

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1493

68th Legislature
2024 Regular Session

Passed by the House March 6, 2024
Yeas 69 Nays 27

**Speaker of the House of
Representatives**

Passed by the Senate February 29,
2024
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1493** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1493

AS AMENDED BY THE SENATE

Passed Legislature - 2024 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By House Community Safety, Justice, & Reentry (originally sponsored by Representative Goodman)

READ FIRST TIME 02/17/23.

1 AN ACT Relating to impaired driving; amending RCW 9.94A.030,
2 9.94A.190, 9.94A.501, 9.94A.505, 9.94A.525, 9.94A.633, 9.94A.6332,
3 9.94A.660, 9.94A.701, 10.05.010, 10.05.015, 10.05.020, 10.05.030,
4 10.05.040, 10.05.050, 10.05.060, 10.05.090, 10.05.100, 10.05.120,
5 10.05.140, 10.05.150, 10.05.155, 10.05.170, 46.20.355, 46.20.385,
6 46.20.720, 46.20.740, 46.61.502, 46.61.5055, and 46.61.504; adding a
7 new section to chapter 9.94A RCW; adding a new section to chapter
8 10.05 RCW; adding a new section to chapter 46.61 RCW; providing an
9 effective date; and prescribing penalties.

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

11 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A
12 RCW to read as follows:

13 (1) An offender is eligible for the special drug offender
14 sentencing alternative for driving under the influence if the
15 offender:

16 (a) Does not have a prior conviction under RCW 46.61.520,
17 46.61.522, 46.61.502(6), or 46.61.504(6); and either

18 (b) Is convicted of felony driving while under the influence of
19 intoxicating liquor, cannabis, or any drug under RCW 46.61.502(6)(a);
20 or

1 (c) Is convicted of felony physical control of a vehicle while
2 under the influence of intoxicating liquor or any drug under RCW
3 46.61.504(6) (a).

4 (2) A motion for a special drug offender sentencing alternative
5 for driving under the influence may be made by the court, the
6 offender, or the state if the midpoint of the standard sentence range
7 is 26 months or less. If an offender has a higher midpoint, a motion
8 for a special drug offender sentencing alternative for driving under
9 the influence can only be made by joint agreement of the state and
10 offender.

11 (3) If the sentencing court determines that the offender is
12 eligible for an alternative sentence under this section and that the
13 alternative sentence is appropriate, the court shall waive imposition
14 of a sentence within the standard sentence range and:

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

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

22 (4) (a) To assist the court in making its determination, the court
23 may order the department to complete either a risk assessment report
24 or a substance use disorder screening report as provided in RCW
25 9.94A.500, or both.

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

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

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

34 (iii) Whether the offender and the community will benefit from
35 the use of the alternative.

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

38 (a) If necessary, an indeterminate term of confinement of no more
39 than 30 days in a facility operated, licensed, or utilized under

1 contract, by the county in order to facilitate direct transfer to a
2 residential substance use disorder treatment facility;

3 (b) Treatment in a residential substance use disorder treatment
4 program licensed or certified by the department of health for a
5 period set by the court up to six months with treatment completion
6 and continued care delivered in accordance with rules established by
7 the department of health. In establishing rules pursuant to this
8 subsection, the department of health must consider criteria
9 established by the American society of addiction medicine;

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

13 (d) Twelve months of community custody.

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

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

19 (c) The department shall, within available resources, make
20 substance use disorder assessment and treatment services available to
21 the offender.

22 (d) An offender sentenced to community custody under subsection
23 (3)(a) of this section as part of the prison-based alternative or
24 under subsection (3)(b) of this section as part of the residential
25 treatment-based alternative may be required to pay \$30 per month
26 while on community custody to offset the cost of monitoring for
27 alcohol or controlled substances.

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

32 (b) Upon receipt of the plan, the court shall schedule a progress
33 hearing during the period of treatment and schedule a treatment
34 termination hearing for three months before the expiration of the
35 term of community custody.

36 (c) Before the progress hearing and treatment termination
37 hearing, the treatment provider and the department shall submit
38 written reports to the court and parties regarding the offender's
39 compliance with treatment and monitoring requirements and
40 recommendations regarding termination from treatment.

1 (8) At a progress hearing or treatment termination hearing, the
2 court may:

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

6 (b) Continue the hearing to a date before the expiration date of
7 community custody, with or without modifying the conditions of
8 partial confinement or community custody; or

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

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

17 (b) If the offender is brought back to court, the court may
18 modify the conditions of partial confinement or community custody or
19 order the offender to serve a term of total confinement within the
20 standard sentence range of the offender's current offense at any time
21 during the period of partial confinement or community custody if the
22 offender violates the conditions or requirements of the sentence or
23 if the offender is failing to make satisfactory progress in
24 treatment.

25 (c) An offender ordered to serve a term of total confinement
26 under (b) of this subsection shall receive credit for any time
27 previously served in total confinement or residential treatment under
28 this section and shall receive 50 percent credit for any time
29 previously served in partial confinement or community custody under
30 this section.

31 (10) In serving a term of community custody imposed upon failure
32 to complete, or administrative termination from, the special drug
33 offender sentencing alternative program for driving under the
34 influence under this section, the offender shall receive no credit
35 for time served in community custody prior to termination of the
36 offender's participation in the program.

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

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

6 **Sec. 2.** RCW 9.94A.030 and 2022 c 231 s 11 are each amended to
7 read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

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

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

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

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

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

31 (6) "Community protection zone" means the area within 880 feet of
32 the facilities and grounds of a public or private school.

33 (7) "Community restitution" means compulsory service, without
34 compensation, performed for the benefit of the community by the
35 offender.

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

37 (9) "Conviction" means an adjudication of guilt pursuant to Title
38 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,
39 and acceptance of a plea of guilty.

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

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

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

17 (b) A conviction may be removed from a defendant's criminal
18 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,
19 9.95.240, or a similar out-of-state statute, or if the conviction has
20 been vacated pursuant to a governor's pardon. However, when a
21 defendant is charged with a recidivist offense, "criminal history"
22 includes a vacated prior conviction for the sole purpose of
23 establishing that such vacated prior conviction constitutes an
24 element of the present recidivist offense as provided in RCW
25 9.94A.640(4)(b) and 9.96.060(7)(c).

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

31 (12) "Criminal street gang" means any ongoing organization,
32 association, or group of three or more persons, whether formal or
33 informal, having a common name or common identifying sign or symbol,
34 having as one of its primary activities the commission of criminal
35 acts, and whose members or associates individually or collectively
36 engage in or have engaged in a pattern of criminal street gang
37 activity. This definition does not apply to employees engaged in
38 concerted activities for their mutual aid and protection, or to the
39 activities of labor and bona fide nonprofit organizations or their
40 members or agents.

1 (13) "Criminal street gang associate or member" means any person
2 who actively participates in any criminal street gang and who
3 intentionally promotes, furthers, or assists in any criminal act by
4 the criminal street gang.

5 (14) "Criminal street gang-related offense" means any felony or
6 misdemeanor offense, whether in this state or elsewhere, that is
7 committed for the benefit of, at the direction of, or in association
8 with any criminal street gang, or is committed with the intent to
9 promote, further, or assist in any criminal conduct by the gang, or
10 is committed for one or more of the following reasons:

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

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

14 (c) To exact revenge or retribution for the gang or any member of
15 the gang;

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

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

21 (f) To provide the gang with any advantage in, or any control or
22 dominance over any criminal market sector, including, but not limited
23 to, manufacturing, delivering, or selling any controlled substance
24 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
25 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
26 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
27 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
28 9.68 RCW).

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

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

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

39 (18) "Determinate sentence" means a sentence that states with
40 exactitude the number of actual years, months, or days of total

1 confinement, of partial confinement, of community custody, the number
2 of actual hours or days of community restitution work, or dollars or
3 terms of a legal financial obligation. The fact that an offender
4 through earned release can reduce the actual period of confinement
5 shall not affect the classification of the sentence as a determinate
6 sentence.

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

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

21 (b) "Domestic violence" also means: (i) Physical harm, bodily
22 injury, assault, or the infliction of fear of imminent physical harm,
23 bodily injury, or assault, sexual assault, or stalking, as defined in
24 RCW 9A.46.110, of one intimate partner by another intimate partner as
25 defined in RCW 10.99.020; or (ii) physical harm, bodily injury,
26 assault, or the infliction of fear of imminent physical harm, bodily
27 injury, or assault, sexual assault, or stalking, as defined in RCW
28 9A.46.110, of one family or household member by another family or
29 household member as defined in RCW 10.99.020.

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

33 (22) "Drug offender sentencing alternative for driving under the
34 influence" is a sentencing option available to persons convicted of
35 felony driving while under the influence of intoxicating liquor or
36 any drug under RCW 46.61.502(6), or felony physical control of a
37 vehicle while under the influence of intoxicating liquor or any drug
38 under RCW 46.61.504(6) who are eligible under section 1 of this act.

39 (23) "Drug offense" means:

1 (a) Any felony violation of chapter 69.50 RCW except possession
2 of a controlled substance (RCW 69.50.4013) or forged prescription for
3 a controlled substance (RCW 69.50.403);

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

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

10 ~~((23))~~ (24) "Earned release" means earned release from
11 confinement as provided in RCW 9.94A.728.

12 ~~((24))~~ (25) "Electronic monitoring" means tracking the location
13 of an individual through the use of technology that is capable of
14 determining or identifying the monitored individual's presence or
15 absence at a particular location including, but not limited to:

16 (a) Radio frequency signaling technology, which detects if the
17 monitored individual is or is not at an approved location and
18 notifies the monitoring agency of the time that the monitored
19 individual either leaves the approved location or tampers with or
20 removes the monitoring device; or

21 (b) Active or passive global positioning system technology, which
22 detects the location of the monitored individual and notifies the
23 monitoring agency of the monitored individual's location and which
24 may also include electronic monitoring with victim notification
25 technology that is capable of notifying a victim or protected party,
26 either directly or through a monitoring agency, if the monitored
27 individual enters within the restricted distance of a victim or
28 protected party, or within the restricted distance of a designated
29 location.

30 ~~((25))~~ (26) "Escape" means:

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

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

40 ~~((26))~~ (27) "Felony traffic offense" means:

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

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

10 ~~((27))~~ (28) "Fine" means a specific sum of money ordered by the
11 sentencing court to be paid by the offender to the court over a
12 specific period of time.

13 ~~((28))~~ (29) "First-time offender" means any person who has no
14 prior convictions for a felony and is eligible for the first-time
15 offender waiver under RCW 9.94A.650.

16 ~~((29))~~ (30) "Home detention" is a subset of electronic
17 monitoring and means a program of partial confinement available to
18 offenders wherein the offender is confined in a private residence 24
19 hours a day, unless an absence from the residence is approved,
20 authorized, or otherwise permitted in the order by the court or other
21 supervising agency that ordered home detention, and the offender is
22 subject to electronic monitoring.

23 ~~((30))~~ (31) "Homelessness" or "homeless" means a condition
24 where an individual lacks a fixed, regular, and adequate nighttime
25 residence and who has a primary nighttime residence that is:

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

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

30 (c) A private residence where the individual stays as a transient
31 invitee.

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

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

6 ~~((32))~~ (33) "Most serious offense" means any of the following
7 felonies or a felony attempt to commit any of the following felonies:

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

11 (b) Assault in the second degree;

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

13 (d) Child molestation in the second degree;

14 (e) Controlled substance homicide;

15 (f) Extortion in the first degree;

16 (g) Incest when committed against a child under age 14;

17 (h) Indecent liberties;

18 (i) Kidnapping in the second degree;

19 (j) Leading organized crime;

20 (k) Manslaughter in the first degree;

21 (l) Manslaughter in the second degree;

22 (m) Promoting prostitution in the first degree;

23 (n) Rape in the third degree;

24 (o) Sexual exploitation;

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

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

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

35 (s) Any other felony with a deadly weapon verdict under RCW
36 9.94A.825;

37 (t) Any felony offense in effect at any time prior to December 2,
38 1993, that is comparable to a most serious offense under this
39 subsection, or any federal or out-of-state conviction for an offense

1 that under the laws of this state would be a felony classified as a
2 most serious offense under this subsection;

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

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

17 (v) Any out-of-state conviction for a felony offense with a
18 finding of sexual motivation if the minimum sentence imposed was 10
19 years or more; provided that the out-of-state felony offense must be
20 comparable to a felony offense under this title and Title 9A RCW and
21 the out-of-state definition of sexual motivation must be comparable
22 to the definition of sexual motivation contained in this section.

23 (~~((33))~~) (34) "Nonviolent offense" means an offense which is not
24 a violent offense.

25 (~~((34))~~) (35) "Offender" means a person who has committed a
26 felony established by state law and is 18 years of age or older or is
27 less than 18 years of age but whose case is under superior court
28 jurisdiction under RCW 13.04.030 or has been transferred by the
29 appropriate juvenile court to a criminal court pursuant to RCW
30 13.40.110. In addition, for the purpose of community custody
31 requirements under this chapter, "offender" also means a misdemeanor
32 or gross misdemeanor probationer ordered by a superior court to
33 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and
34 supervised by the department pursuant to RCW 9.94A.501 and
35 9.94A.5011. Throughout this chapter, the terms "offender" and
36 "defendant" are used interchangeably.

37 (~~((35))~~) (36) "Partial confinement" means confinement for no more
38 than one year in a facility or institution operated or utilized under
39 contract by the state or any other unit of government, or, if home
40 detention, electronic monitoring, or work crew has been ordered by

1 the court or home detention has been ordered by the department as
2 part of the parenting program or the graduated reentry program, in an
3 approved residence, for a substantial portion of each day with the
4 balance of the day spent in the community. Partial confinement
5 includes work release, home detention, work crew, electronic
6 monitoring, and a combination of work crew, electronic monitoring,
7 and home detention.

8 ((~~(36)~~)) (37) "Pattern of criminal street gang activity" means:

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

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

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

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

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

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

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

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

24 (viii) Harassment where a subsequent violation or deadly threat
25 is made (RCW 9A.46.020(2)(b));

26 (ix) Criminal Gang Intimidation (RCW 9A.46.120);

27 (x) Any felony conviction by a person 18 years of age or older
28 with a special finding of involving a juvenile in a felony offense
29 under RCW 9.94A.833;

30 (xi) Residential Burglary (RCW 9A.52.025);

31 (xii) Burglary 2 (RCW 9A.52.030);

32 (xiii) Malicious Mischief 1 (RCW 9A.48.070);

33 (xiv) Malicious Mischief 2 (RCW 9A.48.080);

34 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);

35 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

36 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
37 9A.56.070);

38 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
39 9A.56.075);

40 (xix) Extortion 1 (RCW 9A.56.120);

1 (xx) Extortion 2 (RCW 9A.56.130);
2 (xxi) Intimidating a Witness (RCW 9A.72.110);
3 (xxii) Tampering with a Witness (RCW 9A.72.120);
4 (xxiii) Reckless Endangerment (RCW 9A.36.050);
5 (xxiv) Coercion (RCW 9A.36.070);
6 (xxv) Harassment (RCW 9A.46.020); or
7 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

8 (b) That at least one of the offenses listed in (a) of this
9 subsection shall have occurred after July 1, 2008;

10 (c) That the most recent committed offense listed in (a) of this
11 subsection occurred within three years of a prior offense listed in
12 (a) of this subsection; and

13 (d) Of the offenses that were committed in (a) of this
14 subsection, the offenses occurred on separate occasions or were
15 committed by two or more persons.

16 (~~(37)~~) (38) "Persistent offender" is an offender who:

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

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

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

38 (ii) Has, before the commission of the offense under (b) (i) of
39 this subsection, been convicted as an offender on at least one
40 occasion, whether in this state or elsewhere, of an offense listed in

1 (b)(i) of this subsection or any federal or out-of-state offense or
2 offense under prior Washington law that is comparable to the offenses
3 listed in (b)(i) of this subsection. A conviction for rape of a child
4 in the first degree constitutes a conviction under (b)(i) of this
5 subsection only when the offender was 16 years of age or older when
6 the offender committed the offense. A conviction for rape of a child
7 in the second degree constitutes a conviction under (b)(i) of this
8 subsection only when the offender was 18 years of age or older when
9 the offender committed the offense.

10 ~~((38))~~ (39) "Predatory" means: (a) The perpetrator of the crime
11 was a stranger to the victim, as defined in this section; (b) the
12 perpetrator established or promoted a relationship with the victim
13 prior to the offense and the victimization of the victim was a
14 significant reason the perpetrator established or promoted the
15 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
16 volunteer, or other person in authority in any public or private
17 school and the victim was a student of the school under his or her
18 authority or supervision. For purposes of this subsection, "school"
19 does not include home-based instruction as defined in RCW
20 28A.225.010; (ii) a coach, trainer, volunteer, or other person in
21 authority in any recreational activity and the victim was a
22 participant in the activity under his or her authority or
23 supervision; (iii) a pastor, elder, volunteer, or other person in
24 authority in any church or religious organization, and the victim was
25 a member or participant of the organization under his or her
26 authority; or (iv) a teacher, counselor, volunteer, or other person
27 in authority providing home-based instruction and the victim was a
28 student receiving home-based instruction while under his or her
29 authority or supervision. For purposes of this subsection: (A) "Home-
30 based instruction" has the same meaning as defined in RCW
31 28A.225.010; and (B) "teacher, counselor, volunteer, or other person
32 in authority" does not include the parent or legal guardian of the
33 victim.

34 ~~((39))~~ (40) "Private school" means a school regulated under
35 chapter 28A.195 or 28A.205 RCW.

36 ~~((40))~~ (41) "Public school" has the same meaning as in RCW
37 28A.150.010.

38 ~~((41))~~ (42) "Recidivist offense" means a felony offense where a
39 prior conviction of the same offense or other specified offense is an
40 element of the crime including, but not limited to:

1 (a) Assault in the fourth degree where domestic violence is
2 pleaded and proven, RCW 9A.36.041(3);
3 (b) Cyber harassment, RCW 9A.90.120(2)(b)(i);
4 (c) Harassment, RCW 9A.46.020(2)(b)(i);
5 (d) Indecent exposure, RCW 9A.88.010(2)(c);
6 (e) Stalking, RCW 9A.46.110(5)(b)(i) and (iii);
7 (f) Telephone harassment, RCW 9.61.230(2)(a); and
8 (g) Violation of a no-contact or protection order, RCW 7.105.450
9 or former RCW 26.50.110(5).

10 (~~(42)~~) (43) "Repetitive domestic violence offense" means any:

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

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

15 (iii) Domestic violence violation of a protection order under
16 chapter 26.09, 26.26A, or 26.26B RCW or former chapter 26.50 RCW, or
17 violation of a domestic violence protection order under chapter 7.105
18 RCW, that is not a felony offense;

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

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

23 (b) Any federal, out-of-state, tribal court, military, county, or
24 municipal conviction for an offense that under the laws of this state
25 would be classified as a repetitive domestic violence offense under
26 (a) of this subsection.

27 (~~(43)~~) (44) "Restitution" means a specific sum of money ordered
28 by the sentencing court to be paid by the offender to the court over
29 a specified period of time as payment of damages. The sum may include
30 both public and private costs.

31 (~~(44)~~) (45) "Risk assessment" means the application of the risk
32 instrument recommended to the department by the Washington state
33 institute for public policy as having the highest degree of
34 predictive accuracy for assessing an offender's risk of reoffense.

35 (~~(45)~~) (46) "Serious traffic offense" means:

36 (a) (i) Nonfelony driving while under the influence of
37 intoxicating liquor or any drug (RCW 46.61.502) (~~(nonfelony)~~);

38 (ii) Nonfelony actual physical control while under the influence
39 of intoxicating liquor or any drug (RCW 46.61.504) (~~(reckless)~~);

40 (iii) Reckless driving (RCW 46.61.500) (~~(or hit-and-run)~~);

1 (iv) Negligent driving if the conviction is the result of a
2 charge that was originally filed as a violation of RCW 46.61.502 or
3 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
4 46.61.522 while under the influence of intoxicating liquor or any
5 drug (RCW 46.61.5249);

6 (v) Reckless endangerment if the conviction is the result of a
7 charge that was originally filed as a violation of RCW 46.61.502 or
8 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
9 46.61.522 while under the influence of intoxicating liquor or any
10 drug (RCW 9A.36.050); or

11 (vi) Hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

15 (c) This definition applies for the purpose of a personal
16 driver's license only and does not apply to violations related to a
17 commercial motor vehicle under RCW 46.25.090.

18 ~~((46))~~ (47) "Serious violent offense" is a subcategory of
19 violent offense and means:

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

21 (ii) Homicide by abuse;

22 (iii) Murder in the second degree;

23 (iv) Manslaughter in the first degree;

24 (v) Assault in the first degree;

25 (vi) Kidnapping in the first degree;

26 (vii) Rape in the first degree;

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

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

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

33 ~~((47))~~ (48) "Sex offense" means:

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

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

37 (iii) A felony that is a violation of chapter 9.68A RCW other
38 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)~~) (49) "Sexual motivation" means that one of the purposes
17 for which the defendant committed the crime was for the purpose of
18 his or her sexual gratification.

19 (~~(49)~~) (50) "Standard sentence range" means the sentencing
20 court's discretionary range in imposing a nonappealable sentence.

21 (~~(50)~~) (51) "Statutory maximum sentence" means the maximum
22 length of time for which an offender may be confined as punishment
23 for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the
24 statute defining the crime, or other statute defining the maximum
25 penalty for a crime.

26 (~~(51)~~) (52) "Stranger" means that the victim did not know the
27 offender 24 hours before the offense.

28 (~~(52)~~) (53) "Total confinement" means confinement inside the
29 physical boundaries of a facility or institution operated or utilized
30 under contract by the state or any other unit of government for 24
31 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

32 (~~(53)~~) (54) "Transition training" means written and verbal
33 instructions and assistance provided by the department to the
34 offender during the two weeks prior to the offender's successful
35 completion of the work ethic camp program. The transition training
36 shall include instructions in the offender's requirements and
37 obligations during the offender's period of community custody.

38 (~~(54)~~) (55) "Victim" means any person who has sustained
39 emotional, psychological, physical, or financial injury to person or
40 property as a direct result of the crime charged.

1 (~~(55)~~) (56) "Victim of domestic violence" means an intimate
2 partner or household member who has been subjected to the infliction
3 of physical harm or sexual and psychological abuse by an intimate
4 partner or household member as part of a pattern of assaultive,
5 coercive, and controlling behaviors directed at achieving compliance
6 from or control over that intimate partner or household member.
7 Domestic violence includes, but is not limited to, the offenses
8 listed in RCW 10.99.020 and 26.50.010 committed by an intimate
9 partner or household member against a victim who is an intimate
10 partner or household member.

11 (~~(56)~~) (57) "Victim of sex trafficking, prostitution, or
12 commercial sexual abuse of a minor" means a person who has been
13 forced or coerced to perform a commercial sex act including, but not
14 limited to, being a victim of offenses defined in RCW 9A.40.100,
15 9A.88.070, 9.68A.101, and the trafficking victims protection act of
16 2000, 22 U.S.C. Sec. 7101 et seq.; or a person who was induced to
17 perform a commercial sex act when they were less than 18 years of age
18 including but not limited to the offenses defined in chapter 9.68A
19 RCW.

20 (~~(57)~~) (58) "Victim of sexual assault" means any person who is
21 a victim of a sexual assault offense, nonconsensual sexual conduct,
22 or nonconsensual sexual penetration and as a result suffers physical,
23 emotional, financial, or psychological impacts. Sexual assault
24 offenses include, but are not limited to, the offenses defined in
25 chapter 9A.44 RCW.

26 (~~(58)~~) (59) "Violent offense" means:

27 (a) Any of the following felonies:

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

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

32 (iii) Manslaughter in the first degree;

33 (iv) Manslaughter in the second degree;

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

35 (vi) Kidnapping in the second degree;

36 (vii) Arson in the second degree;

37 (viii) Assault in the second degree;

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

39 (x) Extortion in the first degree;

40 (xi) Robbery in the second degree;

1 (xii) Drive-by shooting;

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

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

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

13 (c) 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
15 violent offense under (a) or (b) of this subsection.

16 ~~((+59+))~~ (60) "Work crew" means a program of partial confinement
17 consisting of civic improvement tasks for the benefit of the
18 community that complies with RCW 9.94A.725.

19 ~~((+60+))~~ (61) "Work ethic camp" means an alternative
20 incarceration program as provided in RCW 9.94A.690 designed to reduce
21 recidivism and lower the cost of corrections by requiring offenders
22 to complete a comprehensive array of real-world job and vocational
23 experiences, character-building work ethics training, life management
24 skills development, substance abuse rehabilitation, counseling,
25 literacy training, and basic adult education.

26 ~~((+61+))~~ (62) "Work release" means a program of partial
27 confinement available to offenders who are employed or engaged as a
28 student in a regular course of study at school.

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

31 (1) A sentence that includes a term or terms of confinement
32 totaling more than one year shall be served in a facility or
33 institution operated, or utilized under contract, by the state, or in
34 home detention pursuant to RCW 9.94A.6551 or the graduated reentry
35 program under RCW 9.94A.733. Except as provided in subsection (3) or
36 (5) of this section, a sentence of not more than one year of
37 confinement shall be served in a facility operated, licensed, or
38 utilized under contract, by the county, or if home detention or work

1 crew has been ordered by the court, in the residence of either the
2 offender or a member of the offender's immediate family.

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

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

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

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

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

33 (1) The department shall supervise the following offenders who
34 are sentenced to probation in superior court, pursuant to RCW
35 9.92.060, 9.95.204, or 9.95.210:

36 (a) Offenders convicted of:

37 (i) Sexual misconduct with a minor second degree;

38 (ii) Custodial sexual misconduct second degree;

39 (iii) Communication with a minor for immoral purposes; and

1 (iv) Violation of RCW 9A.44.132(2) (failure to register); and

2 (b) Offenders who have:

3 (i) A current conviction for a repetitive domestic violence
4 offense where domestic violence has been pleaded and proven after
5 August 1, 2011; and

6 (ii) A prior conviction for a repetitive domestic violence
7 offense or domestic violence felony offense where domestic violence
8 has been pleaded and proven after August 1, 2011.

9 (2) Misdemeanor and gross misdemeanor offenders supervised by the
10 department pursuant to this section shall be placed on community
11 custody.

12 (3) The department shall supervise every felony offender
13 sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702
14 whose risk assessment classifies the offender as one who is at a high
15 risk to reoffend.

16 (4) Notwithstanding any other provision of this section, the
17 department shall supervise an offender sentenced to community custody
18 regardless of risk classification if the offender:

19 (a) Has a current conviction for a sex offense or a serious
20 violent offense and was sentenced to a term of community custody
21 pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

22 (b) Has been identified by the department as a dangerous mentally
23 ill offender pursuant to RCW 72.09.370;

24 (c) Has an indeterminate sentence and is subject to parole
25 pursuant to RCW 9.95.017;

26 (d) Has a current conviction for violating RCW 9A.44.132(1)
27 (failure to register) and was sentenced to a term of community
28 custody pursuant to RCW 9.94A.701;

29 (e) (i) Has a current conviction for a domestic violence felony
30 offense where domestic violence has been pleaded and proven after
31 August 1, 2011, and a prior conviction for a repetitive domestic
32 violence offense or domestic violence felony offense where domestic
33 violence was pleaded and proven after August 1, 2011. This subsection

34 (4) (e) (i) applies only to offenses committed prior to July 24, 2015;

35 (ii) Has a current conviction for a domestic violence felony
36 offense where domestic violence was pleaded and proven. The state and
37 its officers, agents, and employees shall not be held criminally or
38 civilly liable for its supervision of an offender under this
39 subsection (4) (e) (ii) unless the state and its officers, agents, and
40 employees acted with gross negligence;

1 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660,
2 9.94A.670, 9.94A.711, (~~(e)~~) 9.94A.695, or section 1 of this act;

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

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

7 (5) The department shall supervise any offender who is released
8 by the indeterminate sentence review board and who was sentenced to
9 community custody or subject to community custody under the terms of
10 release.

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

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

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

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

26 **Sec. 5.** RCW 9.94A.505 and 2022 c 260 s 23 are each amended to
27 read as follows:

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

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

32 (i) Unless another term of confinement applies, a sentence within
33 the standard sentence range established in RCW 9.94A.510 or
34 9.94A.517;

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

36 (iii) RCW 9.94A.570, relating to persistent offenders;

37 (iv) RCW 9.94A.540, relating to mandatory minimum terms;

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

1 (vi) RCW 9.94A.660, relating to the drug offender sentencing
2 alternative;

3 (vii) Section 1 of this act, relating to the drug offender
4 sentencing alternative for driving under the influence;

5 (viii) RCW 9.94A.670, relating to the special sex offender
6 sentencing alternative;

7 ~~((viii))~~ (ix) RCW 9.94A.655, relating to the parenting
8 sentencing alternative;

9 ~~((ix))~~ (x) RCW 9.94A.695, relating to the mental health
10 sentencing alternative;

11 ~~((x))~~ (xi) RCW 9.94A.507, relating to certain sex offenses;

12 ~~((xi))~~ (xii) RCW 9.94A.535, relating to exceptional sentences;

13 ~~((xii))~~ (xiii) RCW 9.94A.589, relating to consecutive and
14 concurrent sentences;

15 ~~((xiii))~~ (xiv) RCW 9.94A.603, relating to felony driving while
16 under the influence of intoxicating liquor or any drug and felony
17 physical control of a vehicle while under the influence of
18 intoxicating liquor or any drug;

19 ~~((xiv))~~ (xv) RCW 9.94A.711, relating to the theft or taking of
20 a motor vehicle.

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

30 (3) If the court imposes a sentence requiring confinement of 30
31 days or less, the court may, in its discretion, specify that the
32 sentence be served on consecutive or intermittent days. A sentence
33 requiring more than 30 days of confinement shall be served on
34 consecutive days. Local jail administrators may schedule court-
35 ordered intermittent sentences as space permits.

36 (4) If a sentence imposed includes payment of a legal financial
37 obligation, it shall be imposed as provided in RCW 9.94A.750,
38 9.94A.753, and 9.94A.760.

39 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
40 court may not impose a sentence providing for a term of confinement

1 or community custody that exceeds the statutory maximum for the crime
2 as provided in chapter 9A.20 RCW.

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

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

11 (a) A violent offense;

12 (b) Any sex offense;

13 (c) Any drug offense;

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

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

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

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

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

20 (8) The court shall order restitution as provided in RCW
21 9.94A.750 and 9.94A.753.

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

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

32 **Sec. 6.** RCW 9.94A.525 and 2023 c 415 s 2 are each amended to
33 read as follows:

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

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

38 (1)(a) A prior conviction is a conviction which exists before the
39 date of sentencing for the offense for which the offender score is

1 being computed. Convictions entered or sentenced on the same date as
2 the conviction for which the offender score is being computed shall
3 be deemed "other current offenses" within the meaning of RCW
4 9.94A.589.

5 (b) For the purposes of this section, adjudications of guilt
6 pursuant to Title 13 RCW which are not murder in the first or second
7 degree or class A felony sex offenses may not be included in the
8 offender score.

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

11 (b) Class B prior felony convictions other than sex offenses
12 shall not be included in the offender score, if since the last date
13 of release from confinement (including full-time residential
14 treatment) pursuant to a felony conviction, if any, or entry of
15 judgment and sentence, the offender had spent (~~ten~~) 10 consecutive
16 years in the community without committing any crime that subsequently
17 results in a conviction.

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

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

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

1 46.61.504(6)) shall always be included in the offender score. All
2 other convictions of the defendant shall be scored according to this
3 section.

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

10 (g) This subsection applies to both prior adult convictions and
11 prior juvenile adjudications.

12 (3) Out-of-state convictions for offenses shall be classified
13 according to the comparable offense definitions and sentences
14 provided by Washington law. Federal convictions for offenses shall be
15 classified according to the comparable offense definitions and
16 sentences provided by Washington law. Neither out-of-state or federal
17 convictions which would have been presumptively adjudicated in
18 juvenile court under Washington law may be included in the offender
19 score unless they are comparable to murder in the first or second
20 degree or a class A felony sex offense. If there is no clearly
21 comparable offense under Washington law or the offense is one that is
22 usually considered subject to exclusive federal jurisdiction, the
23 offense shall be scored as a class C felony equivalent if it was a
24 felony under the relevant federal statute.

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

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

31 (i) Prior offenses which were found, under RCW 9.94A.589(1) (a),
32 to encompass the same criminal conduct, shall be counted as one
33 offense, the offense that yields the highest offender score. The
34 current sentencing court shall determine with respect to other prior
35 adult offenses for which sentences were served concurrently or prior
36 juvenile offenses for which sentences were served consecutively,
37 whether those offenses shall be counted as one offense or as separate
38 offenses using the "same criminal conduct" analysis found in RCW
39 9.94A.589(1) (a), and if the court finds that they shall be counted as
40 one offense, then the offense that yields the highest offender score

1 shall be used. The current sentencing court may presume that such
2 other prior offenses were not the same criminal conduct from
3 sentences imposed on separate dates, or in separate counties or
4 jurisdictions, or in separate complaints, indictments, or
5 informations;

6 (ii) In the case of multiple prior convictions for offenses
7 committed before July 1, 1986, for the purpose of computing the
8 offender score, count all convictions or adjudications served
9 concurrently as one offense. Use the conviction for the offense that
10 yields the highest offender score.

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

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

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

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

33 (9) If the present conviction is for a serious violent offense,
34 count three points for prior adult convictions and juvenile
35 convictions which are scorable under subsection (1)(b) of this
36 section for crimes in this category, two points for each prior adult
37 and scorable juvenile violent conviction (not already counted), and
38 one point for each prior adult nonviolent felony conviction.

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

4 (11) If the present conviction is for a felony traffic offense
5 count two points for each prior conviction for Vehicular Homicide or
6 Vehicular Assault; for each felony offense count one point for each
7 adult prior conviction and 1/2 point for each juvenile prior
8 conviction which is scorable under subsection (1)(b) of this section;
9 for each serious traffic offense, other than those used for an
10 enhancement pursuant to RCW 46.61.520(2), count one point for each
11 adult prior conviction and 1/2 point for each juvenile prior
12 conviction which is scorable under subsection (1)(b) of this section;
13 count one point for each adult prior conviction for operation of a
14 vessel while under the influence of intoxicating liquor or any drug;
15 count one point for a deferred prosecution granted under chapter
16 10.05 RCW for a second or subsequent violation of RCW 46.61.502 or
17 46.61.504, or an equivalent local ordinance.

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

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

38 (14) If the present conviction is for Escape from Community
39 Custody, RCW 72.09.310, count only adult prior escape convictions in
40 the offender score. Count prior escape convictions as one 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 which are scorable under subsection
4 (1)(b) of this section as 1/2 point.

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

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

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 prior sex offense
18 conviction and juvenile prior sex offense conviction which is
19 scorable under subsection (1)(b) of this section, excluding adult
20 prior convictions for failure to register as a sex offender under RCW
21 9A.44.130 or 9A.44.132, which shall count as one point.

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

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

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

20 (c) Count one point for each adult prior conviction for a
21 repetitive domestic violence offense as defined in RCW 9.94A.030,
22 where domestic violence as defined in RCW 9.94A.030, was pleaded and
23 proven after August 1, 2011.

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

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

38 (1)(a) An offender who violates any condition or requirement of a
39 sentence may be sanctioned by the court with up to (~~sixty~~) 60 days'

1 confinement for each violation or by the department with up to
2 (~~thirty~~) 30 days' confinement as provided in RCW 9.94A.737.

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

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

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

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

19 (c) If the offender was sentenced under the drug offender
20 sentencing alternative for driving under the influence set out in
21 section 1 of this act, the offender may be sanctioned in accordance
22 with that section.

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

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

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

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

36 (~~(g)~~) (h) If a sex offender was sentenced pursuant to RCW
37 9.94A.507, the offender may be transferred to a more restrictive
38 confinement status to serve up to the remaining portion of the
39 sentence, less credit for any period actually spent in community
40 custody or in detention awaiting disposition of an alleged violation.

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

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

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

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

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

18 The procedure for imposing sanctions for violations of sentence
19 conditions or requirements is as follows:

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

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

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

30 ~~((3))~~ (4) If the offender was sentenced under the parenting
31 sentencing alternative, any sanctions shall be imposed by the
32 department or by the court pursuant to RCW 9.94A.655.

33 ~~((4))~~ (5) If the offender was sentenced under the mental health
34 sentencing alternative, any sanctions shall be imposed by the
35 department or the court pursuant to RCW 9.94A.695.

36 ~~((5))~~ (6) If a sex offender was sentenced pursuant to RCW
37 9.94A.507, any sanctions shall be imposed by the board pursuant to
38 RCW 9.95.435.

1 (~~(6)~~) (7) If the offender was released pursuant to RCW
2 9.94A.730, any sanctions shall be imposed by the board pursuant to
3 RCW 9.95.435.

4 (~~(7)~~) (8) If the offender was sentenced pursuant to RCW
5 10.95.030(~~(3)~~) (2) or 10.95.035, any sanctions shall be imposed by
6 the board pursuant to RCW 9.95.435.

7 (~~(8)~~) (9) In any other case, if the offender is being
8 supervised by the department, any sanctions shall be imposed by the
9 department pursuant to RCW 9.94A.737. If a probationer is being
10 supervised by the department pursuant to RCW 9.92.060, 9.95.204, or
11 9.95.210, upon receipt of a violation hearing report from the
12 department, the court retains any authority that those statutes
13 provide to respond to a probationer's violation of conditions.

14 (~~(9)~~) (10) If the offender is not being supervised by the
15 department, any sanctions shall be imposed by the court pursuant to
16 RCW 9.94A.6333.

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

19 (1) An offender is eligible for the special drug offender
20 sentencing alternative if:

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

24 (b) The offender is convicted of a felony that is not a felony
25 driving while under the influence of intoxicating liquor or any drug
26 under RCW 46.61.502(6) or felony physical control of a vehicle while
27 under the influence of intoxicating liquor or any drug under RCW
28 46.61.504(6);

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

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

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

38 (ii) Any other violent offense within (~~(ten)~~) 10 years before
39 conviction of the current offense;

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

7 (f) The offender has not been found by the United States attorney
8 general to be subject to a deportation detainer or order and does not
9 become subject to a deportation order during the period of the
10 sentence; and

11 (g) The offender has not received a drug offender sentencing
12 alternative under this section, or a drug offender sentencing
13 alternative for driving under the influence under section 1 of this
14 act, more than once in the prior (~~ten~~) 10 years before the current
15 offense.

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

18 (3) If the sentencing court determines that the offender is
19 eligible for an alternative sentence under this section and that the
20 alternative sentence is appropriate, the court shall waive imposition
21 of a sentence within the standard sentence range and impose a
22 sentence consisting of either a prison-based alternative under RCW
23 9.94A.662 or a residential substance use disorder treatment-based
24 alternative under RCW 9.94A.664. The residential substance use
25 disorder treatment-based alternative is only available if the
26 midpoint of the standard sentence range is (~~twenty-six~~) 26 months
27 or less.

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

32 (b) To assist the court in making its determination in domestic
33 violence cases, the court shall order the department to complete a
34 presentence investigation and a chemical dependency screening report
35 as provided in RCW 9.94A.500, unless otherwise specifically waived by
36 the court.

37 (5) If the court is considering imposing a sentence under the
38 residential substance use disorder treatment-based alternative, the
39 court may order an examination of the offender by the department. The
40 examination must be performed by an agency licensed or certified by

1 the department of health to provide substance use disorder services.

2 The examination shall, at a minimum, address the following issues:

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

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

6 ~~(-e-))~~ Whether effective treatment for the offender's substance
7 use disorder is available from a provider that has been licensed or
8 certified by the department of health, and where applicable, whether
9 effective domestic violence perpetrator treatment is available from a
10 state-certified domestic violence treatment provider pursuant to RCW
11 43.20A.735; and

12 ~~((d))~~ (c) Whether the offender and the community will benefit
13 from the use of the alternative.

14 (6) When a court imposes a sentence of community custody under
15 this section:

16 (a) The court may impose conditions as provided in RCW 9.94A.703
17 and may impose other affirmative conditions as the court considers
18 appropriate. In addition, an offender may be required to pay ~~((thirty~~
19 ~~dollars))~~ \$30 per month while on community custody to offset the cost
20 of monitoring for alcohol or controlled substances, or in cases of
21 domestic violence for monitoring with global positioning system
22 technology for compliance with a no-contact order.

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

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

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

32 (c) The court may order the offender to serve a term of total
33 confinement within the standard sentence range of the offender's
34 current offense at any time during the period of community custody if
35 the offender violates the conditions or requirements of the sentence
36 or if the offender is failing to make satisfactory progress in
37 treatment.

38 (d) An offender ordered to serve a term of total confinement
39 under (c) of this subsection shall receive credit for time previously
40 served in total or partial confinement and inpatient treatment under

1 this section, and shall receive (~~fifty~~) 50 percent credit for time
2 previously served in community custody under this section.

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

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

11 (10) The Washington state institute for public policy shall
12 submit a report to the governor and the appropriate committees of the
13 legislature by November 1, 2022, analyzing the effectiveness of the
14 drug offender sentencing alternative in reducing recidivism among
15 various offender populations. An additional report is due November 1,
16 2028, and every five years thereafter. The Washington state institute
17 for public policy may coordinate with the department and the caseload
18 forecast council in tracking data and preparing the report.

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

21 (1) If an offender is sentenced to the custody of the department
22 for one of the following crimes, the court shall, in addition to the
23 other terms of the sentence, sentence the offender to community
24 custody for three years:

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

26 (b) A serious violent offense.

27 (2) A court shall, in addition to the other terms of the
28 sentence, sentence an offender to community custody for (~~eighteen~~)
29 18 months when the court sentences the person to the custody of the
30 department for a violent offense that is not considered a serious
31 violent offense.

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

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

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

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

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

6 (4) If an offender is sentenced under the drug offender
7 sentencing alternative, the court shall impose community custody as
8 provided in:

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

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

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

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

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

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

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

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

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

32 (10) The term of community custody specified by this section
33 shall be reduced by the court whenever an offender's standard
34 sentence range term of confinement in combination with the term of
35 community custody exceeds the statutory maximum for the crime as
36 provided in RCW 9A.20.021.

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

1 (1) In a court of limited jurisdiction a person charged with a
2 misdemeanor or gross misdemeanor may petition the court to be
3 considered for a deferred prosecution (~~(program)~~). The petition shall
4 be filed with the court at least seven days before the date set for
5 trial but, upon a written motion and affidavit establishing good
6 cause for the delay and failure to comply with this section, the
7 court may waive this requirement subject to the defendant's
8 reimbursement to the court of the witness fees and expenses due for
9 subpoenaed witnesses who have appeared on the date set for trial. A
10 person charged with a misdemeanor or gross misdemeanor shall not be
11 eligible for a deferred prosecution unless the court makes specific
12 findings pursuant to RCW 10.05.020.

13 (2) A person charged with a (~~(traffic infraction, misdemeanor, or~~
14 ~~gross misdemeanor under Title 46 RCW, or a misdemeanor or gross~~
15 ~~misdemeanor domestic violence offense,)) violation of RCW 46.61.502
16 or 46.61.504 shall not be eligible for a deferred prosecution
17 (~~(program)~~) unless the court makes specific findings pursuant to RCW
18 10.05.020. A person (~~(may not participate in a deferred prosecution~~
19 ~~program for a traffic infraction, misdemeanor, or gross misdemeanor~~
20 ~~under Title 46 RCW if he or she has participated in a deferred~~
21 ~~prosecution program for a prior traffic infraction, misdemeanor, or~~
22 ~~gross misdemeanor under Title 46 RCW, and a person may not~~
23 ~~participate in a deferred prosecution program for a misdemeanor or~~
24 ~~gross misdemeanor domestic violence offense if he or she has~~
25 ~~participated in a deferred prosecution program for a prior domestic~~
26 ~~violence offense)) who petitions the court for the deferred
27 prosecution and participates in the deferred prosecution under this
28 chapter for his or her first violation of RCW 46.61.502 or 46.61.504
29 is eligible to petition the court for a second deferred prosecution
30 for the person's next violation of RCW 46.61.502 or 46.61.504 when
31 the person has no other prior convictions defined as a "prior
32 offense" under RCW 46.61.5055. The person's first deferred
33 prosecution shall not be considered a prior offense for the purpose
34 of granting a second deferred prosecution. Separate offenses
35 committed more than seven days apart may not be consolidated in a
36 single program.~~~~

37 (3) A person charged with a misdemeanor or a gross misdemeanor
38 under chapter 9A.42 RCW shall not be eligible for a deferred
39 prosecution (~~(program)~~) unless the court makes specific findings

1 pursuant to RCW 10.05.020. Such person shall not be eligible for a
2 deferred prosecution (~~(program)~~) more than once.

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

6 (5) A person may petition a court for a second deferred
7 prosecution while still under the jurisdiction of a court for the
8 person's first deferred prosecution; however, the first deferred
9 prosecution shall be revoked prior to the entry of the second
10 deferred prosecution.

11 (6) A person may not be on two deferred prosecutions at the same
12 time unless separate offenses are committed within seven days of each
13 other and the person petitions to consolidate each offense into a
14 single deferred prosecution.

15 (7) A person charged with a misdemeanor or gross misdemeanor for
16 a violation of RCW 46.61.502 or 46.61.504 who does not participate in
17 a deferred prosecution for his or her first violation of RCW
18 46.61.502 or 46.61.504 remains eligible to petition the court for a
19 deferred prosecution pursuant to the terms of this section and
20 specific findings made under RCW 10.05.020. Such person shall not be
21 eligible for a deferred prosecution more than once.

22 **Sec. 12.** RCW 10.05.015 and 2019 c 263 s 702 are each amended to
23 read as follows:

24 At the time of arraignment a person charged with a violation of
25 RCW 46.61.502 or 46.61.504 or a misdemeanor or gross misdemeanor
26 domestic violence offense may be given a statement by the court that
27 explains the availability, operation, and effects of the deferred
28 prosecution (~~(program)~~).

29 **Sec. 13.** RCW 10.05.020 and 2021 c 215 s 115 are each amended to
30 read as follows:

31 (1) Except as provided in subsection (2) of this section, the
32 petitioner shall allege under oath in the petition that the wrongful
33 conduct charged is the result of or caused by substance use disorders
34 or mental (~~(problems)~~) health disorders or domestic violence behavior
35 problems for which the person is in need of treatment and unless
36 treated the probability of future recurrence is great, along with a
37 statement that the person agrees to pay the cost of a diagnosis and
38 treatment of the alleged problem or problems if financially able to

1 do so. The petition shall also contain a case history and written
2 assessment prepared by an approved (~~substance use disorder treatment~~
3 ~~program~~) behavioral health agency, approved for mental health
4 services or substance use disorder services, as designated in chapter
5 71.24 RCW (~~if the petition alleges a substance use disorder, by an~~
6 ~~approved mental health center if the petition alleges a mental~~
7 ~~problem,~~) or by a state-certified domestic violence treatment
8 provider pursuant to RCW 43.20A.735 (~~if the petition alleges a~~
9 ~~domestic violence behavior problem~~).

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

30 (3) Before entry of an order deferring prosecution, a petitioner
31 shall be advised of his or her rights as an accused and execute, as a
32 condition of receiving treatment, a statement that contains: (a) An
33 acknowledgment of his or her rights; (b) an acknowledgment and waiver
34 of the right to testify, the right to a speedy trial, the right to
35 call witnesses to testify, the right to present evidence in his or
36 her defense, and the right to a jury trial; (c) a stipulation to the
37 admissibility and sufficiency of the facts contained in the written
38 police report; and (d) an acknowledgment that the statement will be
39 entered and used to support a finding of guilty if the court finds
40 cause to revoke the order granting deferred prosecution. The

1 petitioner shall also be advised that he or she may, if he or she
2 proceeds to trial and is found guilty, be allowed to seek suspension
3 of some or all of the fines and incarceration that may be ordered
4 upon the condition that he or she seek treatment and, further, that
5 he or she may seek treatment from public and private agencies at any
6 time without regard to whether or not he or she is found guilty of
7 the offense charged. He or she shall also be advised that the court
8 will not accept a petition for deferred prosecution from a person
9 who: (i) Sincerely believes that he or she is innocent of the
10 charges; (ii) sincerely believes that he or she does not, in fact,
11 suffer from ~~((alcoholism, drug addiction, mental problems))~~ a
12 substance use disorder, a mental health disorder, or domestic
13 violence behavior problems; or (iii) in the case of a petitioner
14 charged under chapter 9A.42 RCW, sincerely believes that he or she
15 does not need child welfare services.

16 (4) Before entering an order deferring prosecution, the court
17 shall make specific findings that: (a) The petitioner has stipulated
18 to the admissibility and sufficiency of the facts as contained in the
19 written police report; (b) the petitioner has acknowledged the
20 admissibility of the stipulated facts in any criminal hearing on the
21 underlying offense or offenses held subsequent to revocation of the
22 order granting deferred prosecution; (c) the petitioner has
23 acknowledged and waived the right to testify, the right to a speedy
24 trial, the right to call witnesses to testify, the right to present
25 evidence in his or her defense, and the right to a jury trial; and
26 (d) the petitioner's statements were made knowingly and voluntarily.
27 Such findings shall be included in the order granting deferred
28 prosecution.

29 **Sec. 14.** RCW 10.05.030 and 2023 c 102 s 17 are each amended to
30 read as follows:

31 The arraigning judge upon consideration of the petition may
32 continue the arraignment and refer such person for a diagnostic
33 investigation and evaluation to:

34 (1) ~~((An approved substance use disorder treatment program))~~ A
35 state-approved behavioral health agency, approved for substance use
36 disorder services, as designated in chapter 71.24 RCW if the petition
37 alleges a substance use disorder;

38 (2) ~~((An approved mental health center))~~ A state-approved
39 behavioral health agency, approved for mental health services, as

1 designated in chapter 71.24 RCW, if the petition alleges a mental
2 (~~problem~~) health disorder;

3 (3) The department of (~~social and health services~~) children,
4 youth, and families if the petition is brought under RCW
5 10.05.020(2); or

6 (4) An approved state-certified domestic violence treatment
7 provider pursuant to RCW 43.20A.735 if the petition alleges a
8 domestic violence behavior problem.

9 **Sec. 15.** RCW 10.05.040 and 2018 c 201 s 9005 are each amended to
10 read as follows:

11 The program to which such person is referred, or the department
12 of (~~social and health services~~) children, youth, and families if
13 the petition is brought under RCW 10.05.020(2), shall conduct an
14 investigation and examination to determine:

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

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

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

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

22 (5) Whether the person is (~~amenable~~): (a) Amenable to treatment
23 as demonstrated by (i) completion of residential treatment; (ii)
24 completion of a minimum of 18 hours of intensive outpatient
25 treatment, for substance use disorder petitions; (iii) completion of
26 a minimum of six mental health sessions, for mental health disorder
27 petitions; or (iv) completion of a minimum of six domestic violence
28 treatment sessions for domestic violence petitions; or (b) willing to
29 cooperate with child welfare services. The requirement for completing
30 a minimum number of sessions may be waived if the court finds good
31 cause.

32 **Sec. 16.** RCW 10.05.050 and 2018 c 201 s 9006 are each amended to
33 read as follows:

34 (1) The program, or the department of (~~social and health~~
35 ~~services~~) children, youth, and families if the petition is brought
36 under RCW 10.05.020(2), shall make a written report to the court
37 stating its findings and recommendations after the examination
38 required by RCW 10.05.040. If its findings and recommendations

1 support treatment or the implementation of a child welfare service
2 plan, it shall also recommend a treatment or service plan setting
3 out:

- 4 (a) The type;
- 5 (b) Nature;
- 6 (c) Length;
- 7 (d) A treatment or service time schedule; and
- 8 (e) Approximate cost of the treatment or child welfare services.

9 (2) In the case of a child welfare service plan, the plan shall
10 be designed in a manner so that a parent who successfully completes
11 the plan will not be likely to withhold the basic necessities of life
12 from his or her child.

13 (3) The report with the treatment or service plan shall be filed
14 with the court and a copy given to the petitioner and petitioner's
15 counsel. A copy of the treatment or service plan shall be given to
16 the prosecutor by petitioner's counsel at the request of the
17 prosecutor. The evaluation facility, or the department of (~~social
18 and health services~~) children, youth, and families if the petition
19 is brought under RCW 10.05.020(2), making the written report shall
20 append to the report a commitment by the treatment program or the
21 department of (~~social and health services~~) children, youth, and
22 families that it will provide the treatment or child welfare services
23 in accordance with this chapter. The facility or the service provider
24 shall agree to provide the court with a statement (~~every three
25 months for the first year and every six months for the second year~~)
26 monthly regarding (a) the petitioner's cooperation with the treatment
27 or child welfare service plan proposed and (b) the petitioner's
28 progress or failure in treatment or child welfare services. These
29 statements shall be made as a declaration by the person who is
30 personally responsible for providing the treatment or services.

31 **Sec. 17.** RCW 10.05.060 and 2009 c 135 s 1 are each amended to
32 read as follows:

33 If the report recommends treatment, the court shall examine the
34 treatment plan. If it approves the plan and the petitioner agrees to
35 comply with its terms and conditions and agrees to pay the cost
36 thereof, if able to do so, or arrange for the treatment, an entry
37 shall be made upon the person's court docket showing that the person
38 has been accepted for deferred prosecution. A copy of the treatment
39 plan shall be filed with the court. If the charge be one that an

1 abstract of the docket showing the charge, the date of the violation
2 for which the charge was made, and the date of petitioner's
3 acceptance is required to be sent to the department of licensing, an
4 abstract shall be sent, and the department of licensing shall make an
5 entry of the charge and of the petitioner's acceptance for deferred
6 prosecution on the department's driving record of the petitioner. The
7 entry is not a conviction for purposes of Title 46 RCW. Upon receipt
8 of the abstract of the docket, the department shall issue notice that
9 45 days after receipt, the petitioner must apply for a probationary
10 license in accordance with RCW 46.20.355, and the petitioner's
11 driver's license shall be on probationary status for five years from
12 the date of the violation that gave rise to the charge. The
13 department shall maintain the record (~~((for ten years from date of~~
14 ~~entry of the order granting deferred prosecution))~~ consistent with
15 the requirements of RCW 46.01.260.

16 **Sec. 18.** RCW 10.05.090 and 2010 c 269 s 10 are each amended to
17 read as follows:

18 If a petitioner, who has been accepted for a deferred
19 prosecution, fails or neglects to carry out and fulfill any term or
20 condition of the petitioner's treatment plan or any term or condition
21 imposed in connection with the installation of an interlock or other
22 device under RCW 46.20.720, the facility, center, institution, or
23 agency administering the treatment or the entity administering the
24 use of the device, shall immediately report such breach to the court,
25 the prosecutor, and the petitioner or petitioner's attorney of
26 record, together with its recommendation. The court upon receiving
27 such a report shall hold a hearing to determine whether the
28 petitioner should be removed from the deferred prosecution
29 (~~(program)~~). At the hearing, evidence shall be taken of the
30 petitioner's alleged failure to comply with the treatment plan or
31 device installation and the petitioner shall have the right to
32 present evidence on his or her own behalf. The court shall either
33 order that the petitioner continue on the treatment plan or be
34 removed from deferred prosecution. If removed from deferred
35 prosecution, the court shall enter judgment pursuant to RCW 10.05.020
36 and, if the charge for which the deferred prosecution was granted was
37 a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify
38 the department of licensing of the removal and entry of judgment.

1 **Sec. 19.** RCW 10.05.100 and 1998 c 208 s 2 are each amended to
2 read as follows:

3 If a petitioner is subsequently convicted of a similar offense
4 that was committed while the petitioner was in a deferred prosecution
5 ((program)), upon notice the court shall remove the petitioner's
6 docket from the deferred prosecution file and the court shall enter
7 judgment pursuant to RCW 10.05.020.

8 **Sec. 20.** RCW 10.05.120 and 2019 c 263 s 705 are each amended to
9 read as follows:

10 (1) Three years after receiving proof of successful completion of
11 the ((two-year)) approved treatment ((program)) plan, and following
12 proof to the court that the petitioner has complied with the
13 conditions imposed by the court following successful completion of
14 the ((two-year)) approved treatment ((program)) plan, but not before
15 five years following entry of the order of deferred prosecution
16 pursuant to a petition brought under RCW 10.05.020(1), the court
17 shall dismiss the charges pending against the petitioner.

18 (2) When a deferred prosecution is ordered pursuant to a petition
19 brought under RCW 10.05.020(2) and the court has received proof that
20 the petitioner has successfully completed the child welfare service
21 plan, or the plan has been terminated because the alleged victim has
22 reached his or her majority and there are no other minor children in
23 the home, the court shall dismiss the charges pending against the
24 petitioner: PROVIDED, That in any case where the petitioner's
25 parental rights have been terminated with regard to the alleged
26 victim due to abuse or neglect that occurred during the pendency of
27 the deferred prosecution, the termination shall be per se evidence
28 that the petitioner did not successfully complete the child welfare
29 service plan.

30 ~~((3) When a deferred prosecution is ordered for a petition
31 brought under RCW 10.05.020(1) involving a domestic violence behavior
32 problem and the court has received proof that the petitioner has
33 successfully completed the domestic violence treatment plan, the
34 court shall dismiss the charges pending against the petitioner.))~~

35 **Sec. 21.** RCW 10.05.140 and 2019 c 263 s 706 are each amended to
36 read as follows:

37 (1) As a condition of granting a deferred prosecution petition
38 for a violation of RCW 46.61.502 or 46.61.504, the court shall order

1 that the petitioner shall not operate a motor vehicle upon the public
2 highways without a valid operator's license and proof of liability
3 insurance. The amount of liability insurance shall be established by
4 the court at not less than that established by RCW 46.29.490. As a
5 condition of granting a deferred prosecution petition on any
6 (~~alcohol-dependency~~) substance use disorder-based case, the court
7 shall also order the installation of an ignition interlock under RCW
8 46.20.720. The required periods of use of the interlock shall be not
9 less than the periods provided for in RCW 46.20.720. As a condition
10 of granting a deferred prosecution petition, the court may order the
11 petitioner to make restitution and to pay costs as defined in RCW
12 10.01.160. To help ensure continued sobriety and reduce the
13 likelihood of reoffense, the court may order reasonable conditions
14 during the period of the deferred prosecution including, but not
15 limited to, attendance at self-help recovery support groups for
16 (~~alcoholism or drugs~~) substance use disorder, complete abstinence
17 from alcohol and all nonprescribed mind-altering drugs, periodic
18 urinalysis or breath analysis, and maintaining law-abiding behavior.
19 The court may terminate the deferred prosecution (~~program~~) upon
20 violation of the deferred prosecution order.

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

23 (a) The court shall order the petitioner not to possess firearms
24 and order the petitioner to surrender firearms under RCW 9.41.800;
25 and

26 (b) The court may order the petitioner to make restitution and to
27 pay costs as defined in RCW 10.01.160. In addition, to help ensure
28 continued sobriety and reduce the likelihood of reoffense in co-
29 occurring domestic violence and substance (~~abuse~~) use disorder or
30 mental health disorder cases, the court may order reasonable
31 conditions during the period of the deferred prosecution including,
32 but not limited to, attendance at self-help recovery support groups
33 for (~~alcoholism or drugs~~) substance use disorder, complete
34 abstinence from alcohol and all nonprescribed mind-altering drugs,
35 periodic urinalysis or breath analysis, and maintaining law-abiding
36 behavior. The court may terminate the deferred prosecution
37 (~~program~~) upon violation of the deferred prosecution order.

38 **Sec. 22.** RCW 10.05.150 and 2016 sp.s. c 29 s 527 are each
39 amended to read as follows:

1 (1) A deferred prosecution ((program)) for ((alcoholism)) either
2 substance use disorder or mental health co-occurring disorder shall
3 be for a two-year period and shall include, but not be limited to,
4 the following requirements:

5 ((1)) (a) Total abstinence from alcohol and all other
6 nonprescribed mind-altering drugs;

7 ((2) Participation in an intensive inpatient or intensive
8 outpatient program in a state-approved substance use disorder
9 treatment program;

10 (3) Participation in a minimum of two meetings per week of an
11 alcoholism self-help recovery support group, as determined by the
12 assessing agency, for the duration of the treatment program;

13 (4) Participation in an alcoholism self-help recovery support
14 group, as determined by the assessing agency, from the date of court
15 approval of the plan to entry into intensive treatment;

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

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

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

25 (8)) (b) All treatment within the purview of this section shall
26 occur within or be approved by a state-approved ((substance use
27 disorder treatment program)) behavioral health agency as described in
28 chapter ((70.96A)) 71.24 RCW;

29 ((9)) (c) Signature of the petitioner agreeing to the terms and
30 conditions of the treatment program;

31 (d) Periodic, random urinalysis or breath analysis;

32 (e) If the petitioner fails to remain abstinent, a full substance
33 use disorder reassessment and recommended treatment;

34 (f) No less than weekly approved outpatient counseling, whether
35 group or individual, for a minimum of six months following the
36 intensive phase of treatment;

37 (g) No less than monthly outpatient contact, whether group or
38 individual, for the remainder of the two-year deferred prosecution
39 period; and

1 (h) The decision to include the use of prescribed drugs,
2 including disulfiram, as a condition of treatment shall be reserved
3 to the treating facility and the petitioner's physician.

4 (2) A deferred prosecution for substance use disorder shall
5 include the following requirements:

6 (a) Completion of an intensive outpatient treatment program or
7 residential inpatient treatment program, depending on the severity of
8 the diagnosis; and

9 (b) Participation in a minimum of two meetings per week of a
10 substance use disorder self-help recovery support group, as
11 determined by the assessing agency, for the duration of the treatment
12 program.

13 (3) A deferred prosecution for mental health co-occurring
14 disorder shall include the following requirements:

15 (a) Completion of the requirements described in subsection (2) of
16 this section, or completion of an outpatient program as determined by
17 the petitioner's diagnostic evaluation; and

18 (b) Completion of individual or group mental health services.

19 **Sec. 23.** RCW 10.05.155 and 2019 c 263 s 708 are each amended to
20 read as follows:

21 A deferred prosecution ((program)) for domestic violence
22 behavior, or domestic violence co-occurring with substance abuse or
23 mental health, must include, but is not limited to, the following
24 requirements:

25 (1) Completion of a risk assessment;

26 (2) Participation in the level of treatment recommended by the
27 program as outlined in the current treatment plan;

28 (3) Compliance with the contract for treatment;

29 (4) Participation in any ancillary or co-occurring treatments
30 that are determined to be necessary for the successful completion of
31 the domestic violence intervention treatment including, but not
32 limited to, mental health or substance use treatment;

33 (5) Domestic violence intervention treatment within the purview
34 of this section to be completed with a state-certified domestic
35 violence intervention treatment program;

36 (6) Signature of the petitioner agreeing to the terms and
37 conditions of the treatment program;

1 (7) Proof of compliance with any active order to surrender
2 weapons issued in this program or related civil protection orders or
3 no-contact orders.

4 NEW SECTION. **Sec. 24.** A new section is added to chapter 10.05
5 RCW to read as follows:

6 A deferred prosecution for mental health disorder where the
7 wrongful conduct did not involve, and was not caused by, alcohol,
8 drugs, or a substance use disorder, shall include treatment
9 recommended by a state-approved mental health provider.

10 **Sec. 25.** RCW 10.05.170 and 1991 c 247 s 2 are each amended to
11 read as follows:

12 As a condition of granting deferred prosecution, the court may
13 order supervision of the petitioner during the period of deferral and
14 may levy a monthly assessment upon the petitioner as provided in RCW
15 10.64.120. In a jurisdiction with a probation department, the court
16 may appoint the probation department to supervise the petitioner. In
17 a jurisdiction without a probation department, the court may appoint
18 an appropriate person or agency to supervise the petitioner. A
19 supervisor appointed under this section shall be required to do at
20 least the following:

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

25 (2) At least once every month make contact with the petitioner
26 ~~((or with any agency to which the petitioner has been directed for~~
27 ~~treatment as a part of the deferral))~~ until treatment is completed;

28 (3) Review the petitioner's criminal history at a minimum of
29 every 90 days until the end of the deferral period; and

30 (4) Report known violations of supervision or law and
31 noncompliance with conditions of the deferred prosecution to the
32 court within five business days or as soon as practicable.

33 **Sec. 26.** RCW 46.20.355 and 2020 c 330 s 8 are each amended to
34 read as follows:

35 (1) Upon receipt of an abstract indicating a deferred prosecution
36 has been granted under RCW 10.05.060, or upon receipt of a notice of
37 conviction of RCW 46.61.502 or 46.61.504, the department of licensing

1 shall issue notice that 45 days after receipt, the person must apply
2 for a probationary license, and order the person to surrender any
3 nonprobationary Washington state driver's license that may be in his
4 or her possession. (~~The department shall revoke the license, permit,~~
5 ~~or privilege to drive of any person who fails to surrender it as~~
6 ~~required by this section for one year, unless the license has been~~
7 ~~previously surrendered to the department, a law enforcement officer,~~
8 ~~or a court, or the person has completed an affidavit of lost, stolen,~~
9 ~~destroyed, or previously surrendered license, such revocation to take~~
10 ~~effect thirty days after notice is given of the requirement for~~
11 ~~license surrender.))~~

12 (2) The department shall place a person's driving privilege in
13 probationary status as required by RCW 10.05.060 or 46.61.5055 for a
14 period of five years from the date the probationary status is
15 required to go into effect.

16 (3) Following receipt of an abstract indicating a deferred
17 prosecution has been granted under RCW 10.05.060, or upon
18 reinstatement or reissuance of a driver's license suspended or
19 revoked as the result of a conviction of RCW 46.61.502 or 46.61.504,
20 the department shall require the person to obtain a probationary
21 license in order to operate a motor vehicle in the state of
22 Washington, except as otherwise exempt under RCW 46.20.025. The
23 department shall not issue the probationary license unless the person
24 is otherwise qualified for licensing, and the person must renew the
25 probationary license on the same cycle as the person's regular
26 license would have been renewed until the expiration of the five-year
27 probationary status period imposed under subsection (2) of this
28 section.

29 (4) If a person is eligible for full credit under RCW
30 46.61.5055(9)(b)(ii) and, by the date specified in the notice issued
31 under RCW 46.20.245, has completed the requirements under RCW
32 46.20.311 and paid the fee under subsection (5) of this section, the
33 department shall issue a probationary license on the date specified
34 in the notice with no further action required of the person.

35 (5) For each original issue or renewal of a probationary license
36 under this section, the department shall charge a fee of (~~fifty~~
37 ~~dollars~~) \$50 in addition to any other licensing fees required.
38 Except for when renewing a probationary license, the department shall
39 waive the requirement to obtain an additional probationary license
40 and the (~~fifty dollar~~) \$50 fee if the person has a probationary

1 license in his or her possession at the time a new probationary
2 license is required.

3 (6) A probationary license shall enable the department and law
4 enforcement personnel to determine that the person is on probationary
5 status. The fact that a person's driving privilege is in probationary
6 status or that the person has been issued a probationary license
7 shall not be a part of the person's record that is available to
8 insurance companies.

9 **Sec. 27.** RCW 46.20.385 and 2020 c 330 s 9 are each amended to
10 read as follows:

11 (1)(a) Any person licensed under this chapter or who has a valid
12 driver's license from another state, who is convicted of: (i) A
13 violation of RCW 46.61.502 or 46.61.504 or an equivalent local or
14 out-of-state statute or ordinance, or (ii) a violation of RCW
15 46.61.520(1)(a) or an equivalent local or out-of-state statute or
16 ordinance, or (iii) a conviction for a violation of RCW 46.61.520(1)
17 (b) or (c) if the conviction is the result of a charge that was
18 originally filed as a violation of RCW 46.61.520(1)(a), or (iv) RCW
19 46.61.522(1)(b) or an equivalent local or out-of-state statute or
20 ordinance, or (v) RCW 46.61.522(1) (a) or (c) if the conviction is
21 the result of a charge that was originally filed as a violation of
22 RCW 46.61.522(1)(b) committed while under the influence of
23 intoxicating liquor or any drug, or (vi) who has had or will have his
24 or her license suspended, revoked, or denied under RCW 46.20.3101, or
25 has had his or her license suspended, revoked, or denied under RCW
26 46.61.5055(11)(c)(i), or who is otherwise permitted under subsection
27 (8) of this section, may submit to the department an application for
28 an ignition interlock driver's license. The department, upon receipt
29 of the prescribed fee and upon determining that the petitioner is
30 eligible to receive the license, may issue an ignition interlock
31 driver's license.

32 (b) A person may apply for an ignition interlock driver's license
33 anytime, including immediately after receiving the notices under RCW
34 46.20.308 or after his or her license is suspended, revoked, or
35 denied.

36 (c) An applicant under this subsection shall provide proof to the
37 satisfaction of the department that a functioning ignition interlock
38 device has been installed on all vehicles operated by the person.

1 (i) The department shall require the person to maintain the
2 device on all vehicles operated by the person and shall restrict the
3 person to operating only vehicles equipped with the device, for the
4 remainder of the period of suspension, revocation, or denial, unless
5 otherwise permitted under RCW 46.20.720(6).

6 (ii) Subject to any periodic renewal requirements established by
7 the department under this section and subject to any applicable
8 compliance requirements under this chapter or other law, an ignition
9 interlock driver's license granted upon a suspension or revocation
10 under RCW 46.61.5055 or 46.20.3101 extends through the remaining
11 portion of any concurrent or consecutive suspension or revocation
12 that may be imposed as the result of administrative action and
13 criminal conviction arising out of the same incident.

14 (2) An applicant for an ignition interlock driver's license who
15 qualifies under subsection (1) of this section is eligible to receive
16 a license only if the applicant files satisfactory proof of financial
17 responsibility under chapter 46.29 RCW.

18 (3) Upon receipt of evidence that a holder of an ignition
19 interlock driver's license granted under this subsection no longer
20 has a functioning ignition interlock device installed on all vehicles
21 operated by the driver, the director shall give written notice by
22 first-class mail to the driver that the ignition interlock driver's
23 license shall be canceled. If at any time before the cancellation
24 goes into effect the driver submits evidence that a functioning
25 ignition interlock device has been installed on all vehicles operated
26 by the driver, the cancellation shall be stayed. If the cancellation
27 becomes effective, the driver may obtain, at no additional charge, a
28 new ignition interlock driver's license upon submittal of evidence
29 that a functioning ignition interlock device has been installed on
30 all vehicles operated by the driver.

31 (4) A person aggrieved by the decision of the department on the
32 application for an ignition interlock driver's license may request a
33 hearing as provided by rule of the department.

34 (5) The director shall cancel an ignition interlock driver's
35 license after receiving notice that the holder thereof has been
36 convicted of operating a motor vehicle in violation of its
37 restrictions, no longer meets the eligibility requirements, or has
38 been convicted of or found to have committed a separate offense or
39 any other act or omission that under this chapter would warrant
40 suspension or revocation of a regular driver's license. The

1 department must give notice of the cancellation as provided under RCW
2 46.20.245. A person whose ignition interlock driver's license has
3 been canceled under this section may reapply for a new ignition
4 interlock driver's license if he or she is otherwise qualified under
5 this section and pays the fee required under RCW 46.20.380.

6 (6) (a) Unless costs are waived by the ignition interlock company
7 or the person is indigent under RCW 10.101.010, the applicant shall
8 pay the cost of installing, removing, and leasing the ignition
9 interlock device and shall pay an additional fee of twenty-one
10 dollars per month. Payments shall be made directly to the ignition
11 interlock company. The company shall remit the additional fee to the
12 department, except that the company may retain (~~twenty-five~~) 25
13 cents per month of the additional fee to cover the expenses
14 associated with administering the fee.

15 (b) The department shall deposit the proceeds of the twenty-one
16 dollar fee into the ignition interlock device revolving account.
17 Expenditures from the account may be used only to administer and
18 operate the ignition interlock device revolving account program. The
19 department shall adopt rules to provide monetary assistance according
20 to greatest need and when funds are available.

21 (7) The department shall adopt rules to implement ignition
22 interlock licensing. The department shall consult with the
23 administrative office of the courts, the state patrol, the Washington
24 association of sheriffs and police chiefs, ignition interlock
25 companies, and any other organization or entity the department deems
26 appropriate.

27 (8) (a) Any person licensed under this chapter who is convicted of
28 a violation of RCW 46.61.500 when the charge was originally filed as
29 a violation of RCW 46.61.502 or 46.61.504, or an equivalent local
30 ordinance, may submit to the department an application for an
31 ignition interlock driver's license under this section.

32 (b) A person who does not have any driver's license under this
33 chapter, but who would otherwise be eligible under this section to
34 apply for an ignition interlock license, may submit to the department
35 an application for an ignition interlock license. The department may
36 require the person to take any driver's licensing examination under
37 this chapter and may require the person to also apply and qualify for
38 a temporary restricted driver's license under RCW 46.20.391.

1 **Sec. 28.** RCW 46.20.720 and 2020 c 330 s 10 are each amended to
2 read as follows:

3 (1) **Ignition interlock restriction.** The department shall require
4 that a person may drive only a motor vehicle equipped with a
5 functioning ignition interlock device:

6 (a) **Pretrial release.** Upon receipt of notice from a court that an
7 ignition interlock device restriction has been imposed under RCW
8 10.21.055;

9 (b) **Ignition interlock driver's license.** As required for issuance
10 of an ignition interlock driver's license under RCW 46.20.385;

11 (c) **Deferred prosecution.** Upon receipt of notice from a court
12 that the person is participating in a deferred prosecution program
13 under RCW 10.05.020 for a violation of:

14 (i) RCW 46.61.502 or 46.61.504 or an equivalent local ordinance;
15 or

16 (ii) RCW 46.61.5249 or 46.61.500 or an equivalent local ordinance
17 if the person would be required under RCW 46.61.5249(4) or
18 46.61.500(3) (a) or (b) to install an ignition interlock device on
19 all vehicles operated by the person in the event of a conviction;

20 (d) **Post conviction.** After any applicable period of mandatory
21 suspension, revocation, or denial of driving privileges, or upon
22 fulfillment of day-for-day credit under RCW 46.61.5055(9)(b)(ii) for
23 a suspension, revocation, or denial of driving privileges:

24 (i) Due to a conviction of a violation of RCW 46.61.502 or
25 46.61.504 or an equivalent local or out-of-state statute or
26 ordinance; or

27 (ii) Due to a conviction of a violation of RCW 46.61.5249 or
28 46.61.500 or an equivalent local ordinance if the person is required
29 under RCW 46.61.5249(4) or 46.61.500(3) (a) or (b) to install an
30 ignition interlock device on all vehicles operated by the person; or

31 (e) **Court order.** Upon receipt of an order by a court having
32 jurisdiction that a person charged or convicted of any offense
33 involving the use, consumption, or possession of alcohol while
34 operating a motor vehicle may drive only a motor vehicle equipped
35 with a functioning ignition interlock. The court shall establish a
36 specific alcohol set point at which the ignition interlock will
37 prevent the vehicle from being started. The court shall also
38 establish the period of time for which ignition interlock use will be
39 required.

1 (2) **Alcohol set point.** Unless otherwise specified by the court
2 for a restriction imposed under subsection (1)(e) of this section,
3 the ignition interlock device shall have an alcohol set point that
4 prevents the motor vehicle from being started when the breath sample
5 provided has an alcohol concentration of 0.020 or more.

6 (3) **Duration of restriction.** A restriction imposed under:

7 (a) Subsection (1)(a) of this section shall remain in effect
8 until:

9 (i) The court has authorized the removal of the device under RCW
10 10.21.055; or

11 (ii) The department has imposed a restriction under subsection
12 (1)(b), (c), or (d) of this section arising out of the same incident.

13 (b) Subsection (1)(b) of this section remains in effect during
14 the validity of any ignition interlock driver's license that has been
15 issued to the person.

16 (c) Subsection (1)(c)(i) or (d)(i) of this section shall be for
17 no less than:

18 (i) For a person who has not previously been restricted under
19 this subsection, a period of one year;

20 (ii) For a person who has previously been restricted under (c)(i)
21 of this subsection, a period of five years;

22 (iii) For a person who has previously been restricted under
23 (c)(ii) of this subsection, a period of (~~ten~~) 10 years.

24 The restriction of a person who is convicted of a violation of
25 RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and who
26 committed the offense while one or more passengers under the age of
27 (~~sixteen~~) 16 were in the vehicle shall be extended for an
28 additional period as required by RCW 46.61.5055(6)(a).

29 For purposes of determining a period of restriction for a person
30 restricted pursuant to a conviction under (d) of this subsection, a
31 restriction based on a deferred prosecution under subsection (1)(c)
32 of this section arising out of the same incident is not considered a
33 prior restriction for purposes of this subsection.

34 (d) Subsection (1)(c)(ii) or (d)(ii) of this section shall be for
35 a period of no less than six months.

36 (e) The period of restriction under (c) or (d) of this subsection
37 shall be extended by (~~one hundred eighty~~) 180 days whenever the
38 department receives notice that the restricted person has been
39 convicted under RCW 46.20.740 or 46.20.750. If the period of
40 restriction under (c) or (d) of this subsection has been fulfilled

1 and cannot be extended, the department must add a new (~~one hundred~~
2 ~~eighty-day~~) 180-day restriction that is imposed from the date of
3 conviction and is subject to the requirements for removal under
4 subsection (4) of this section.

5 (f) Subsection (1)(e) of this section shall remain in effect for
6 the period of time specified by the court.

7 (g) The period of restriction under (c) and (d) of this
8 subsection based on incidents occurring on or after June 9, 2016,
9 must be tolled for any period in which the person does not have an
10 ignition interlock device installed on a vehicle owned or operated by
11 the person unless the person receives a determination from the
12 department that the person is unable to operate an ignition interlock
13 device due to a physical disability. For all drivers restricted under
14 this section with incidents and restriction start dates prior to June
15 9, 2016, a driver may apply to waive the restriction by applying for
16 a determination from the department that the person is unable to
17 operate an ignition interlock device due to a physical disability.

18 The department's determination that a person is unable to operate an
19 ignition interlock device must be reasonable and be based upon good
20 and substantial evidence. This determination is subject to review by
21 a court of competent jurisdiction. The department may charge a person
22 seeking a medical exemption under this subsection a reasonable fee
23 for the assessment.

24 (4) **Requirements for removal.** A restriction imposed under
25 subsection (1)(c) or (d) of this section shall remain in effect until
26 the department receives a declaration from the person's ignition
27 interlock device vendor, in a form provided or approved by the
28 department, certifying the following:

29 (a) That there have been none of the following incidents in the
30 (~~one hundred eighty~~) 180 consecutive days prior to the date of
31 release:

32 (i) Any attempt to start the vehicle with a breath alcohol
33 concentration of 0.04 or more unless a subsequent test performed
34 within (~~ten~~) 10 minutes registers a breath alcohol concentration
35 lower than 0.04 and the digital image confirms the same person
36 provided both samples;

37 (ii) Failure to take any random test unless a review of the
38 digital image confirms that the vehicle was not occupied by the
39 driver at the time of the missed test;

1 (iii) Failure to pass any random retest with a breath alcohol
2 concentration of lower than 0.020 unless a subsequent test performed
3 within (~~(ten)~~) 10 minutes registers a breath alcohol concentration
4 lower than 0.020, and the digital image confirms the same person
5 provided both samples;

6 (iv) Failure of the person to appear at the ignition interlock
7 device vendor when required for maintenance, repair, calibration,
8 monitoring, inspection, or replacement of the device; or

9 (v) Removal of the ignition interlock device by a person other
10 than an ignition interlock technician certified by the Washington
11 state patrol; and

12 (b) That the ignition interlock device was inspected at the
13 conclusion of the (~~(one hundred eighty-day)~~) 180-day period by an
14 ignition interlock technician certified by the Washington state
15 patrol and no evidence was found that the device was tampered with in
16 the manner described in RCW 46.20.750.

17 (5) **Day-for-day credit.** (a) The time period during which a person
18 has an ignition interlock device installed in order to meet the
19 requirements of subsection (1)(b) of this section shall apply on a
20 day-for-day basis toward satisfying the period of time the ignition
21 interlock device restriction is imposed under subsection (1)(c) or
22 (d) of this section arising out of the same incident.

23 (b) The department must also give the person a day-for-day credit
24 for any time period, beginning from the date of the incident, during
25 which the person kept an ignition interlock device installed on all
26 vehicles the person operates, other than those subject to the
27 employer exemption under subsection (6) of this section.

28 (c) If the day-for-day credit granted under this subsection
29 equals or exceeds the period of time the ignition interlock device
30 restriction is imposed under subsection (1)(c) or (d) of this section
31 arising out of the same incident, and the person has already met the
32 requirements for removal of the device under subsection (4) of this
33 section, the department may waive the requirement that a device be
34 installed or that the person again meet the requirements for removal.

35 (6) **Employer exemption.** (a) Except as provided in (b) of this
36 subsection, the installation of an ignition interlock device is not
37 necessary on vehicles owned, leased, or rented by a person's employer
38 and on those vehicles whose care and/or maintenance is the temporary
39 responsibility of the employer, and driven at the direction of a
40 person's employer as a requirement of employment during working

1 hours. The person must provide the department with a declaration
2 pursuant to chapter 5.50 RCW from his or her employer stating that
3 the person's employment requires the person to operate a vehicle
4 owned by the employer or other persons during working hours. When the
5 department receives a declaration under this subsection, it shall
6 attach or imprint a notation on the person's driving record stating
7 that the employer exemption applies.

8 (b) The employer exemption does not apply when the employer's
9 vehicle is assigned exclusively to the restricted driver and used
10 solely for commuting to and from employment.

11 (c) The employer exemption does not apply to a person who is
12 self-employed unless the person's vehicle is used exclusively for the
13 person's employment.

14 (7) **Ignition interlock device revolving account.** In addition to
15 any other costs associated with the use of an ignition interlock
16 device imposed on the person restricted under this section, the
17 person shall pay an additional fee of (~~twenty-one dollars~~) \$21 per
18 month. Payments must be made directly to the ignition interlock
19 company. The company shall remit the additional fee to the department
20 to be deposited into the ignition interlock device revolving account,
21 except that the company may retain (~~twenty-five~~) 25 cents per month
22 of the additional fee to cover the expenses associated with
23 administering the fee. The department may waive the monthly fee if
24 the person is indigent under RCW 10.101.010.

25 (8) **Foreign jurisdiction.** For a person restricted under this
26 section who is residing outside of the state of Washington, the
27 department may accept verification of installation of an ignition
28 interlock device by an ignition interlock company authorized to do
29 business in the jurisdiction in which the person resides, provided
30 the device meets any applicable requirements of that jurisdiction.
31 The department may waive one or more requirements for removal under
32 subsection (4) of this section if compliance with the requirement or
33 requirements would be impractical in the case of a person residing in
34 another jurisdiction, provided the person is in compliance with any
35 equivalent requirement of that jurisdiction. The department may waive
36 the monthly fee required by subsection (7) of this section if
37 collection of the fee would be impractical in the case of a person
38 residing in another jurisdiction.

1 **Sec. 29.** RCW 46.20.740 and 2020 c 330 s 11 are each amended to
2 read as follows:

3 (1) The department shall attach or imprint a notation on the
4 driving record of any person restricted under RCW 46.20.720,
5 46.61.5055, or 10.05.140 stating that the person may operate only a
6 motor vehicle equipped with a functioning ignition interlock device.
7 The department shall determine the person's eligibility for licensing
8 based upon written verification by a company doing business in the
9 state that it has installed the required device on a vehicle owned or
10 operated by the person seeking reinstatement. If, based upon
11 notification from the interlock provider or otherwise, the department
12 determines that an ignition interlock required under this section is
13 no longer installed or functioning as required, the department shall
14 suspend the person's license or privilege to drive. Whenever the
15 license or driving privilege of any person is suspended or revoked as
16 a result of noncompliance with an ignition interlock requirement, the
17 suspension shall remain in effect until the person provides notice
18 issued by a company doing business in the state that a vehicle owned
19 or operated by the person is equipped with a functioning ignition
20 interlock device.

21 (2) It is a gross misdemeanor for a person with such a notation
22 on his or her driving record to operate a motor vehicle that is not
23 so equipped, unless the notation resulted from a restriction imposed
24 as a condition of release and the restriction has been released by
25 the court prior to driving. Any time a person is convicted under this
26 section, the court shall immediately notify the department for
27 purposes of RCW 46.20.720(3)(e). It is an affirmative defense, which
28 the defendant must prove by a preponderance of the evidence, that the
29 employer exemption in RCW 46.20.720(6) applies. The court shall not
30 admit evidence of this defense unless the defendant notifies the
31 prosecution prior to the omnibus or pretrial hearing in the case of
32 the defendant's intent to assert the affirmative defense.

33 (3) Any sentence imposed for a violation of subsection (2) of
34 this section shall be served consecutively with any sentence imposed
35 under RCW 46.20.750, 46.61.502, 46.61.504, or 46.61.5055.

36 **Sec. 30.** RCW 46.61.502 and 2022 c 16 s 40 are each amended to
37 read as follows:

1 (1) A person is guilty of driving while under the influence of
2 intoxicating liquor, cannabis, or any drug if the person drives a
3 vehicle within this state:

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

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

10 (c) While the person is under the influence of or affected by
11 intoxicating liquor, cannabis, or any drug; or

12 (d) While the person is under the combined influence of or
13 affected by intoxicating liquor, cannabis, and any drug.

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

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

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

38 (4) (a) Analyses of blood or breath samples obtained more than two
39 hours after the alleged driving may be used as evidence that within
40 two hours of the alleged driving, a person had an alcohol

1 concentration of 0.08 or more in violation of subsection (1)(a) of
2 this section, and in any case in which the analysis shows an alcohol
3 concentration above 0.00 may be used as evidence that a person was
4 under the influence of or affected by intoxicating liquor or any drug
5 in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

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

27 **Sec. 31.** RCW 46.61.5055 and 2020 c 330 s 15 are each amended to
28 read as follows:

29 (1) **No prior offenses in seven years.** Except as provided in RCW
30 46.61.502(6) or 46.61.504(6), a person who is convicted of a
31 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
32 within seven years shall be punished as follows:

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

38 (i) By imprisonment for not less than ~~((twenty-four))~~ 24
39 consecutive hours nor more than ~~((three-hundred-sixty-four))~~ 364

1 days. In lieu of the mandatory minimum term of imprisonment required
2 under this subsection (1)(a)(i), the court, in its discretion, may
3 order not less than (~~fifteen~~) 15 days of electronic home monitoring
4 or a (~~ninety-day~~) 90-day period of 24/7 sobriety program
5 monitoring. The court may consider the offender's pretrial 24/7
6 sobriety program monitoring as fulfilling a portion of posttrial
7 sentencing. The offender shall pay the cost of electronic home
8 monitoring. The county or municipality in which the penalty is being
9 imposed shall determine the cost. The court may also require the
10 offender's electronic home monitoring device or other separate
11 alcohol monitoring device to include an alcohol detection
12 breathalyzer, and the court may restrict the amount of alcohol the
13 offender may consume during the time the offender is on electronic
14 home monitoring; and

15 (ii) By a fine of not less than (~~three hundred fifty dollars~~)
16 \$350 nor more than (~~five thousand dollars~~) \$5,000. (~~Three hundred~~
17 ~~fifty dollars~~) \$350 of the fine may not be suspended unless the
18 court finds the offender to be indigent; or

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

24 (i) By imprisonment for not less than (~~forty-eight~~) 48
25 consecutive hours nor more than (~~three hundred sixty-four~~) 364
26 days. In lieu of the mandatory minimum term of imprisonment required
27 under this subsection (1)(b)(i), the court, in its discretion, may
28 order not less than (~~thirty~~) 30 days of electronic home monitoring
29 or a (~~one hundred twenty-day~~) 120-day period of 24/7 sobriety
30 program monitoring. The court may consider the offender's pretrial
31 24/7 sobriety program testing as fulfilling a portion of posttrial
32 sentencing. The offender shall pay the cost of electronic home
33 monitoring. The county or municipality in which the penalty is being
34 imposed shall determine the cost. The court may also require the
35 offender's electronic home monitoring device to include an alcohol
36 detection breathalyzer or other separate alcohol monitoring device,
37 and the court may restrict the amount of alcohol the offender may
38 consume during the time the offender is on electronic home
39 monitoring; and

1 (ii) By a fine of not less than (~~five hundred dollars~~) \$500 nor
2 more than (~~five thousand dollars~~) \$5,000. (~~Five hundred dollars~~)
3 \$500 of the fine may not be suspended unless the court finds the
4 offender to be indigent.

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

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

14 (i) By imprisonment for not less than (~~thirty~~) 30 days nor more
15 than (~~three hundred sixty four~~) 364 days and (~~sixty~~) 60 days of
16 electronic home monitoring. Thirty days of imprisonment and (~~sixty~~)
17 60 days of electronic home monitoring may not be suspended or
18 converted unless the court finds that the imposition of this
19 mandatory minimum sentence would impose a substantial risk to the
20 offender's physical or mental well-being. If the offender shows that
21 the imposition of this mandatory minimum sentence would impose a
22 substantial risk to the offender's physical or mental well-being, in
23 lieu of the mandatory term of imprisonment and electronic home
24 monitoring under this subsection (2)(a)(i), the court may order a
25 minimum of either (~~one hundred eighty~~) 180 days of electronic home
26 monitoring or a (~~one hundred twenty day~~) 120-day period of 24/7
27 sobriety program monitoring pursuant to RCW 36.28A.300 through
28 36.28A.390. Whenever the mandatory minimum sentence is suspended or
29 converted, the court shall state in writing the reason for granting
30 the suspension or conversion and the facts upon which the suspension
31 or conversion is based. The court may consider the offender's
32 pretrial 24/7 sobriety program monitoring as fulfilling a portion of
33 posttrial sentencing. The court shall order an expanded substance use
34 disorder assessment and treatment, if deemed appropriate by the
35 assessment. The offender shall pay for the cost of the electronic
36 monitoring. The county or municipality where the penalty is being
37 imposed shall determine the cost. The court may also require the
38 offender's electronic home monitoring device include an alcohol
39 detection breathalyzer or other separate alcohol monitoring device,

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

3 (ii) By a fine of not less than (~~five hundred dollars~~) \$500 nor
4 more than (~~five thousand dollars~~) \$5,000. (~~Five hundred dollars~~)
5 \$500 of the fine may not be suspended unless the court finds the
6 offender to be indigent; or

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

12 (i) By imprisonment for not less than (~~forty-five~~) 45 days nor
13 more than (~~three hundred sixty-four~~) 364 days and (~~ninety~~) 90
14 days of electronic home monitoring. Forty-five days of imprisonment
15 and (~~ninety~~) 90 days of electronic home monitoring may not be
16 suspended or converted unless the court finds that the imposition of
17 this mandatory minimum sentence would impose a substantial risk to
18 the offender's physical or mental well-being. If the offender shows
19 that the imposition of this mandatory minimum sentence would impose a
20 substantial risk to the offender's physical or mental well-being, in
21 lieu of the mandatory minimum term of imprisonment and electronic
22 home monitoring under this subsection (2)(b)(i), the court may order
23 a minimum of either six months of electronic home monitoring or a
24 (~~one hundred twenty-day~~) 120-day period of 24/7 sobriety program
25 monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever
26 the mandatory minimum sentence is suspended or converted, the court
27 shall state in writing the reason for granting the suspension or
28 conversion and the facts upon which the suspension or conversion is
29 based. The court may consider the offender's pretrial 24/7 sobriety
30 program monitoring as fulfilling a portion of posttrial sentencing.
31 The court shall order an expanded substance use disorder assessment
32 and treatment, if deemed appropriate by the assessment. The offender
33 shall pay for the cost of the electronic monitoring. The county or
34 municipality where the penalty is being imposed shall determine the
35 cost. The court may also require the offender's electronic home
36 monitoring device include an alcohol detection breathalyzer or other
37 separate alcohol monitoring device, and may restrict the amount of
38 alcohol the offender may consume during the time the offender is on
39 electronic home monitoring; and

1 (ii) By a fine of not less than (~~seven hundred fifty dollars~~)
2 \$750 nor more than (~~five thousand dollars~~) \$5,000. (~~Seven hundred~~
3 ~~fifty dollars~~) \$750 of the fine may not be suspended unless the
4 court finds the offender to be indigent.

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

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

14 (i) By imprisonment for not less than (~~ninety~~) 90 days nor more
15 than (~~three hundred sixty-four~~) 364 days, if available in that
16 county or city, a six-month period of 24/7 sobriety program
17 monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and (~~one~~
18 ~~hundred twenty~~) 120 days of electronic home monitoring. Ninety days
19 of imprisonment and (~~one hundred twenty~~) 120 days of electronic
20 home monitoring may not be suspended or converted unless the court
21 finds that the imposition of this mandatory minimum sentence would
22 impose a substantial risk to the offender's physical or mental well-
23 being. If the offender shows that the imposition of this mandatory
24 minimum sentence would impose a substantial risk to the offender's
25 physical or mental well-being, in lieu of the mandatory minimum term
26 of (~~ninety~~) 90 days of imprisonment and (~~one hundred twenty~~) 120
27 days of electronic home monitoring, the court may order (~~three~~
28 ~~hundred sixty~~) 360 days of electronic home monitoring or a (~~three~~
29 ~~hundred sixty-day~~) 360-day period of 24/7 sobriety monitoring
30 pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory
31 minimum sentence is suspended or converted, the court shall state in
32 writing the reason for granting the suspension or conversion and the
33 facts upon which the suspension or conversion is based. The court
34 shall order an expanded substance use disorder assessment and
35 treatment, if deemed appropriate by the assessment. The offender
36 shall pay for the cost of the electronic monitoring. The county or
37 municipality where the penalty is being imposed shall determine the
38 cost. The court may also require the offender's electronic home
39 monitoring device include an alcohol detection breathalyzer or other
40 separate alcohol monitoring device, and may restrict the amount of

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

3 (ii) By a fine of not less than (~~one thousand dollars~~) \$1,000
4 nor more than (~~five thousand dollars~~) \$5,000. (~~One thousand~~
5 ~~dollars~~) \$1,000 of the fine may not be suspended unless the court
6 finds the offender to be indigent; or

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

12 (i) By imprisonment for not less than (~~one hundred twenty~~) 120
13 days nor more than (~~three hundred sixty-four~~) 364 days, if
14 available in that county or city, a six-month period of 24/7 sobriety
15 program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and
16 (~~one hundred fifty~~) 150 days of electronic home monitoring. One
17 hundred twenty days of imprisonment and (~~one hundred fifty~~) 150
18 days of electronic home monitoring may not be suspended or converted
19 unless the court finds that the imposition of this mandatory minimum
20 sentence would impose a substantial risk to the offender's physical
21 or mental well-being. If the offender shows that the imposition of
22 this mandatory minimum sentence would impose a substantial risk to
23 the offender's physical or mental well-being, in lieu of the
24 mandatory minimum term of (~~one hundred twenty~~) 120 days of
25 imprisonment and (~~one hundred fifty~~) 150 days of electronic home
26 monitoring, the court may order (~~three hundred sixty~~) 360 days of
27 electronic home monitoring or a (~~three hundred sixty-day~~) 360-day
28 period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through
29 36.28A.390. Whenever the mandatory minimum sentence is suspended or
30 converted, the court shall state in writing the reason for granting
31 the suspension or conversion and the facts upon which the suspension
32 or conversion is based. The offender shall pay for the cost of the
33 electronic monitoring. The court shall order an expanded substance
34 use disorder assessment and treatment, if deemed appropriate by the
35 assessment. The county or municipality where the penalty is being
36 imposed shall determine the cost. The court may also require the
37 offender's electronic home monitoring device include an alcohol
38 detection breathalyzer or other separate alcohol monitoring device,
39 and may restrict the amount of alcohol the offender may consume
40 during the time the offender is on electronic home monitoring; and

1 (ii) By a fine of not less than (~~one thousand five hundred~~
2 ~~dollars~~) \$1,500 nor more than (~~five thousand dollars~~) \$5,000.
3 (~~One thousand five hundred~~) \$1,500 dollars of the fine may not be
4 suspended unless the court finds the offender to be indigent.

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

8 (a) The person has three or more prior offenses within (~~ten~~) 15
9 years; or

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

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

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

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

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

18 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall
19 require any person convicted of a violation of RCW 46.61.502 or
20 46.61.504 or an equivalent local ordinance to comply with the rules
21 and requirements of the department regarding the installation and use
22 of a functioning ignition interlock device installed on all motor
23 vehicles operated by the person.

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

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

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

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

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

8 (6) **Penalty for having a minor passenger in vehicle.** If a person
9 who is convicted of a violation of RCW 46.61.502 or 46.61.504
10 committed the offense while one or more passengers under the age of
11 (~~sixteen~~) 16 were in the vehicle, the court shall:

12 (a) Order the use of an ignition interlock or other device for an
13 additional (~~twelve~~) 12 months for each passenger under the age of
14 (~~sixteen~~) 16 when the person is subject to the penalties under
15 subsection (1)(a), (2)(a), or (3)(a) of this section; and order the
16 use of an ignition interlock device for an additional (~~eighteen~~) 18
17 months for each passenger under the age of (~~sixteen~~) 16 when the
18 person is subject to the penalties under subsection (1)(b), (2)(b),
19 (3)(b), or (4) of this section;

20 (b) In any case in which the person has no prior offenses within
21 seven years, and except as provided in RCW 46.61.502(6) or
22 46.61.504(6), order an additional (~~twenty-four~~) 24 hours of
23 imprisonment to be served consecutively for each passenger under the
24 age of (~~sixteen~~) 16, and a fine of not less than (~~one-thousand~~
25 ~~dollars~~) \$1,000 and not more than (~~five-thousand-dollars~~) \$5,000
26 for each passenger under the age of (~~sixteen~~) 16. (~~One-thousand~~
27 ~~dollars~~) \$1,000 of the fine for each passenger under the age of
28 (~~sixteen~~) 16 may not be suspended unless the court finds the
29 offender to be indigent;

30 (c) In any case in which the person has one prior offense within
31 seven years, and except as provided in RCW 46.61.502(6) or
32 46.61.504(6), order an additional five days of imprisonment to be
33 served consecutively for each passenger under the age of (~~sixteen~~)
34 16, and a fine of not less than (~~two-thousand-dollars~~) \$2,000 and
35 not more than (~~five-thousand-dollars~~) \$5,000 for each passenger
36 under the age of (~~sixteen~~) 16. One thousand dollars of the fine for
37 each passenger under the age of (~~sixteen~~) 16 may not be suspended
38 unless the court finds the offender to be indigent;

39 (d) In any case in which the person has two prior offenses within
40 seven years, and except as provided in RCW 46.61.502(6) or

1 46.61.504(6), order an additional ten days of imprisonment to be
2 served consecutively for each passenger under the age of (~~sixteen~~)
3 16, and a fine of not less than (~~three thousand dollars~~) \$3,000 and
4 not more than (~~ten thousand dollars~~) \$10,000 for each passenger
5 under the age of (~~sixteen~~) 16. (~~One thousand dollars~~) \$1,000 of
6 the fine for each passenger under the age of (~~sixteen~~) 16 may not
7 be suspended unless the court finds the offender to be indigent.

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

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

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

16 (c) Whether the driver was driving in the opposite direction of
17 the normal flow of traffic on a multiple lane highway, as defined by
18 RCW 46.04.350, with a posted speed limit of (~~forty-five~~) 45 miles
19 per hour or greater; and

20 (d) Whether a child passenger under the age of (~~sixteen~~) 16 was
21 an occupant in the driver's vehicle.

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

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

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

34 (A) Where there has been no prior offense within seven years, be
35 suspended or denied by the department for (~~ninety~~) 90 days or until
36 the person is evaluated by a substance use disorder agency or
37 probation department pursuant to RCW 46.20.311 and the person
38 completes or is enrolled in a (~~ninety-day~~) 90-day period of 24/7
39 sobriety program monitoring. In no circumstances shall the license
40 suspension be for fewer than two days;

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

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

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

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

19 (B) Where there has been one prior offense within seven years, be
20 revoked or denied by the department for (~~nine hundred~~) 900 days; or

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

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

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

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

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

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

36 (ii) If a person has already served a suspension, revocation, or
37 denial under RCW 46.20.3101 for a period equal to or greater than the
38 period imposed under this subsection (9), the department shall
39 provide notice of full credit, shall provide for no further
40 suspension or revocation under this subsection provided the person

1 has completed the requirements under RCW 46.20.311 and paid the
2 probationary license fee under RCW 46.20.355 by the date specified in
3 the notice under RCW 46.20.245, and shall impose no additional
4 reissue fees for this credit.

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

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

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

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

30 (11) **Conditions of probation.** (a) In addition to any
31 nonsuspendable and nondeferrable jail sentence required by this
32 section, whenever the court imposes up to (~~three hundred sixty-~~
33 ~~four~~) 364 days in jail, the court shall also suspend but shall not
34 defer a period of confinement for a period not exceeding five years.
35 The court shall impose conditions of probation that include: (i) Not
36 driving a motor vehicle within this state without a valid license to
37 drive; (ii) not driving a motor vehicle within this state without
38 proof of liability insurance or other financial responsibility for
39 the future pursuant to RCW 46.30.020; (iii) not driving or being in
40 physical control of a motor vehicle within this state while having an

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

17 (b) For each violation of mandatory conditions of probation under
18 (a)(i), (ii), (iii), (iv), or (v) of this subsection, the court shall
19 order the convicted person to be confined for (~~(thirty)~~) 30 days,
20 which shall not be suspended or deferred.

21 (c) (~~(For)~~) (i) Except as provided in (c)(ii) of this subsection,
22 for each incident involving a violation of a mandatory condition of
23 probation imposed under this subsection, the license, permit, or
24 privilege to drive of the person shall be suspended by the court for
25 (~~(thirty)~~) 30 days or, if such license, permit, or privilege to drive
26 already is suspended, revoked, or denied at the time the finding of
27 probation violation is made, the suspension, revocation, or denial
28 then in effect shall be extended by (~~(thirty)~~) 30 days. The court
29 shall notify the department of any suspension, revocation, or denial
30 or any extension of a suspension, revocation, or denial imposed under
31 this subsection. The person may apply for an ignition interlock
32 driver's license under RCW 46.20.385 during the suspension period.

33 (ii) For each incident involving a violation of RCW
34 46.20.342(1)(c), the court has discretion not to impose a suspension
35 when the person provides the court with proof that the violation has
36 been cured within 30 days. The court is not required to notify the
37 department of the violation unless it is not cured within 30 days.

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

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

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

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

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

18 Whenever the combination of jail time and electronic home
19 monitoring or alternative sentence would exceed (~~three hundred~~
20 ~~sixty-four~~) 364 days, the offender shall serve the jail portion of
21 the sentence first, and the electronic home monitoring or alternative
22 portion of the sentence shall be reduced so that the combination does
23 not exceed (~~three hundred sixty-four~~) 364 days.

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

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

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

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

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

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

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

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

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

8 (vii) A conviction for a violation of RCW 47.68.220 or an
9 equivalent local ordinance committed in a careless or reckless manner
10 if the conviction is the result of a charge that was originally filed
11 as a violation of RCW 47.68.220 or an equivalent local ordinance
12 while under the influence of intoxicating liquor or any drug;

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

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

17 (x) A conviction for a violation of RCW 46.61.520 committed while
18 under the influence of intoxicating liquor or any drug, or a
19 conviction for a violation of RCW 46.61.520 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 46.61.520 committed while under the influence of
23 intoxicating liquor or any drug;

24 (xi) A conviction for a violation of RCW 46.61.522 committed
25 while under the influence of intoxicating liquor or any drug, or a
26 conviction for a violation of RCW 46.61.522 committed in a reckless
27 manner or with the disregard for the safety of others if the
28 conviction is the result of a charge that was originally filed as a
29 violation of RCW 46.61.522 committed while under the influence of
30 intoxicating liquor or any drug;

31 (xii) A conviction for a violation of RCW 46.61.5249, 46.61.500,
32 or 9A.36.050 or an equivalent local ordinance, if the conviction is
33 the result of a charge that was originally filed as a violation of
34 RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of
35 RCW 46.61.520 or 46.61.522;

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

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

4 (xv) A deferred prosecution under chapter 10.05 RCW granted in a
5 prosecution for a violation of RCW 46.61.5249, or an equivalent local
6 ordinance, if the charge under which the deferred prosecution was
7 granted was originally filed as a violation of RCW 46.61.502 or
8 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
9 46.61.522;

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

16 (xvii) A deferred sentence imposed in a prosecution for a
17 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
18 equivalent local ordinance, if the charge under which the deferred
19 sentence was imposed was originally filed as a violation of RCW
20 46.61.502 or 46.61.504, or an equivalent local ordinance, or a
21 violation of RCW 46.61.520 or 46.61.522;

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

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

28 (c) "Within seven years" means that the arrest for a prior
29 offense occurred within seven years before or after the arrest for
30 the current offense; and

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

34 (15) All fines imposed by this section apply to adult offenders
35 only.

36 **Sec. 32.** RCW 46.61.504 and 2022 c 16 s 42 are each amended to
37 read as follows:

38 (1) A person is guilty of being in actual physical control of a
39 motor vehicle while under the influence of intoxicating liquor or any

1 drug if the person has actual physical control of a vehicle within
2 this state:

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

7 (b) The person has, within two hours after being in actual
8 physical control of a vehicle, a THC concentration of 5.00 or higher
9 as shown by analysis of the person's blood made under RCW 46.61.506;
10 or

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

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

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

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

34 (b) It is an affirmative defense to a violation of subsection
35 (1)(b) of this section, which the defendant must prove by a
36 preponderance of the evidence, that the defendant consumed a
37 sufficient quantity of cannabis after the time of being in actual
38 physical control of the vehicle and before the administration of an
39 analysis of the person's blood to cause the defendant's THC
40 concentration to be 5.00 or more within two hours after being in

1 control of the vehicle. The court shall not admit evidence of this
2 defense unless the defendant notifies the prosecution prior to the
3 omnibus or pretrial hearing in the case of the defendant's intent to
4 assert the affirmative defense.

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

14 (b) Analyses of blood samples obtained more than two hours after
15 the alleged being in actual physical control of a vehicle may be used
16 as evidence that within two hours of the alleged being in control of
17 the vehicle, a person had a THC concentration of 5.00 or more in
18 violation of subsection (1)(b) of this section, and in any case in
19 which the analysis shows a THC concentration above 0.00 may be used
20 as evidence that a person was under the influence of or affected by
21 cannabis in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

36 NEW SECTION. **Sec. 33.** A new section is added to chapter 46.61
37 RCW to read as follows:

1 (1) Any law enforcement agency utilizing oral fluid roadside
2 information as part of the enforcement of driving under the influence
3 laws must ensure the following:

4 (a) The oral fluid test instrument or instruments to be used are
5 valid and reliable;

6 (b) Any peace officer who may administer an oral fluid test is
7 properly trained in the administration of the test;

8 (c) Prior to administering the test, the administering peace
9 officer advises the subject of the following information:

10 (i) The test is voluntary, and does not constitute compliance
11 with the implied consent requirement of RCW 46.20.308;

12 (ii) Test results may not be used against the person in a court
13 of law; and

14 (iii) Submission to the test is not an alternative to any
15 evidentiary breath or blood test; and

16 (d) The law enforcement agency establishes policies to protect
17 personally identifying information from unnecessary and improper
18 dissemination including, but not limited to:

19 (i) Destruction of biological samples from oral fluid tests as
20 soon as practicable after collection of test results; and

21 (ii) Prohibitions against entering DNA samples or results from
22 such tests into any database.

23 (2) Any law enforcement agency administering an oral fluid
24 roadside test as authorized in this section or section 1 of this act
25 is strictly liable for (a) any failure to destroy biological samples
26 from such tests within 24 hours or (b) unlawful entry of DNA samples
27 or results from such tests into any database.

28 NEW SECTION. **Sec. 34.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 35.** This act takes effect January 1, 2026.

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