sexual motivation" means that one of the purposes for which  
17 the defendant committed the crime was for the purpose of his or her  
18 sexual gratification.

19 (49) "Standard sentence range" means the sentencing court's  
20 discretionary range in imposing a nonappealable sentence.

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

26 (51) "Stranger" means that the victim did not know the offender  
27 twenty-four hours before the offense.

28 (52) "Total confinement" means confinement inside the physical  
29 boundaries of a facility or institution operated or utilized under  
30 contract by the state or any other unit of government for twenty-four  
31 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

32 (53) "Transition training" means written and verbal instructions  
33 and assistance provided by the department to the offender during the  
34 two weeks prior to the offender's successful completion of the work  
35 ethic camp program. The transition training shall include  
36 instructions in the offender's requirements and obligations during  
37 the offender's period of community custody.

38 (54) "Victim" means any person who has sustained emotional,  
39 psychological, physical, or financial injury to person or property as  
40 a direct result of the crime charged.

1 (55) "Victim of domestic violence" means an intimate partner or  
2 household member who has been subjected to the infliction of physical  
3 harm or sexual and psychological abuse by an intimate partner or  
4 household member as part of a pattern of assaultive, coercive, and  
5 controlling behaviors directed at achieving compliance from or  
6 control over that intimate partner or household member. Domestic  
7 violence includes, but is not limited to, the offenses listed in RCW  
8 10.99.020 and 26.50.010 committed by an intimate partner or household  
9 member against a victim who is an intimate partner or household  
10 member.

11 (56) "Victim of sex trafficking, prostitution, or commercial  
12 sexual abuse of a minor" means a person who has been forced or  
13 coerced to perform a commercial sex act including, but not limited  
14 to, being a victim of offenses defined in RCW 9A.40.100, 9A.88.070,  
15 9.68A.101, and the trafficking victims protection act of 2000, 22  
16 U.S.C. Sec. 7101 et seq.; or a person who was induced to perform a  
17 commercial sex act when they were less than 18 years of age including  
18 but not limited to the offenses defined in chapter 9.68A RCW.

19 (57) "Victim of sexual assault" means any person who is a victim  
20 of a sexual assault offense, nonconsensual sexual conduct, or  
21 nonconsensual sexual penetration and as a result suffers physical,  
22 emotional, financial, or psychological impacts. Sexual assault  
23 offenses include, but are not limited to, the offenses defined in  
24 chapter 9A.44 RCW.

25 (58) "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;

39 (xi) Robbery in the second degree;

40 (xii) Drive-by shooting;

1 (xiii) Vehicular assault, when caused by the operation or driving  
2 of a vehicle by a person while under the influence of intoxicating  
3 liquor or any drug or by the operation or driving of a vehicle in a  
4 reckless manner; and

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

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

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

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

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

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

28 (62) "Drug offender sentencing alternative for driving under the  
29 influence" is a sentencing option available to persons convicted of  
30 felony driving while under the influence of intoxicating liquor or  
31 any drug under RCW 46.61.502(6), or felony physical control of a  
32 vehicle while under the influence of intoxicating liquor or any drug  
33 under RCW 46.61.504(6) who are eligible under section 1 of this act.

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

36 (1) A sentence that includes a term or terms of confinement  
37 totaling more than one year shall be served in a facility or  
38 institution operated, or utilized under contract, by the state, or in  
39 home detention pursuant to RCW 9.94A.6551 or the graduated reentry

1 program under RCW 9.94A.733. Except as provided in subsection (3) or  
2 (5) of this section, a sentence of not more than one year of  
3 confinement shall be served in a facility operated, licensed, or  
4 utilized under contract, by the county, or if home detention or work  
5 crew has been ordered by the court, in the residence of either the  
6 offender or a member of the offender's immediate family.

7 (2) If a county uses a state partial confinement facility for the  
8 partial confinement of a person sentenced to confinement for not more  
9 than one year, the county shall reimburse the state for the use of  
10 the facility as provided in this subsection. The office of financial  
11 management shall set the rate of reimbursement based upon the average  
12 per diem cost per offender in the facility. The office of financial  
13 management shall determine to what extent, if any, reimbursement  
14 shall be reduced or eliminated because of funds provided by the  
15 legislature to the department for the purpose of covering the cost of  
16 county use of state partial confinement facilities. The office of  
17 financial management shall reestablish reimbursement rates each even-  
18 numbered year.

19 (3) A person who is sentenced for a felony to a term of not more  
20 than one year, and who is committed or returned to incarceration in a  
21 state facility on another felony conviction, either under the  
22 indeterminate sentencing laws, chapter 9.95 RCW, or under this  
23 chapter shall serve all terms of confinement, including a sentence of  
24 not more than one year, in a facility or institution operated, or  
25 utilized under contract, by the state, consistent with the provisions  
26 of RCW 9.94A.589.

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

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

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

37 (1) The department shall supervise the following offenders who  
38 are sentenced to probation in superior court, pursuant to RCW  
39 9.92.060, 9.95.204, or 9.95.210:

- 1 (a) Offenders convicted of:
- 2 (i) Sexual misconduct with a minor second degree;
- 3 (ii) Custodial sexual misconduct second degree;
- 4 (iii) Communication with a minor for immoral purposes; and
- 5 (iv) Violation of RCW 9A.44.132(2) (failure to register); and
- 6 (b) Offenders who have:
- 7 (i) A current conviction for a repetitive domestic violence
- 8 offense where domestic violence has been pleaded and proven after
- 9 August 1, 2011; and
- 10 (ii) A prior conviction for a repetitive domestic violence
- 11 offense or domestic violence felony offense where domestic violence
- 12 has been pleaded and proven after August 1, 2011.
- 13 (2) Misdemeanor and gross misdemeanor offenders supervised by the
- 14 department pursuant to this section shall be placed on community
- 15 custody.
- 16 (3) The department shall supervise every felony offender
- 17 sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702
- 18 whose risk assessment classifies the offender as one who is at a high
- 19 risk to reoffend.
- 20 (4) Notwithstanding any other provision of this section, the
- 21 department shall supervise an offender sentenced to community custody
- 22 regardless of risk classification if the offender:
- 23 (a) Has a current conviction for a sex offense or a serious
- 24 violent offense and was sentenced to a term of community custody
- 25 pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;
- 26 (b) Has been identified by the department as a dangerous mentally
- 27 ill offender pursuant to RCW 72.09.370;
- 28 (c) Has an indeterminate sentence and is subject to parole
- 29 pursuant to RCW 9.95.017;
- 30 (d) Has a current conviction for violating RCW 9A.44.132(1)
- 31 (failure to register) and was sentenced to a term of community
- 32 custody pursuant to RCW 9.94A.701;
- 33 (e) (i) Has a current conviction for a domestic violence felony
- 34 offense where domestic violence has been pleaded and proven after
- 35 August 1, 2011, and a prior conviction for a repetitive domestic
- 36 violence offense or domestic violence felony offense where domestic
- 37 violence was pleaded and proven after August 1, 2011. This subsection
- 38 (4) (e) (i) applies only to offenses committed prior to July 24, 2015;
- 39 (ii) Has a current conviction for a domestic violence felony
- 40 offense where domestic violence was pleaded and proven. The state and

1 its officers, agents, and employees shall not be held criminally or  
2 civilly liable for its supervision of an offender under this  
3 subsection (4)(e)(ii) unless the state and its officers, agents, and  
4 employees acted with gross negligence;

5 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660,  
6 9.94A.670, 9.94A.711, (~~(e)~~) 9.94A.695, or section 1 of this act;

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

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

11 (5) The department shall supervise any offender who is released  
12 by the indeterminate sentence review board and who was sentenced to  
13 community custody or subject to community custody under the terms of  
14 release.

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

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

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

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

30 **Sec. 5.** RCW 9.94A.505 and 2021 c 242 s 3 are each amended to  
31 read as follows:

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

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

36 (i) Unless another term of confinement applies, a sentence within  
37 the standard sentence range established in RCW 9.94A.510 or  
38 9.94A.517;

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

- 1 (iii) RCW 9.94A.570, relating to persistent offenders;  
2 (iv) RCW 9.94A.540, relating to mandatory minimum terms;  
3 (v) RCW 9.94A.650, relating to the first-time offender waiver;  
4 (vi) RCW 9.94A.660, relating to the drug offender sentencing  
5 alternative;  
6 (vii) Section 1 of this act, relating to the drug offender  
7 sentencing alternative for driving under the influence;  
8 (viii) RCW 9.94A.670, relating to the special sex offender  
9 sentencing alternative;  
10 ~~((viii))~~ (ix) RCW 9.94A.655, relating to the parenting  
11 sentencing alternative;  
12 ~~((ix))~~ (x) RCW 9.94A.695, relating to the mental health  
13 sentencing alternative;  
14 ~~((x))~~ (xi) RCW 9.94A.507, relating to certain sex offenses;  
15 ~~((xi))~~ (xii) RCW 9.94A.535, relating to exceptional sentences;  
16 ~~((xii))~~ (xiii) RCW 9.94A.589, relating to consecutive and  
17 concurrent sentences;  
18 ~~((xiii))~~ (xiv) RCW 9.94A.603, relating to felony driving while  
19 under the influence of intoxicating liquor or any drug and felony  
20 physical control of a vehicle while under the influence of  
21 intoxicating liquor or any drug;  
22 ~~((xiv))~~ (xv) RCW 9.94A.711, relating to the theft or taking of  
23 a motor vehicle.

24 (b) If a standard sentence range has not been established for the  
25 offender's crime, the court shall impose a determinate sentence which  
26 may include not more than one year of confinement; community  
27 restitution work; a term of community custody under RCW 9.94A.702 not  
28 to exceed one year; and/or other legal financial obligations. The  
29 court may impose a sentence which provides more than one year of  
30 confinement and a community custody term under RCW 9.94A.701 if the  
31 court finds reasons justifying an exceptional sentence as provided in  
32 RCW 9.94A.535.

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

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

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

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

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

16 (a) A violent offense;

17 (b) Any sex offense;

18 (c) Any drug offense;

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

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

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

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

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

25 (8) The court shall order restitution as provided in RCW  
26 9.94A.750 and 9.94A.753.

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

33 (10) In any sentence of partial confinement, the court may  
34 require the offender to serve the partial confinement in work  
35 release, in a program of home detention, on work crew, or in a  
36 combined program of work crew and home detention.

37 **Sec. 6.** RCW 9.94A.525 and 2021 c 215 s 100 are each amended to  
38 read as follows:



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

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

5 (1) A prior conviction is a conviction which exists before the  
6 date of sentencing for the offense for which the offender score is  
7 being computed. Convictions entered or sentenced on the same date as  
8 the conviction for which the offender score is being computed shall  
9 be deemed "other current offenses" within the meaning of RCW  
10 9.94A.589.

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

13 (b) Class B prior felony convictions other than sex offenses  
14 shall not be included in the offender score, if since the last date  
15 of release from confinement (including full-time residential  
16 treatment) pursuant to a felony conviction, if any, or entry of  
17 judgment and sentence, the offender had spent ten consecutive years  
18 in the community without committing any crime that subsequently  
19 results in a conviction.

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

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

34 (e) If the present conviction is felony driving while under the  
35 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or  
36 felony physical control of a vehicle while under the influence of  
37 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate  
38 crimes for the offense as defined by RCW 46.61.5055(14) shall be  
39 included in the offender score, and prior convictions for felony  
40 driving while under the influence of intoxicating liquor or any drug

1 (RCW 46.61.502(6)) or felony physical control of a vehicle while  
2 under the influence of intoxicating liquor or any drug (RCW  
3 46.61.504(6)) shall always be included in the offender score. All  
4 other convictions of the defendant shall be scored according to this  
5 section.

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

12 (g) This subsection applies to both adult and juvenile prior  
13 convictions.

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

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

26 (5) (a) In the case of multiple prior convictions, for the purpose  
27 of computing the offender score, count all convictions separately,  
28 except:

29 (i) Prior offenses which were found, under RCW 9.94A.589(1) (a),  
30 to encompass the same criminal conduct, shall be counted as one  
31 offense, the offense that yields the highest offender score. The  
32 current sentencing court shall determine with respect to other prior  
33 adult offenses for which sentences were served concurrently or prior  
34 juvenile offenses for which sentences were served consecutively,  
35 whether those offenses shall be counted as one offense or as separate  
36 offenses using the "same criminal conduct" analysis found in RCW  
37 9.94A.589(1) (a), and if the court finds that they shall be counted as  
38 one offense, then the offense that yields the highest offender score  
39 shall be used. The current sentencing court may presume that such  
40 other prior offenses were not the same criminal conduct from

1 sentences imposed on separate dates, or in separate counties or  
2 jurisdictions, or in separate complaints, indictments, or  
3 informations;

4 (ii) In the case of multiple prior convictions for offenses  
5 committed before July 1, 1986, for the purpose of computing the  
6 offender score, count all adult convictions served concurrently as  
7 one offense, and count all juvenile convictions entered on the same  
8 date as one offense. Use the conviction for the offense that yields  
9 the highest offender score.

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

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

21 (7) If the present conviction is for a nonviolent offense and not  
22 covered by subsection (11), (12), or (13) of this section, count one  
23 point for each adult prior felony conviction and one point for each  
24 juvenile prior violent felony conviction and 1/2 point for each  
25 juvenile prior nonviolent felony conviction.

26 (8) If the present conviction is for a violent offense and not  
27 covered in subsection (9), (10), (11), (12), or (13) of this section,  
28 count two points for each prior adult and juvenile violent felony  
29 conviction, one point for each prior adult nonviolent felony  
30 conviction, and 1/2 point for each prior juvenile nonviolent felony  
31 conviction.

32 (9) If the present conviction is for a serious violent offense,  
33 count three points for prior adult and juvenile convictions for  
34 crimes in this category, two points for each prior adult and juvenile  
35 violent conviction (not already counted), one point for each prior  
36 adult nonviolent felony conviction, and 1/2 point for each prior  
37 juvenile nonviolent felony conviction.

38 (10) If the present conviction is for Burglary 1, count prior  
39 convictions as in subsection (8) of this section; however count two  
40 points for each prior adult Burglary 2 or residential burglary

1 conviction, and one point for each prior juvenile Burglary 2 or  
2 residential burglary conviction.

3 (11) If the present conviction is for a felony traffic offense  
4 count two points for each adult or juvenile prior conviction for  
5 Vehicular Homicide or Vehicular Assault; for each felony offense  
6 count one point for each adult and 1/2 point for each juvenile prior  
7 conviction; for each serious traffic offense, other than those used  
8 for an enhancement pursuant to RCW 46.61.520(2), count one point for  
9 each adult and 1/2 point for each juvenile prior conviction; count  
10 one point for each adult and 1/2 point for each juvenile prior  
11 conviction for operation of a vessel while under the influence of  
12 intoxicating liquor or any drug; count one point for a deferred  
13 prosecution granted under chapter 10.05 RCW for a second or  
14 subsequent violation of RCW 46.61.502 or 46.61.504, or an equivalent  
15 local ordinance.

16 (12) If the present conviction is for homicide by watercraft or  
17 assault by watercraft count two points for each adult or juvenile  
18 prior conviction for homicide by watercraft or assault by watercraft;  
19 for each felony offense count one point for each adult and 1/2 point  
20 for each juvenile prior conviction; count one point for each adult  
21 and 1/2 point for each juvenile prior conviction for driving under  
22 the influence of intoxicating liquor or any drug, actual physical  
23 control of a motor vehicle while under the influence of intoxicating  
24 liquor or any drug, or operation of a vessel while under the  
25 influence of intoxicating liquor or any drug.

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

37 (14) If the present conviction is for Escape from Community  
38 Custody, RCW 72.09.310, count only prior escape convictions in the  
39 offender score. Count adult prior escape convictions as one point and  
40 juvenile prior escape convictions as 1/2 point.

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

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

10 (17) If the present conviction is for a sex offense, count priors  
11 as in subsections (7) through (11) and (13) through (16) of this  
12 section; however count three points for each adult and juvenile prior  
13 sex offense conviction.

14 (18) If the present conviction is for failure to register as a  
15 sex offender under RCW 9A.44.130 or 9A.44.132, count priors as in  
16 subsections (7) through (11) and (13) through (16) of this section;  
17 however count three points for each adult and juvenile prior sex  
18 offense conviction, excluding prior convictions for failure to  
19 register as a sex offender under RCW 9A.44.130 or 9A.44.132, which  
20 shall count as one point.

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

25 (20) If the present conviction is for Theft of a Motor Vehicle,  
26 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without  
27 Permission 1, or Taking a Motor Vehicle Without Permission 2, count  
28 priors as in subsections (7) through (18) of this section; however  
29 count one point for prior convictions of Vehicle Prowling 2, and  
30 three points for each adult and juvenile prior Theft 1 (of a motor  
31 vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property  
32 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor  
33 vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle,  
34 Taking a Motor Vehicle Without Permission 1, or Taking a Motor  
35 Vehicle Without Permission 2 conviction.

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

1 (a) Count two points for each adult prior conviction where  
2 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
3 after August 1, 2011, for any of the following offenses: A felony  
4 violation of a no-contact or protection order (RCW 7.105.450 or  
5 former RCW 26.50.110), felony Harassment (RCW 9A.46.020(2)(b)),  
6 felony Stalking (RCW 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020),  
7 Kidnapping 1 (RCW 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful  
8 imprisonment (RCW 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2  
9 (RCW 9A.56.210), Assault 1 (RCW 9A.36.011), Assault 2 (RCW  
10 9A.36.021), Assault 3 (RCW 9A.36.031), Arson 1 (RCW 9A.48.020), or  
11 Arson 2 (RCW 9A.48.030);

12 (b) Count two points for each adult prior conviction where  
13 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
14 after July 23, 2017, for any of the following offenses: Assault of a  
15 child in the first degree, RCW 9A.36.120; Assault of a child in the  
16 second degree, RCW 9A.36.130; Assault of a child in the third degree,  
17 RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW  
18 9A.42.020; or Criminal Mistreatment in the second degree, RCW  
19 9A.42.030;

20 (c) Count one point for each second and subsequent juvenile  
21 conviction where domestic violence as defined in RCW 9.94A.030 was  
22 pleaded and proven after August 1, 2011, for the offenses listed in  
23 (a) of this subsection; and

24 (d) Count one point for each adult prior conviction for a  
25 repetitive domestic violence offense as defined in RCW 9.94A.030,  
26 where domestic violence as defined in RCW 9.94A.030, was pleaded and  
27 proven after August 1, 2011.

28 (22) The fact that a prior conviction was not included in an  
29 offender's offender score or criminal history at a previous  
30 sentencing shall have no bearing on whether it is included in the  
31 criminal history or offender score for the current offense. Prior  
32 convictions that were not counted in the offender score or included  
33 in criminal history under repealed or previous versions of the  
34 sentencing reform act shall be included in criminal history and shall  
35 count in the offender score if the current version of the sentencing  
36 reform act requires including or counting those convictions. Prior  
37 convictions that were not included in criminal history or in the  
38 offender score shall be included upon any resentencing to ensure  
39 imposition of an accurate sentence.

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

3       (1) (a) An offender who violates any condition or requirement of a  
4 sentence may be sanctioned by the court with up to sixty days'  
5 confinement for each violation or by the department with up to thirty  
6 days' confinement as provided in RCW 9.94A.737.

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

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

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

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

23       (c) If the offender was sentenced under the drug offender  
24 sentencing alternative for driving under the influence set out in  
25 section 1 of this act, the offender may be sanctioned in accordance  
26 with that section.

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

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

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

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

1       (~~(g)~~) (h) If a sex offender was sentenced pursuant to RCW  
2 9.94A.507, the offender may be transferred to a more restrictive  
3 confinement status to serve up to the remaining portion of the  
4 sentence, less credit for any period actually spent in community  
5 custody or in detention awaiting disposition of an alleged violation.

6       (3) If a probationer is being supervised by the department  
7 pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may  
8 be sanctioned pursuant to subsection (1) of this section. The  
9 department shall have authority to issue a warrant for the arrest of  
10 an offender who violates a condition of community custody, as  
11 provided in RCW 9.94A.716. Any sanctions shall be imposed by the  
12 department pursuant to RCW 9.94A.737. Nothing in this subsection is  
13 intended to limit the power of the sentencing court to respond to a  
14 probationer's violation of conditions.

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

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

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

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

23       The procedure for imposing sanctions for violations of sentence  
24 conditions or requirements is as follows:

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

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

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

35       (~~(3)~~) (4) If the offender was sentenced under the parenting  
36 sentencing alternative, any sanctions shall be imposed by the  
37 department or by the court pursuant to RCW 9.94A.655.



1       (~~(4)~~) (5) If the offender was sentenced under the mental health  
2 sentencing alternative, any sanctions shall be imposed by the  
3 department or the court pursuant to RCW 9.94A.695.

4       (~~(5)~~) (6) If a sex offender was sentenced pursuant to RCW  
5 9.94A.507, any sanctions shall be imposed by the board pursuant to  
6 RCW 9.95.435.

7       (~~(6)~~) (7) If the offender was released pursuant to RCW  
8 9.94A.730, any sanctions shall be imposed by the board pursuant to  
9 RCW 9.95.435.

10       (~~(7)~~) (8) If the offender was sentenced pursuant to RCW  
11 10.95.030(3) or 10.95.035, any sanctions shall be imposed by the  
12 board pursuant to RCW 9.95.435.

13       (~~(8)~~) (9) In any other case, if the offender is being  
14 supervised by the department, any sanctions shall be imposed by the  
15 department pursuant to RCW 9.94A.737. If a probationer is being  
16 supervised by the department pursuant to RCW 9.92.060, 9.95.204, or  
17 9.95.210, upon receipt of a violation hearing report from the  
18 department, the court retains any authority that those statutes  
19 provide to respond to a probationer's violation of conditions.

20       (~~(9)~~) (10) If the offender is not being supervised by the  
21 department, any sanctions shall be imposed by the court pursuant to  
22 RCW 9.94A.6333.

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

25       (1) An offender is eligible for the special drug offender  
26 sentencing alternative if:

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

30       (b) The offender is convicted of a felony that is not a felony  
31 driving while under the influence of intoxicating liquor or any drug  
32 under RCW 46.61.502(6) or felony physical control of a vehicle while  
33 under the influence of intoxicating liquor or any drug under RCW  
34 46.61.504(6);

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

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

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

7 (ii) Any other violent offense within ten years before conviction  
8 of the current offense;

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

15 (f) The offender has not been found by the United States attorney  
16 general to be subject to a deportation detainer or order and does not  
17 become subject to a deportation order during the period of the  
18 sentence; and

19 (g) The offender has not received a drug offender sentencing  
20 alternative under this section, or a drug offender sentencing  
21 alternative for driving under the influence under section 1 of this  
22 act, more than once in the prior ten years before the current  
23 offense.

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

26 (3) If the sentencing court determines that the offender is  
27 eligible for an alternative sentence under this section and that the  
28 alternative sentence is appropriate, the court shall waive imposition  
29 of a sentence within the standard sentence range and impose a  
30 sentence consisting of either a prison-based alternative under RCW  
31 9.94A.662 or a residential substance use disorder treatment-based  
32 alternative under RCW 9.94A.664. The residential substance use  
33 disorder treatment-based alternative is only available if the  
34 midpoint of the standard sentence range is twenty-six months or less.

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

39 (b) To assist the court in making its determination in domestic  
40 violence cases, the court shall order the department to complete a

1 presentence investigation and a chemical dependency screening report  
2 as provided in RCW 9.94A.500, unless otherwise specifically waived by  
3 the court.

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

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

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

13 (c) Whether effective treatment for the offender's substance use  
14 disorder is available from a provider that has been licensed or  
15 certified by the department of health, and where applicable, whether  
16 effective domestic violence perpetrator treatment is available from a  
17 state-certified domestic violence treatment provider pursuant to RCW  
18 43.20A.735; and

19 (d) Whether the offender and the community will benefit from the  
20 use of the alternative.

21 (6) When a court imposes a sentence of community custody under  
22 this section:

23 (a) The court may impose conditions as provided in RCW 9.94A.703  
24 and may impose other affirmative conditions as the court considers  
25 appropriate. In addition, an offender may be required to pay thirty  
26 dollars per month while on community custody to offset the cost of  
27 monitoring for alcohol or controlled substances, or in cases of  
28 domestic violence for monitoring with global positioning system  
29 technology for compliance with a no-contact order.

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

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

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

39 (c) The court may order the offender to serve a term of total  
40 confinement within the standard sentence range of the offender's

1 current offense at any time during the period of community custody if  
2 the offender violates the conditions or requirements of the sentence  
3 or if the offender is failing to make satisfactory progress in  
4 treatment.

5 (d) An offender ordered to serve a term of total confinement  
6 under (c) of this subsection shall receive credit for time previously  
7 served in total or partial confinement and inpatient treatment under  
8 this section, and shall receive fifty percent credit for time  
9 previously served in community custody under this section.

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

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

18 (10) The Washington state institute for public policy shall  
19 submit a report to the governor and the appropriate committees of the  
20 legislature by November 1, 2022, analyzing the effectiveness of the  
21 drug offender sentencing alternative in reducing recidivism among  
22 various offender populations. An additional report is due November 1,  
23 2028, and every five years thereafter. The Washington state institute  
24 for public policy may coordinate with the department and the caseload  
25 forecast council in tracking data and preparing the report.

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

28 (1) If an offender is sentenced to the custody of the department  
29 for one of the following crimes, the court shall, in addition to the  
30 other terms of the sentence, sentence the offender to community  
31 custody for three years:

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

33 (b) A serious violent offense.

34 (2) A court shall, in addition to the other terms of the  
35 sentence, sentence an offender to community custody for eighteen  
36 months when the court sentences the person to the custody of the  
37 department for a violent offense that is not considered a serious  
38 violent offense.

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

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

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

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

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

13 (4) If an offender is sentenced under the drug offender  
14 sentencing alternative, the court shall impose community custody as  
15 provided in:

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

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

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

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

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

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

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

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

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

39 (10) The term of community custody specified by this section  
40 shall be reduced by the court whenever an offender's standard

1 sentence range term of confinement in combination with the term of  
2 community custody exceeds the statutory maximum for the crime as  
3 provided in RCW 9A.20.021.

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

6 (1) In a court of limited jurisdiction a person charged with a  
7 misdemeanor or gross misdemeanor may petition the court to be  
8 considered for a deferred prosecution program. The petition shall be  
9 filed with the court at least seven days before the date set for  
10 trial but, upon a written motion and affidavit establishing good  
11 cause for the delay and failure to comply with this section, the  
12 court may waive this requirement subject to the defendant's  
13 reimbursement to the court of the witness fees and expenses due for  
14 subpoenaed witnesses who have appeared on the date set for trial.

15 (2) A person charged with a (~~traffic infraction, misdemeanor, or~~  
16 ~~gross misdemeanor under Title 46 RCW, or a~~) misdemeanor or gross  
17 misdemeanor domestic violence offense, or a violation of RCW  
18 46.61.502 or 46.61.504, shall not be eligible for a deferred  
19 prosecution program unless the court makes specific findings pursuant  
20 to RCW 10.05.020. A person may not participate in a deferred  
21 prosecution program for (~~a traffic infraction, misdemeanor, or gross~~  
22 ~~misdemeanor under Title 46 RCW if he or she has participated in a~~  
23 ~~deferred prosecution program for a prior traffic infraction,~~  
24 ~~misdemeanor, or gross misdemeanor under Title 46 RCW, and a person~~  
25 ~~may not participate in a deferred prosecution program for~~) a  
26 misdemeanor or gross misdemeanor domestic violence offense if he or  
27 she has participated in a deferred prosecution program for a prior  
28 domestic violence offense. A person charged with a gross misdemeanor  
29 violation of RCW 46.61.502 or 46.61.504 may only participate in a  
30 deferred prosecution once in his or her lifetime unless the person  
31 meets the requirements in subsection (5) of this section. Separate  
32 offenses committed more than seven days apart may not be consolidated  
33 in a single program.

34 (3) A person charged with a misdemeanor or a gross misdemeanor  
35 under chapter 9A.42 RCW shall not be eligible for a deferred  
36 prosecution program unless the court makes specific findings pursuant  
37 to RCW 10.05.020. Such person shall not be eligible for a deferred  
38 prosecution program more than once.

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

4 (5)(a) A person who has previously participated in a deferred  
5 prosecution under this chapter for the person's first gross  
6 misdemeanor violation of RCW 46.61.502 or 46.61.504 is eligible to  
7 petition the court for a second deferred prosecution for the person's  
8 second gross misdemeanor violation of RCW 46.61.502 or 46.61.504 if  
9 the court finds that:

10 (i) The person participated in a previous deferred prosecution  
11 for his or her first charged offense of RCW 46.61.502 or 46.61.504;

12 (ii) The person is eligible to petition the court for a second  
13 deferred prosecution for his or her second charged gross misdemeanor  
14 offense of RCW 46.61.502 or 46.61.504 pursuant to RCW 10.05.020; and

15 (iii) The person has no prior out-of-state convictions that  
16 qualify as a "prior offense" as defined under RCW 46.61.5055.

17 (b) If a person petitions the court for a second deferred  
18 prosecution while still under the jurisdiction of a court on a first  
19 deferred prosecution, the first deferred prosecution shall be revoked  
20 before the court considers the person's petition for a second  
21 deferred prosecution.

22 **Sec. 12.** RCW 10.05.020 and 2021 c 215 s 115 are each amended to  
23 read as follows:

24 (1) Except as provided in subsection (2) of this section, the  
25 petitioner shall allege under oath in the petition that the wrongful  
26 conduct charged is the result of or caused by substance use disorders  
27 or mental problems or domestic violence behavior problems for which  
28 the person is in need of treatment and unless treated the probability  
29 of future recurrence is great, along with a statement that the person  
30 agrees to pay the cost of a diagnosis and treatment of the alleged  
31 problem or problems if financially able to do so. The petition shall  
32 also contain a case history and written assessment prepared by an  
33 approved substance use disorder treatment program as designated in  
34 chapter 71.24 RCW if the petition alleges a substance use disorder,  
35 by an approved mental health center if the petition alleges a mental  
36 problem, or by a state-certified domestic violence treatment provider  
37 pursuant to RCW 43.20A.735 if the petition alleges a domestic  
38 violence behavior problem.

1           (2) In the case of a petitioner charged with a misdemeanor or  
2 gross misdemeanor under chapter 9A.42 RCW, the petitioner shall  
3 allege under oath in the petition that the petitioner is the natural  
4 or adoptive parent of the alleged victim; that the wrongful conduct  
5 charged is the result of parenting problems for which the petitioner  
6 is in need of services; that the petitioner is in need of child  
7 welfare services under chapter 74.13 RCW to improve his or her  
8 parenting skills in order to better provide his or her child or  
9 children with the basic necessities of life; that the petitioner  
10 wants to correct his or her conduct to reduce the likelihood of harm  
11 to his or her minor children; that in the absence of child welfare  
12 services the petitioner may be unable to reduce the likelihood of  
13 harm to his or her minor children; and that the petitioner has  
14 cooperated with the department of social and health services to  
15 develop a plan to receive appropriate child welfare services; along  
16 with a statement that the person agrees to pay the cost of the  
17 services if he or she is financially able to do so. The petition  
18 shall also contain a case history and a written service plan from the  
19 department of social and health services.

20           (3) Before entry of an order deferring prosecution, a petitioner  
21 shall be advised of his or her rights as an accused and execute, as a  
22 condition of receiving treatment, a statement that contains: (a) An  
23 acknowledgment of his or her rights; (b) an acknowledgment and waiver  
24 of the right to testify, the right to a speedy trial, the right to  
25 call witnesses to testify, the right to present evidence in his or  
26 her defense, and the right to a jury trial; (c) a stipulation to the  
27 admissibility and sufficiency of the facts contained in the written  
28 police report; and (d) an acknowledgment that the statement will be  
29 entered and used to support a finding of guilty if the court finds  
30 cause to revoke the order granting deferred prosecution. The  
31 petitioner shall also be advised that he or she may, if he or she  
32 proceeds to trial and is found guilty, be allowed to seek suspension  
33 of some or all of the fines and incarceration that may be ordered  
34 upon the condition that he or she seek treatment and, further, that  
35 he or she may seek treatment from public and private agencies at any  
36 time without regard to whether or not he or she is found guilty of  
37 the offense charged. He or she shall also be advised that the court  
38 will not accept a petition for deferred prosecution from a person  
39 who: (i) Sincerely believes that he or she is innocent of the  
40 charges; (ii) sincerely believes that he or she does not, in fact,



1 suffer from ((~~alcoholism, drug addiction~~)) a substance use disorder,  
2 mental problems, or domestic violence behavior problems; or (iii) in  
3 the case of a petitioner charged under chapter 9A.42 RCW, sincerely  
4 believes that he or she does not need child welfare services.

5 (4) Before entering an order deferring prosecution, the court  
6 shall make specific findings that: (a) The petitioner has stipulated  
7 to the admissibility and sufficiency of the facts as contained in the  
8 written police report; (b) the petitioner has acknowledged the  
9 admissibility of the stipulated facts in any criminal hearing on the  
10 underlying offense or offenses held subsequent to revocation of the  
11 order granting deferred prosecution; (c) the petitioner has  
12 acknowledged and waived the right to testify, the right to a speedy  
13 trial, the right to call witnesses to testify, the right to present  
14 evidence in his or her defense, and the right to a jury trial; and  
15 (d) the petitioner's statements were made knowingly and voluntarily.  
16 Such findings shall be included in the order granting deferred  
17 prosecution.

18 **Sec. 13.** RCW 10.05.040 and 2018 c 201 s 9005 are each amended to  
19 read as follows:

20 The program to which such person is referred, or the department  
21 of social and health services if the petition is brought under RCW  
22 10.05.020(2), shall conduct an investigation and examination to  
23 determine:

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

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

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

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

31 (5) Whether the person is amenable to treatment or willing to  
32 cooperate with child welfare services; and

33 (6) With respect to petitions brought for a deferred prosecution  
34 of a charge under RCW 46.61.502 or 46.61.504, whether the petitioner  
35 is amenable to treatment as demonstrated by completion of residential  
36 treatment or completion of a minimum of 18 hours of intensive  
37 outpatient treatment. The minimum treatment requirement under this  
38 section may be waived if the court finds good cause.

1       **Sec. 14.** RCW 10.05.060 and 2009 c 135 s 1 are each amended to  
2 read as follows:

3       If the report recommends treatment, the court shall examine the  
4 treatment plan. If it approves the plan and the petitioner agrees to  
5 comply with its terms and conditions and agrees to pay the cost  
6 thereof, if able to do so, or arrange for the treatment, an entry  
7 shall be made upon the person's court docket showing that the person  
8 has been accepted for deferred prosecution. A copy of the treatment  
9 plan shall be filed with the court. If the charge be one that an  
10 abstract of the docket showing the charge, the date of the violation  
11 for which the charge was made, and the date of petitioner's  
12 acceptance is required to be sent to the department of licensing, an  
13 abstract shall be sent, and the department of licensing shall make an  
14 entry of the charge and of the petitioner's acceptance for deferred  
15 prosecution on the department's driving record of the petitioner. The  
16 entry is not a conviction for purposes of Title 46 RCW. Upon receipt  
17 of the abstract of the docket, the department shall issue the  
18 petitioner a probationary license in accordance with RCW 46.20.355,  
19 and the petitioner's driver's license shall be on probationary status  
20 for five years from the date of the violation that gave rise to the  
21 charge. The department shall maintain the record (~~(for ten years from~~  
22 ~~date of entry of the order granting deferred prosecution)) consistent  
23 with the requirements of RCW 46.01.260(2).~~

24       **Sec. 15.** RCW 10.05.140 and 2019 c 263 s 706 are each amended to  
25 read as follows:

26       (1) As a condition of granting a deferred prosecution petition  
27 for a violation of RCW 46.61.502 or 46.61.504, the court shall order  
28 that the petitioner shall not operate a motor vehicle upon the public  
29 highways without a valid operator's license and proof of liability  
30 insurance. The amount of liability insurance shall be established by  
31 the court at not less than that established by RCW 46.29.490. As a  
32 condition of granting a deferred prosecution petition on any  
33 (~~(alcohol-dependency)) substance use disorder-based case, the court  
34 shall also order the installation of an ignition interlock under RCW  
35 46.20.720. The required periods of use of the interlock shall be not  
36 less than the periods provided for in RCW 46.20.720. As a condition  
37 of granting a deferred prosecution petition, the court may order the  
38 petitioner to make restitution and to pay costs as defined in RCW  
39 10.01.160. To help ensure continued sobriety and reduce the~~

1 likelihood of reoffense, the court may order reasonable conditions  
2 during the period of the deferred prosecution including, but not  
3 limited to, attendance at self-help recovery support groups for  
4 (~~alcoholism or drugs~~) substance use disorder, complete abstinence  
5 from alcohol and all nonprescribed mind-altering drugs, periodic  
6 urinalysis or breath analysis, and maintaining law-abiding behavior.  
7 The court may terminate the deferred prosecution program upon  
8 violation of the deferred prosecution order.

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

11 (a) The court shall order the petitioner not to possess firearms  
12 and order the petitioner to surrender firearms under RCW 9.41.800;  
13 and

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

26 **Sec. 16.** RCW 10.05.150 and 2016 sp.s. c 29 s 527 are each  
27 amended to read as follows:

28 A deferred prosecution program for (~~alcoholism~~) substance use  
29 disorder shall be for a two-year period and shall include, but not be  
30 limited to, the following requirements:

31 (1) Total abstinence from alcohol and all other nonprescribed  
32 mind-altering drugs;

33 (2) Participation in an intensive inpatient or intensive  
34 outpatient program in a state-approved substance use disorder  
35 treatment program;

36 (3) Participation in a minimum of two meetings per week of (~~a~~  
37 ~~alcoholism~~) a substance use disorder self-help recovery support  
38 group, as determined by the assessing agency, for the duration of the  
39 treatment program;

1 (4) Participation in ((an alcoholism)) a substance use disorder  
2 self-help recovery support group, as determined by the assessing  
3 agency, from the date of court approval of the plan to entry into  
4 intensive treatment;

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

8 (6) Not less than monthly outpatient contact, group or  
9 individual, for the remainder of the two-year deferred prosecution  
10 period;

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

14 (8) All treatment within the purview of this section shall occur  
15 within or be approved by a state-approved substance use disorder  
16 treatment program as described in chapter ((70.96A)) 71.24 RCW;

17 (9) Signature of the petitioner agreeing to the terms and  
18 conditions of the treatment program.

19 **Sec. 17.** RCW 10.05.170 and 1991 c 247 s 2 are each amended to  
20 read as follows:

21 As a condition of granting deferred prosecution, the court may  
22 order supervision of the petitioner during the period of deferral and  
23 may levy a monthly assessment upon the petitioner as provided in RCW  
24 10.64.120. In a jurisdiction with a probation department, the court  
25 may appoint the probation department to supervise the petitioner. In  
26 a jurisdiction without a probation department, the court may appoint  
27 an appropriate person or agency to supervise the petitioner. A  
28 supervisor appointed under this section shall be required to do at  
29 least the following:

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

34 ~~(2))~~ At least once every month make contact with the petitioner  
35 or with any agency to which the petitioner has been directed for  
36 treatment as a part of the deferral; and

37 (2) If the charge for which deferred prosecution is granted is a  
38 charge of RCW 46.61.502 or 46.61.504:

1 (a) At least once every three months, request an abstract of the  
2 petitioner's driving record;

3 (b) At least once every month, make contact with the petitioner  
4 until treatment is completed;

5 (c) Review the petitioner's criminal history at a minimum of  
6 every 90 days until the end of the deferral period; and

7 (d) Report known violations of supervision or law and  
8 noncompliance with conditions of the deferred prosecution to the  
9 court within five business days or as soon as practicable.

10 **Sec. 18.** RCW 46.61.502 and 2017 c 335 s 1 are each amended to  
11 read as follows:

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

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

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

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

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

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

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

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

11 (4)(a) 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 alcohol  
16 concentration above 0.00 may be used as evidence that a person was  
17 under the influence of or affected by intoxicating liquor or any drug  
18 in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

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

1       **Sec. 19.** RCW 46.61.5055 and 2020 c 330 s 15 are each amended to  
2 read as follows:

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

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

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

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

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

36       (i) By imprisonment for not less than forty-eight consecutive  
37 hours nor more than three hundred sixty-four days. In lieu of the  
38 mandatory minimum term of imprisonment required under this subsection  
39 (1)(b)(i), the court, in its discretion, may order not less than  
40 thirty days of electronic home monitoring or a one hundred twenty day

1 period of 24/7 sobriety program monitoring. The court may consider  
2 the offender's pretrial 24/7 sobriety program testing as fulfilling a  
3 portion of posttrial sentencing. The offender shall pay the cost of  
4 electronic home monitoring. The county or municipality in which the  
5 penalty is being imposed shall determine the cost. The court may also  
6 require the offender's electronic home monitoring device to include  
7 an alcohol detection breathalyzer or other separate alcohol  
8 monitoring device, and the court may restrict the amount of alcohol  
9 the offender may consume during the time the offender is on  
10 electronic home monitoring; and

11 (ii) By a fine of not less than five hundred dollars nor more  
12 than five thousand dollars. Five hundred dollars of the fine may not  
13 be suspended unless the court finds the offender to be indigent.

14 (2) **One prior offense in seven years.** Except as provided in RCW  
15 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
16 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense  
17 within seven years shall be punished as follows:

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

23 (i) By imprisonment for not less than thirty days nor more than  
24 three hundred sixty-four days and sixty days of electronic home  
25 monitoring. Thirty days of imprisonment and sixty days of electronic  
26 home monitoring may not be suspended or converted unless the court  
27 finds that the imposition of this mandatory minimum sentence would  
28 impose a substantial risk to the offender's physical or mental well-  
29 being. If the offender shows that the imposition of this mandatory  
30 minimum sentence would impose a substantial risk to the offender's  
31 physical or mental well-being, in lieu of the mandatory term of  
32 imprisonment and electronic home monitoring under this subsection

33 (2)(a)(i), the court may order a minimum of either one hundred eighty  
34 days of electronic home monitoring or a one hundred twenty-day period  
35 of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300  
36 through 36.28A.390. Whenever the mandatory minimum sentence is  
37 suspended or converted, the court shall state in writing the reason  
38 for granting the suspension or conversion and the facts upon which  
39 the suspension or conversion is based. The court may consider the  
40 offender's pretrial 24/7 sobriety program monitoring as fulfilling a



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

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

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

19 (i) By imprisonment for not less than forty-five days nor more  
20 than three hundred sixty-four days and ninety days of electronic home  
21 monitoring. Forty-five days of imprisonment and ninety days of  
22 electronic home monitoring may not be suspended or converted unless  
23 the court finds that the imposition of this mandatory minimum  
24 sentence would impose a substantial risk to the offender's physical  
25 or mental well-being. If the offender shows that the imposition of  
26 this mandatory minimum sentence would impose a substantial risk to  
27 the offender's physical or mental well-being, in lieu of the  
28 mandatory minimum term of imprisonment and electronic home monitoring  
29 under this subsection (2)(b)(i), the court may order a minimum of  
30 either six months of electronic home monitoring or a one hundred  
31 twenty-day period of 24/7 sobriety program monitoring pursuant to RCW  
32 36.28A.300 through 36.28A.390. Whenever the mandatory minimum  
33 sentence is suspended or converted, the court shall state in writing  
34 the reason for granting the suspension or conversion and the facts  
35 upon which the suspension or conversion is based. The court may  
36 consider the offender's pretrial 24/7 sobriety program monitoring as  
37 fulfilling a portion of posttrial sentencing. The court shall order  
38 an expanded substance use disorder assessment and treatment, if  
39 deemed appropriate by the assessment. The offender shall pay for the  
40 cost of the electronic monitoring. The county or municipality where

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

7 (ii) By a fine of not less than seven hundred fifty dollars nor  
8 more than five thousand dollars. Seven hundred fifty dollars of the  
9 fine may not be suspended unless the court finds the offender to be  
10 indigent.

11 (3) **Two prior offenses in seven years.** Except as provided in RCW  
12 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
13 violation of RCW 46.61.502 or 46.61.504 and who has two prior  
14 offenses within seven years shall be punished as follows:

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

20 (i) By imprisonment for not less than ninety days nor more than  
21 three hundred sixty-four days, if available in that county or city, a  
22 six-month period of 24/7 sobriety program monitoring pursuant to RCW  
23 36.28A.300 through 36.28A.390, and one hundred twenty days of  
24 electronic home monitoring. Ninety days of imprisonment and one  
25 hundred twenty days of electronic home monitoring may not be  
26 suspended or converted unless the court finds that the imposition of  
27 this mandatory minimum sentence would impose a substantial risk to  
28 the offender's physical or mental well-being. If the offender shows  
29 that the imposition of this mandatory minimum sentence would impose a  
30 substantial risk to the offender's physical or mental well-being, in  
31 lieu of the mandatory minimum term of ninety days of imprisonment and  
32 one hundred twenty days of electronic home monitoring, the court may  
33 order three hundred sixty days of electronic home monitoring or a  
34 three hundred sixty-day period of 24/7 sobriety monitoring pursuant  
35 to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory minimum  
36 sentence is suspended or converted, the court shall state in writing  
37 the reason for granting the suspension or conversion and the facts  
38 upon which the suspension or conversion is based. The court shall  
39 order an expanded substance use disorder assessment and treatment, if  
40 deemed appropriate by the assessment. The offender shall pay for the

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

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

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

16 (i) By imprisonment for not less than one hundred twenty days nor  
17 more than three hundred sixty-four days, if available in that county  
18 or city, a six-month period of 24/7 sobriety program monitoring  
19 pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty  
20 days of electronic home monitoring. One hundred twenty days of  
21 imprisonment and one hundred fifty days of electronic home monitoring  
22 may not be suspended or converted unless the court finds that the  
23 imposition of this mandatory minimum sentence would impose a  
24 substantial risk to the offender's physical or mental well-being. If  
25 the offender shows that the imposition of this mandatory minimum  
26 sentence would impose a substantial risk to the offender's physical  
27 or mental well-being, in lieu of the mandatory minimum term of one  
28 hundred twenty days of imprisonment and one hundred fifty days of  
29 electronic home monitoring, the court may order three hundred sixty  
30 days of electronic home monitoring or a three hundred sixty-day  
31 period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through  
32 36.28A.390. Whenever the mandatory minimum sentence is suspended or  
33 converted, the court shall state in writing the reason for granting  
34 the suspension or conversion and the facts upon which the suspension  
35 or conversion is based. The offender shall pay for the cost of the  
36 electronic monitoring. The court shall order an expanded substance  
37 use disorder assessment and treatment, if deemed appropriate by the  
38 assessment. The county or municipality where the penalty is being  
39 imposed shall determine the cost. The court may also require the  
40 offender's electronic home monitoring device include an alcohol

1 detection breathalyzer or other separate alcohol monitoring device,  
2 and may restrict the amount of alcohol the offender may consume  
3 during the time the offender is on electronic home monitoring; and

4 (ii) By a fine of not less than one thousand five hundred dollars  
5 nor more than five thousand dollars. One thousand five hundred  
6 dollars of the fine may not be suspended unless the court finds the  
7 offender to be indigent.

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

11 (a) The person has three or more prior offenses within ((ten)) 15  
12 years; or

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

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

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

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

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

21 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall  
22 require any person convicted of a violation of RCW 46.61.502 or  
23 46.61.504 or an equivalent local ordinance to comply with the rules  
24 and requirements of the department regarding the installation and use  
25 of a functioning ignition interlock device installed on all motor  
26 vehicles operated by the person.

27 (b) **Monitoring devices.** If the court orders that a person refrain  
28 from consuming any alcohol, the court may order the person to submit  
29 to alcohol monitoring through an alcohol detection breathalyzer  
30 device, transdermal sensor device, or other technology designed to  
31 detect alcohol in a person's system. The person shall pay for the  
32 cost of the monitoring, unless the court specifies that the cost of  
33 monitoring will be paid with funds that are available from an  
34 alternative source identified by the court. The county or  
35 municipality where the penalty is being imposed shall determine the  
36 cost.

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

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

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

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

11 (6) **Penalty for having a minor passenger in vehicle.** If a person  
12 who is convicted of a violation of RCW 46.61.502 or 46.61.504  
13 committed the offense while one or more passengers under the age of  
14 sixteen were in the vehicle, the court shall:

15 (a) Order the use of an ignition interlock or other device for an  
16 additional twelve months for each passenger under the age of sixteen  
17 when the person is subject to the penalties under subsection (1)(a),  
18 (2)(a), or (3)(a) of this section; and order the use of an ignition  
19 interlock device for an additional eighteen months for each passenger  
20 under the age of sixteen when the person is subject to the penalties  
21 under subsection (1)(b), (2)(b), (3)(b), or (4) of this section;

22 (b) In any case in which the person has no prior offenses within  
23 seven years, and except as provided in RCW 46.61.502(6) or  
24 46.61.504(6), order an additional twenty-four hours of imprisonment  
25 to be served consecutively for each passenger under the age of  
26 sixteen, and a fine of not less than one thousand dollars and not  
27 more than five thousand dollars for each passenger under the age of  
28 sixteen. One thousand dollars of the fine for each passenger under  
29 the age of sixteen may not be suspended unless the court finds the  
30 offender to be indigent;

31 (c) In any case in which the person has one prior offense within  
32 seven years, and except as provided in RCW 46.61.502(6) or  
33 46.61.504(6), order an additional five days of imprisonment to be  
34 served consecutively for each passenger under the age of sixteen, and  
35 a fine of not less than two thousand dollars and not more than five  
36 thousand dollars for each passenger under the age of sixteen. One  
37 thousand dollars of the fine for each passenger under the age of  
38 sixteen may not be suspended unless the court finds the offender to  
39 be indigent;

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

10 (7) **Other items courts must consider while setting penalties.** In  
11 exercising its discretion in setting penalties within the limits  
12 allowed by this section, the court shall particularly consider the  
13 following:

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

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

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

22 (d) Whether a child passenger under the age of sixteen was an  
23 occupant in the driver's vehicle.

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

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

31 (i) **Penalty for alcohol concentration less than 0.15.** If the  
32 person's alcohol concentration was less than 0.15, or if for reasons  
33 other than the person's refusal to take a test offered under RCW  
34 46.20.308 there is no test result indicating the person's alcohol  
35 concentration:

36 (A) Where there has been no prior offense within seven years, be  
37 suspended or denied by the department for ninety days or until the  
38 person is evaluated by a substance use disorder agency or probation  
39 department pursuant to RCW 46.20.311 and the person completes or is  
40 enrolled in a ninety-day period of 24/7 sobriety program monitoring.

1 In no circumstances shall the license suspension be for fewer than  
2 two days;

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

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

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

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

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

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

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

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

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

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

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

38 (ii) If a person has already served a suspension, revocation, or  
39 denial under RCW 46.20.3101 for a period equal to or greater than the  
40 period imposed under this subsection (9), the department shall

1 provide notice of full credit, shall provide for no further  
2 suspension or revocation under this subsection provided the person  
3 has completed the requirements under RCW 46.20.311 and paid the  
4 probationary license fee under RCW 46.20.355 by the date specified in  
5 the notice under RCW 46.20.245, and shall impose no additional  
6 reissue fees for this credit.

7 (c) Upon receipt of a notice from the court under RCW 36.28A.390  
8 that a participant has been removed from a 24/7 sobriety program, the  
9 department must resume any suspension, revocation, or denial that had  
10 been terminated early under this subsection due to participation in  
11 the program, granting credit on a day-for-day basis for any portion  
12 of a suspension, revocation, or denial already served under RCW  
13 46.20.3101 or this section arising out of the same incident.

14 (d) Upon its own motion or upon motion by a person, a court may  
15 find, on the record, that notice to the department under RCW  
16 46.20.270 has been delayed for three years or more as a result of a  
17 clerical or court error. If so, the court may order that the person's  
18 license, permit, or nonresident privilege shall not be revoked,  
19 suspended, or denied for that offense. The court shall send notice of  
20 the finding and order to the department and to the person. Upon  
21 receipt of the notice from the court, the department shall not  
22 revoke, suspend, or deny the license, permit, or nonresident  
23 privilege of the person for that offense.

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

27 (10) **Probation of driving privilege.** After expiration of any  
28 period of suspension, revocation, or denial of the offender's  
29 license, permit, or privilege to drive required by this section, the  
30 department shall place the offender's driving privilege in  
31 probationary status pursuant to RCW 46.20.355.

32 (11) **Conditions of probation.** (a) In addition to any  
33 nonsuspendable and nondeferrable jail sentence required by this  
34 section, whenever the court imposes up to three hundred sixty-four  
35 days in jail, the court shall also suspend but shall not defer a  
36 period of confinement for a period not exceeding five years. The  
37 court shall impose conditions of probation that include: (i) Not  
38 driving a motor vehicle within this state without a valid license to  
39 drive; (ii) not driving a motor vehicle within this state without  
40 proof of liability insurance or other financial responsibility for



1 the future pursuant to RCW 46.30.020; (iii) not driving or being in  
2 physical control of a motor vehicle within this state while having an  
3 alcohol concentration of 0.08 or more or a THC concentration of 5.00  
4 nanograms per milliliter of whole blood or higher, within two hours  
5 after driving; (iv) not refusing to submit to a test of his or her  
6 breath or blood to determine alcohol or drug concentration upon  
7 request of a law enforcement officer who has reasonable grounds to  
8 believe the person was driving or was in actual physical control of a  
9 motor vehicle within this state while under the influence of  
10 intoxicating liquor or drug; and (v) not driving a motor vehicle in  
11 this state without a functioning ignition interlock device as  
12 required by the department under RCW 46.20.720. The court may impose  
13 conditions of probation that include nonrepetition, installation of  
14 an ignition interlock device on the probationer's motor vehicle,  
15 substance use disorder treatment, supervised probation, or other  
16 conditions that may be appropriate. The sentence may be imposed in  
17 whole or in part upon violation of a condition of probation during  
18 the suspension period.

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

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

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

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

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

2 (c) The court determines that there is reason to believe that the  
3 offender would violate the conditions of the electronic home  
4 monitoring penalty.

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

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

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

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

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

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

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

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

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

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

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

1 (vii) A conviction for a violation of RCW 47.68.220 or an  
2 equivalent local ordinance committed in a careless or reckless manner  
3 if the conviction is the result of a charge that was originally filed  
4 as a violation of RCW 47.68.220 or an equivalent local ordinance  
5 while under the influence of intoxicating liquor or any drug;

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

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

10 (x) A conviction for a violation of RCW 46.61.520 committed while  
11 under the influence of intoxicating liquor or any drug, or a  
12 conviction for a violation of RCW 46.61.520 committed in a reckless  
13 manner or with the disregard for the safety of others if the  
14 conviction is the result of a charge that was originally filed as a  
15 violation of RCW 46.61.520 committed while under the influence of  
16 intoxicating liquor or any drug;

17 (xi) A conviction for a violation of RCW 46.61.522 committed  
18 while under the influence of intoxicating liquor or any drug, or a  
19 conviction for a violation of RCW 46.61.522 committed in a reckless  
20 manner or with the disregard for the safety of others if the  
21 conviction is the result of a charge that was originally filed as a  
22 violation of RCW 46.61.522 committed while under the influence of  
23 intoxicating liquor or any drug;

24 (xii) A conviction for a violation of RCW 46.61.5249, 46.61.500,  
25 or 9A.36.050 or an equivalent local ordinance, if the conviction is  
26 the result of a charge that was originally filed as a violation of  
27 RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of  
28 RCW 46.61.520 or 46.61.522;

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

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

35 (xv) A deferred prosecution under chapter 10.05 RCW granted in a  
36 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
37 ordinance, if the charge under which the deferred prosecution was  
38 granted was originally filed as a violation of RCW 46.61.502 or  
39 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
40 46.61.522;

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

7 (xvii) A deferred sentence imposed in a prosecution for a  
8 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an  
9 equivalent local ordinance, if the charge under which the deferred  
10 sentence was imposed was originally filed as a violation of RCW  
11 46.61.502 or 46.61.504, or an equivalent local ordinance, or a  
12 violation of RCW 46.61.520 or 46.61.522;

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

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

19 (c) "Within seven years" means that the arrest for a prior  
20 offense occurred within seven years before or after the arrest for  
21 the current offense; and

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

25 (15) All fines imposed by this section apply to adult offenders  
26 only.

27 **Sec. 20.** RCW 46.61.504 and 2017 c 335 s 2 are each amended to  
28 read as follows:

29 (1) A person is guilty of being in actual physical control of a  
30 motor vehicle while under the influence of intoxicating liquor or any  
31 drug if the person has actual physical control of a vehicle within  
32 this state:

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

37 (b) The person has, within two hours after being in actual  
38 physical control of a vehicle, a THC concentration of 5.00 or higher

1 as shown by analysis of the person's blood made under RCW 46.61.506;  
2 or

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

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

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

15 (3) (a) 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 being  
22 in such control. The court shall not admit evidence of this defense  
23 unless the defendant notifies the prosecution prior to the omnibus or  
24 pretrial hearing in the case of the defendant's intent to assert the  
25 affirmative defense.

26 (b) It is an affirmative defense to a violation of subsection  
27 (1) (b) of this section, which the defendant must prove by a  
28 preponderance of the evidence, that the defendant consumed a  
29 sufficient quantity of marijuana after the time of being in actual  
30 physical control of the vehicle and before the administration of an  
31 analysis of the person's blood to cause the defendant's THC  
32 concentration to be 5.00 or more within two hours after being in  
33 control of the vehicle. The court shall not admit evidence of this  
34 defense unless the defendant notifies the prosecution prior to the  
35 omnibus or pretrial hearing in the case of the defendant's intent to  
36 assert the affirmative defense.

37 (4) (a) Analyses of blood or breath samples obtained more than two  
38 hours after the alleged being in actual physical control of a vehicle  
39 may be used as evidence that within two hours of the alleged being in  
40 such control, a person had an alcohol concentration of 0.08 or more

1 in violation of subsection (1)(a) of this section, and in any case in  
2 which the analysis shows an alcohol concentration above 0.00 may be  
3 used as evidence that a person was under the influence of or affected  
4 by intoxicating liquor or any drug in violation of subsection (1)(c)  
5 or (d) of this section.

6 (b) Analyses of blood samples obtained more than two hours after  
7 the alleged being in actual physical control of a vehicle may be used  
8 as evidence that within two hours of the alleged being in control of  
9 the vehicle, a person had a THC concentration of 5.00 or more in  
10 violation of subsection (1)(b) of this section, and in any case in  
11 which the analysis shows a THC concentration above 0.00 may be used  
12 as evidence that a person was under the influence of or affected by  
13 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

27 (iv) A violation of this subsection (6) or RCW 46.61.502(6).

28 NEW SECTION. **Sec. 21.** Sections 1 through 5, 7 through 10, and  
29 18 through 20 of this act take effect July 1, 2022.

30 NEW SECTION. **Sec. 22.** Sections 6 and 11 through 17 of this act  
31 take effect January 1, 2023."

32 Correct the title.

EFFECT: Retains the provisions of the underlying bill with the following changes:  
Adds provisions related to deferred prosecutions in gross misdemeanor impaired driving cases, effective January 1, 2023; specifically:

(1) Provides that, generally, a person charged with impaired driving may only participate in a deferred prosecution once in his or her lifetime; however, a person who has previously participated in a deferred prosecution for his or her first charge of impaired driving may participate in a second deferred prosecution for his or her second impaired driving charge if certain criteria are met;

(2) Requires a determination of the petitioner's amenability to treatment as demonstrated by completion of residential treatment or at least 18 hours of intensive outpatient treatment, unless waived by the court for good cause;

(3) Specifies that the requirement for the court to enter an order prohibiting the petitioner in a deferred prosecution from operating a motor vehicle without a valid driver's license and liability insurance applies specifically to deferred prosecutions for impaired driving;

(4) Makes changes to the requirements for supervision of persons participating in a deferred prosecution for impaired driving to require the supervising entity to request an abstract of the person's driving record at least every three months, make contact with the person at least monthly until treatment is completed, review the person's criminal history at least every 90 days until the end of the deferral period, and report known violations of supervision or law and noncompliance with conditions to the court within five days or as soon as practicable;

(5) Provides that a deferred prosecution for a second or subsequent impaired driving offense counts as one point toward a defendant's offender score for felony traffic offenses; and

(6) Changes terminology to use the term "substance use disorder" in place of references to alcoholism or drug addiction and makes other minor changes to conform underlying statutes to other parts of the code.

Reinstates a current law provision requiring court-ordered evaluations of persons who are being considered for a residential Drug Offender Sentencing Alternative to address whether the person's substance use disorder is such that there is a probability that criminal behavior will occur in the future.

Establishes a July 1, 2022, effective date for all provisions of the bill other than those related to deferred prosecutions of impaired driving offenses.

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