
SENATE BILL 5032

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By Senators Padden, Lovick, Conway, Dhingra, Kuderer, Lias, Wagoner, and L. Wilson

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1 AN ACT Relating to extending the felony driving under the
2 influence lookback to 15 years while providing additional treatment
3 options through the creation of a drug offender sentencing
4 alternative for driving under the influence; amending RCW 9.94A.030,
5 9.94A.190, 9.94A.501, 9.94A.505, 9.94A.525, 9.94A.633, 9.94A.6332,
6 9.94A.660, 9.94A.701, 46.61.502, 46.61.5055, and 46.61.504; adding a
7 new section to chapter 9.94A RCW; providing an effective date; and
8 declaring an emergency.

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

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

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

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

17 (b) Is convicted of felony driving while under the influence of
18 intoxicating liquor, cannabis, or any drug under RCW 46.61.502(6)(a);
19 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) Nonfelony driving while under the influence of intoxicating
37 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
38 while under the influence of intoxicating liquor or any drug (RCW
39 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
40 attended vehicle (RCW 46.52.020(5)); or

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

4 (~~(46)~~) (47) "Serious violent offense" is a subcategory of
5 violent offense and means:

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

7 (ii) Homicide by abuse;

8 (iii) Murder in the second degree;

9 (iv) Manslaughter in the first degree;

10 (v) Assault in the first degree;

11 (vi) Kidnapping in the first degree;

12 (vii) Rape in the first degree;

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

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

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

19 (~~(47)~~) (48) "Sex offense" means:

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

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

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

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

28 (v) A felony violation of RCW 9A.44.132(1) (failure to register
29 as a sex offender) if the person has been convicted of violating RCW
30 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
31 prior to June 10, 2010, on at least one prior occasion;

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

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

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

1 ~~((48))~~ (49) "Sexual motivation" means that one of the purposes
2 for which the defendant committed the crime was for the purpose of
3 his or her sexual gratification.

4 ~~((49))~~ (50) "Standard sentence range" means the sentencing
5 court's discretionary range in imposing a nonappealable sentence.

6 ~~((50))~~ (51) "Statutory maximum sentence" means the maximum
7 length of time for which an offender may be confined as punishment
8 for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the
9 statute defining the crime, or other statute defining the maximum
10 penalty for a crime.

11 ~~((51))~~ (52) "Stranger" means that the victim did not know the
12 offender 24 hours before the offense.

13 ~~((52))~~ (53) "Total confinement" means confinement inside the
14 physical boundaries of a facility or institution operated or utilized
15 under contract by the state or any other unit of government for 24
16 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

17 ~~((53))~~ (54) "Transition training" means written and verbal
18 instructions and assistance provided by the department to the
19 offender during the two weeks prior to the offender's successful
20 completion of the work ethic camp program. The transition training
21 shall include instructions in the offender's requirements and
22 obligations during the offender's period of community custody.

23 ~~((54))~~ (55) "Victim" means any person who has sustained
24 emotional, psychological, physical, or financial injury to person or
25 property as a direct result of the crime charged.

26 ~~((55))~~ (56) "Victim of domestic violence" means an intimate
27 partner or household member who has been subjected to the infliction
28 of physical harm or sexual and psychological abuse by an intimate
29 partner or household member as part of a pattern of assaultive,
30 coercive, and controlling behaviors directed at achieving compliance
31 from or control over that intimate partner or household member.
32 Domestic violence includes, but is not limited to, the offenses
33 listed in RCW 10.99.020 and 26.50.010 committed by an intimate
34 partner or household member against a victim who is an intimate
35 partner or household member.

36 ~~((56))~~ (57) "Victim of sex trafficking, prostitution, or
37 commercial sexual abuse of a minor" means a person who has been
38 forced or coerced to perform a commercial sex act including, but not
39 limited to, being a victim of offenses defined in RCW 9A.40.100,
40 9A.88.070, 9.68A.101, and the trafficking victims protection act of

1 2000, 22 U.S.C. Sec. 7101 et seq.; or a person who was induced to
2 perform a commercial sex act when they were less than 18 years of age
3 including but not limited to the offenses defined in chapter 9.68A
4 RCW.

5 ~~((57))~~ (58) "Victim of sexual assault" means any person who is
6 a victim of a sexual assault offense, nonconsensual sexual conduct,
7 or nonconsensual sexual penetration and as a result suffers physical,
8 emotional, financial, or psychological impacts. Sexual assault
9 offenses include, but are not limited to, the offenses defined in
10 chapter 9A.44 RCW.

11 ~~((58))~~ (59) "Violent offense" means:

12 (a) Any of the following felonies:

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

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

17 (iii) Manslaughter in the first degree;

18 (iv) Manslaughter in the second degree;

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

20 (vi) Kidnapping in the second degree;

21 (vii) Arson in the second degree;

22 (viii) Assault in the second degree;

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

24 (x) Extortion in the first degree;

25 (xi) Robbery in the second degree;

26 (xii) Drive-by shooting;

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

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

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

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

1 (~~(59)~~) (60) "Work crew" means a program of partial confinement
2 consisting of civic improvement tasks for the benefit of the
3 community that complies with RCW 9.94A.725.

4 (~~(60)~~) (61) "Work ethic camp" means an alternative
5 incarceration program as provided in RCW 9.94A.690 designed to reduce
6 recidivism and lower the cost of corrections by requiring offenders
7 to complete a comprehensive array of real-world job and vocational
8 experiences, character-building work ethics training, life management
9 skills development, substance abuse rehabilitation, counseling,
10 literacy training, and basic adult education.

11 (~~(61)~~) (62) "Work release" means a program of partial
12 confinement available to offenders who are employed or engaged as a
13 student in a regular course of study at school.

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

16 (1) A sentence that includes a term or terms of confinement
17 totaling more than one year shall be served in a facility or
18 institution operated, or utilized under contract, by the state, or in
19 home detention pursuant to RCW 9.94A.6551 or the graduated reentry
20 program under RCW 9.94A.733. Except as provided in subsection (3) or
21 (5) of this section, a sentence of not more than one year of
22 confinement shall be served in a facility operated, licensed, or
23 utilized under contract, by the county, or if home detention or work
24 crew has been ordered by the court, in the residence of either the
25 offender or a member of the offender's immediate family.

26 (2) If a county uses a state partial confinement facility for the
27 partial confinement of a person sentenced to confinement for not more
28 than one year, the county shall reimburse the state for the use of
29 the facility as provided in this subsection. The office of financial
30 management shall set the rate of reimbursement based upon the average
31 per diem cost per offender in the facility. The office of financial
32 management shall determine to what extent, if any, reimbursement
33 shall be reduced or eliminated because of funds provided by the
34 legislature to the department for the purpose of covering the cost of
35 county use of state partial confinement facilities. The office of
36 financial management shall reestablish reimbursement rates each even-
37 numbered year.

38 (3) A person who is sentenced for a felony to a term of not more
39 than one year, and who is committed or returned to incarceration in a

1 state facility on another felony conviction, either under the
2 indeterminate sentencing laws, chapter 9.95 RCW, or under this
3 chapter shall serve all terms of confinement, including a sentence of
4 not more than one year, in a facility or institution operated, or
5 utilized under contract, by the state, consistent with the provisions
6 of RCW 9.94A.589.

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

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

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

17 (1) The department shall supervise the following offenders who
18 are sentenced to probation in superior court, pursuant to RCW
19 9.92.060, 9.95.204, or 9.95.210:

20 (a) Offenders convicted of:

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

22 (ii) Custodial sexual misconduct second degree;

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

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

25 (b) Offenders who have:

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

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

32 (2) Misdemeanor and gross misdemeanor offenders supervised by the
33 department pursuant to this section shall be placed on community
34 custody.

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

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

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

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

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

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

14 (e)(i) Has a current conviction for a domestic violence felony
15 offense where domestic violence has been pleaded and proven after
16 August 1, 2011, and a prior conviction for a repetitive domestic
17 violence offense or domestic violence felony offense where domestic
18 violence was pleaded and proven after August 1, 2011. This subsection
19 (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

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

26 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660,
27 9.94A.670, 9.94A.711, ~~((or))~~ 9.94A.695, or section 1 of this act;

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

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

32 (5) The department shall supervise any offender who is released
33 by the indeterminate sentence review board and who was sentenced to
34 community custody or subject to community custody under the terms of
35 release.

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

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

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

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

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

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

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

18 (i) Unless another term of confinement applies, a sentence within
19 the standard sentence range established in RCW 9.94A.510 or
20 9.94A.517;

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

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

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

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

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

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

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

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

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

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

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

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

1 (~~(xiii)~~) (xiv) RCW 9.94A.603, relating to felony driving while
2 under the influence of intoxicating liquor or any drug and felony
3 physical control of a vehicle while under the influence of
4 intoxicating liquor or any drug;

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

7 (b) If a standard sentence range has not been established for the
8 offender's crime, the court shall impose a determinate sentence which
9 may include not more than one year of confinement; community
10 restitution work; a term of community custody under RCW 9.94A.702 not
11 to exceed one year; and/or other legal financial obligations. The
12 court may impose a sentence which provides more than one year of
13 confinement and a community custody term under RCW 9.94A.701 if the
14 court finds reasons justifying an exceptional sentence as provided in
15 RCW 9.94A.535.

16 (3) If the court imposes a sentence requiring confinement of 30
17 days or less, the court may, in its discretion, specify that the
18 sentence be served on consecutive or intermittent days. A sentence
19 requiring more than 30 days of confinement shall be served on
20 consecutive days. Local jail administrators may schedule court-
21 ordered intermittent sentences as space permits.

22 (4) If a sentence imposed includes payment of a legal financial
23 obligation, it shall be imposed as provided in RCW 9.94A.750,
24 9.94A.753, and 9.94A.760.

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

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

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

- 37 (a) A violent offense;
- 38 (b) Any sex offense;
- 39 (c) Any drug offense;

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

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

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

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

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

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

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

15 (10) In any sentence of partial confinement, the court may
16 require the offender to serve the partial confinement in work
17 release, in a program of home detention, on work crew, or in a
18 combined program of work crew and home detention.

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

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

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

25 (1) A prior conviction is a conviction which exists before the
26 date of sentencing for the offense for which the offender score is
27 being computed. Convictions entered or sentenced on the same date as
28 the conviction for which the offender score is being computed shall
29 be deemed "other current offenses" within the meaning of RCW
30 9.94A.589.

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

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

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

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

15 (e) If the present conviction is felony driving while under the
16 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
17 felony physical control of a vehicle while under the influence of
18 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate
19 crimes for the offense as defined by RCW 46.61.5055(14) shall be
20 included in the offender score, and prior convictions for felony
21 driving while under the influence of intoxicating liquor or any drug
22 (RCW 46.61.502(6)) or felony physical control of a vehicle while
23 under the influence of intoxicating liquor or any drug (RCW
24 46.61.504(6)) shall always be included in the offender score. All
25 other convictions of the defendant shall be scored according to this
26 section.

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

33 (g) This subsection applies to both adult and juvenile prior
34 convictions.

35 (3) Out-of-state convictions for offenses shall be classified
36 according to the comparable offense definitions and sentences
37 provided by Washington law. Federal convictions for offenses shall be
38 classified according to the comparable offense definitions and
39 sentences provided by Washington law. If there is no clearly
40 comparable offense under Washington law or the offense is one that is

1 usually considered subject to exclusive federal jurisdiction, the
2 offense shall be scored as a class C felony equivalent if it was a
3 felony under the relevant federal statute.

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

7 (5) (a) In the case of multiple prior convictions, for the purpose
8 of computing the offender score, count all convictions separately,
9 except:

10 (i) Prior offenses which were found, under RCW 9.94A.589(1) (a),
11 to encompass the same criminal conduct, shall be counted as one
12 offense, the offense that yields the highest offender score. The
13 current sentencing court shall determine with respect to other prior
14 adult offenses for which sentences were served concurrently or prior
15 juvenile offenses for which sentences were served consecutively,
16 whether those offenses shall be counted as one offense or as separate
17 offenses using the "same criminal conduct" analysis found in RCW
18 9.94A.589(1) (a), and if the court finds that they shall be counted as
19 one offense, then the offense that yields the highest offender score
20 shall be used. The current sentencing court may presume that such
21 other prior offenses were not the same criminal conduct from
22 sentences imposed on separate dates, or in separate counties or
23 jurisdictions, or in separate complaints, indictments, or
24 informations;

25 (ii) In the case of multiple prior convictions for offenses
26 committed before July 1, 1986, for the purpose of computing the
27 offender score, count all adult convictions served concurrently as
28 one offense, and count all juvenile convictions entered on the same
29 date as one offense. Use the conviction for the offense that yields
30 the highest offender score.

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

37 (6) If the present conviction is one of the anticipatory offenses
38 of criminal attempt, solicitation, or conspiracy, count each prior
39 conviction as if the present conviction were for a completed offense.

1 When these convictions are used as criminal history, score them the
2 same as a completed crime.

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

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

14 (9) If the present conviction is for a serious violent offense,
15 count three points for prior adult and juvenile convictions for
16 crimes in this category, two points for each prior adult and juvenile
17 violent conviction (not already counted), one point for each prior
18 adult nonviolent felony conviction, and 1/2 point for each prior
19 juvenile nonviolent felony conviction.

20 (10) If the present conviction is for Burglary 1, count prior
21 convictions as in subsection (8) of this section; however count two
22 points for each prior adult Burglary 2 or residential burglary
23 conviction, and one point for each prior juvenile Burglary 2 or
24 residential burglary conviction.

25 (11) If the present conviction is for a felony traffic offense
26 count two points for each adult or juvenile prior conviction for
27 Vehicular Homicide or Vehicular Assault; for each felony offense
28 count one point for each adult and 1/2 point for each juvenile prior
29 conviction; for each serious traffic offense, other than those used
30 for an enhancement pursuant to RCW 46.61.520(2), count one point for
31 each adult and 1/2 point for each juvenile prior conviction; count
32 one point for each adult and 1/2 point for each juvenile prior
33 conviction for operation of a vessel while under the influence of
34 intoxicating liquor or any drug.

35 (12) If the present conviction is for homicide by watercraft or
36 assault by watercraft count two points for each adult or juvenile
37 prior conviction for homicide by watercraft or assault by watercraft;
38 for each felony offense count one point for each adult and 1/2 point
39 for each juvenile prior conviction; count one point for each adult
40 and 1/2 point for each juvenile prior conviction for driving under

1 the influence of intoxicating liquor or any drug, actual physical
2 control of a motor vehicle while under the influence of intoxicating
3 liquor or any drug, or operation of a vessel while under the
4 influence of intoxicating liquor or any drug.

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

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

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

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

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

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

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

5 (20) If the present conviction is for Theft of a Motor Vehicle,
6 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
7 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
8 priors as in subsections (7) through (18) of this section; however
9 count one point for prior convictions of Vehicle Prowling 2, and
10 three points for each adult and juvenile prior Theft 1 (of a motor
11 vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property
12 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor
13 vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle,
14 Taking a Motor Vehicle Without Permission 1, or Taking a Motor
15 Vehicle Without Permission 2 conviction.

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

20 (a) Count two points for each adult prior conviction where
21 domestic violence as defined in RCW 9.94A.030 was pleaded and proven
22 after August 1, 2011, for any of the following offenses: A felony
23 violation of a no-contact or protection order (RCW 7.105.450 or
24 former RCW 26.50.110), felony Harassment (RCW 9A.46.020(2)(b)),
25 felony Stalking (RCW 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020),
26 Kidnapping 1 (RCW 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful
27 imprisonment (RCW 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2
28 (RCW 9A.56.210), Assault 1 (RCW 9A.36.011), Assault 2 (RCW
29 9A.36.021), Assault 3 (RCW 9A.36.031), Arson 1 (RCW 9A.48.020), or
30 Arson 2 (RCW 9A.48.030);

31 (b) Count two points for each adult prior conviction where
32 domestic violence as defined in RCW 9.94A.030 was pleaded and proven
33 after July 23, 2017, for any of the following offenses: Assault of a
34 child in the first degree, RCW 9A.36.120; Assault of a child in the
35 second degree, RCW 9A.36.130; Assault of a child in the third degree,
36 RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW
37 9A.42.020; or Criminal Mistreatment in the second degree, RCW
38 9A.42.030;

39 (c) Count one point for each second and subsequent juvenile
40 conviction where domestic violence as defined in RCW 9.94A.030 was

1 pleaded and proven after August 1, 2011, for the offenses listed in
2 (a) of this subsection; and

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

7 (22) The fact that a prior conviction was not included in an
8 offender's offender score or criminal history at a previous
9 sentencing shall have no bearing on whether it is included in the
10 criminal history or offender score for the current offense. Prior
11 convictions that were not counted in the offender score or included
12 in criminal history under repealed or previous versions of the
13 sentencing reform act shall be included in criminal history and shall
14 count in the offender score if the current version of the sentencing
15 reform act requires including or counting those convictions. Prior
16 convictions that were not included in criminal history or in the
17 offender score shall be included upon any resentencing to ensure
18 imposition of an accurate sentence.

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

21 (1)(a) An offender who violates any condition or requirement of a
22 sentence may be sanctioned by the court with up to (~~sixty~~) 60 days'
23 confinement for each violation or by the department with up to
24 (~~thirty~~) 30 days' confinement as provided in RCW 9.94A.737.

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

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

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

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

4 (c) If the offender was sentenced under the drug offender
5 sentencing alternative for driving under the influence set out in
6 section 1 of this act, the offender may be sanctioned in accordance
7 with that section.

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

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

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

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

21 (~~(g)~~) (h) If a sex offender was sentenced pursuant to RCW
22 9.94A.507, the offender may be transferred to a more restrictive
23 confinement status to serve up to the remaining portion of the
24 sentence, less credit for any period actually spent in community
25 custody or in detention awaiting disposition of an alleged violation.

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

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

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

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

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

3 The procedure for imposing sanctions for violations of sentence
4 conditions or requirements is as follows:

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

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

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

15 (~~(3)~~) (4) If the offender was sentenced under the parenting
16 sentencing alternative, any sanctions shall be imposed by the
17 department or by the court pursuant to RCW 9.94A.655.

18 (~~(4)~~) (5) If the offender was sentenced under the mental health
19 sentencing alternative, any sanctions shall be imposed by the
20 department or the court pursuant to RCW 9.94A.695.

21 (~~(5)~~) (6) If a sex offender was sentenced pursuant to RCW
22 9.94A.507, any sanctions shall be imposed by the board pursuant to
23 RCW 9.95.435.

24 (~~(6)~~) (7) If the offender was released pursuant to RCW
25 9.94A.730, any sanctions shall be imposed by the board pursuant to
26 RCW 9.95.435.

27 (~~(7)~~) (8) If the offender was sentenced pursuant to RCW
28 10.95.030(3) or 10.95.035, any sanctions shall be imposed by the
29 board pursuant to RCW 9.95.435.

30 (~~(8)~~) (9) In any other case, if the offender is being
31 supervised by the department, any sanctions shall be imposed by the
32 department pursuant to RCW 9.94A.737. If a probationer is being
33 supervised by the department pursuant to RCW 9.92.060, 9.95.204, or
34 9.95.210, upon receipt of a violation hearing report from the
35 department, the court retains any authority that those statutes
36 provide to respond to a probationer's violation of conditions.

37 (~~(9)~~) (10) If the offender is not being supervised by the
38 department, any sanctions shall be imposed by the court pursuant to
39 RCW 9.94A.6333.

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

3 (1) An offender is eligible for the special drug offender
4 sentencing alternative if:

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

8 (b) The offender is convicted of a felony that is not a felony
9 driving while under the influence of intoxicating liquor or any drug
10 under RCW 46.61.502(6) or felony physical control of a vehicle while
11 under the influence of intoxicating liquor or any drug under RCW
12 46.61.504(6);

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

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

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

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

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

30 (f) The offender has not been found by the United States attorney
31 general to be subject to a deportation detainer or order and does not
32 become subject to a deportation order during the period of the
33 sentence; and

34 (g) The offender has not received a drug offender sentencing
35 alternative under this section, or a drug offender sentencing
36 alternative for driving under the influence under section 1 of this
37 act, more than once in the prior (~~ten~~) 10 years before the current
38 offense.

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

1 (3) If the sentencing court determines that the offender is
2 eligible for an alternative sentence under this section and that the
3 alternative sentence is appropriate, the court shall waive imposition
4 of a sentence within the standard sentence range and impose a
5 sentence consisting of either a prison-based alternative under RCW
6 9.94A.662 or a residential substance use disorder treatment-based
7 alternative under RCW 9.94A.664. The residential substance use
8 disorder treatment-based alternative is only available if the
9 midpoint of the standard sentence range is (~~twenty-six~~) 26 months
10 or less.

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

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

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

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

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

29 ~~(c))~~ (e) Whether effective treatment for the offender's substance
30 use disorder is available from a provider that has been licensed or
31 certified by the department of health, and where applicable, whether
32 effective domestic violence perpetrator treatment is available from a
33 state-certified domestic violence treatment provider pursuant to RCW
34 43.20A.735; and

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

37 (6) When a court imposes a sentence of community custody under
38 this section:

39 (a) The court may impose conditions as provided in RCW 9.94A.703
40 and may impose other affirmative conditions as the court considers

1 appropriate. In addition, an offender may be required to pay (~~thirty~~
2 ~~dollars~~) \$30 per month while on community custody to offset the cost
3 of monitoring for alcohol or controlled substances, or in cases of
4 domestic violence for monitoring with global positioning system
5 technology for compliance with a no-contact order.

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

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

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

15 (c) The court may order the offender to serve a term of total
16 confinement within the standard sentence range of the offender's
17 current offense at any time during the period of community custody if
18 the offender violates the conditions or requirements of the sentence
19 or if the offender is failing to make satisfactory progress in
20 treatment.

21 (d) An offender ordered to serve a term of total confinement
22 under (c) of this subsection shall receive credit for time previously
23 served in total or partial confinement and inpatient treatment under
24 this section, and shall receive (~~fifty~~) 50 percent credit for time
25 previously served in community custody under this section.

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

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

34 (10) The Washington state institute for public policy shall
35 submit a report to the governor and the appropriate committees of the
36 legislature by November 1, 2022, analyzing the effectiveness of the
37 drug offender sentencing alternative in reducing recidivism among
38 various offender populations. An additional report is due November 1,
39 2028, and every five years thereafter. The Washington state institute

1 for public policy may coordinate with the department and the caseload
2 forecast council in tracking data and preparing the report.

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

5 (1) If an offender is sentenced to the custody of the department
6 for one of the following crimes, the court shall, in addition to the
7 other terms of the sentence, sentence the offender to community
8 custody for three years:

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

10 (b) A serious violent offense.

11 (2) A court shall, in addition to the other terms of the
12 sentence, sentence an offender to community custody for ~~((eighteen))~~
13 18 months when the court sentences the person to the custody of the
14 department for a violent offense that is not considered a serious
15 violent offense.

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

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

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

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

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

28 (4) If an offender is sentenced under the drug offender
29 sentencing alternative, the court shall impose community custody as
30 provided in:

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

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

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

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

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

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

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

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

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

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

20 **Sec. 11.** RCW 46.61.502 and 2022 c 16 s 40 are each amended to
21 read as follows:

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

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

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

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

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

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

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

11 (b) It is an affirmative defense to a violation of subsection
12 (1)(b) of this section, which the defendant must prove by a
13 preponderance of the evidence, that the defendant consumed a
14 sufficient quantity of cannabis after the time of driving and before
15 the administration of an analysis of the person's blood to cause the
16 defendant's THC concentration to be 5.00 or more within two hours
17 after driving. The court shall not admit evidence of this defense
18 unless the defendant notifies the prosecution prior to the omnibus or
19 pretrial hearing in the case of the defendant's intent to assert the
20 affirmative defense.

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

29 (b) Analyses of blood samples obtained more than two hours after
30 the alleged driving may be used as evidence that within two hours of
31 the alleged driving, a person had a THC concentration of 5.00 or more
32 in violation of subsection (1)(b) of this section, and in any case in
33 which the analysis shows a THC concentration above 0.00 may be used
34 as evidence that a person was under the influence of or affected by
35 cannabis in violation of subsection (1)(c) or (d) of this section.

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

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

- 1 (a) The person has three or more prior offenses within (~~ten~~) 15
2 years as defined in RCW 46.61.5055; or
- 3 (b) The person has ever previously been convicted of:
- 4 (i) Vehicular homicide while under the influence of intoxicating
5 liquor or any drug, RCW 46.61.520(1)(a);
- 6 (ii) Vehicular assault while under the influence of intoxicating
7 liquor or any drug, RCW 46.61.522(1)(b);
- 8 (iii) An out-of-state offense comparable to the offense specified
9 in (b)(i) or (ii) of this subsection; or
- 10 (iv) A violation of this subsection (6) or RCW 46.61.504(6).

11 **Sec. 12.** RCW 46.61.5055 and 2020 c 330 s 15 are each amended to
12 read as follows:

13 (1) **No prior offenses in seven years.** Except as provided in RCW
14 46.61.502(6) or 46.61.504(6), a person who is convicted of a
15 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
16 within seven years shall be punished as follows:

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

22 (i) By imprisonment for not less than (~~twenty-four~~) 24
23 consecutive hours nor more than (~~three hundred sixty-four~~) 364
24 days. In lieu of the mandatory minimum term of imprisonment required
25 under this subsection (1)(a)(i), the court, in its discretion, may
26 order not less than (~~fifteen~~) 15 days of electronic home monitoring
27 or a (~~ninety-day~~) 90-day period of 24/7 sobriety program
28 monitoring. The court may consider the offender's pretrial 24/7
29 sobriety program monitoring as fulfilling a portion of posttrial
30 sentencing. The offender shall pay the cost of electronic home
31 monitoring. The county or municipality in which the penalty is being
32 imposed shall determine the cost. The court may also require the
33 offender's electronic home monitoring device or other separate
34 alcohol monitoring device to include an alcohol detection
35 breathalyzer, and the court may restrict the amount of alcohol the
36 offender may consume during the time the offender is on electronic
37 home monitoring; and

38 (ii) By a fine of not less than (~~three hundred fifty dollars~~)
39 \$350 nor more than (~~five thousand dollars~~) \$5,000. (~~Three hundred~~

1 ~~fifty dollars~~)) \$350 of the fine may not be suspended unless the
2 court finds the offender to be indigent; or

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

8 (i) By imprisonment for not less than (~~forty-eight~~) 48
9 consecutive hours nor more than (~~three hundred sixty-four~~) 364
10 days. In lieu of the mandatory minimum term of imprisonment required
11 under this subsection (1)(b)(i), the court, in its discretion, may
12 order not less than (~~thirty~~) 30 days of electronic home monitoring
13 or a (~~one hundred twenty~~) 120 day period of 24/7 sobriety program
14 monitoring. The court may consider the offender's pretrial 24/7
15 sobriety program testing as fulfilling a portion of posttrial
16 sentencing. The offender shall pay the cost of electronic home
17 monitoring. The county or municipality in which the penalty is being
18 imposed shall determine the cost. The court may also require the
19 offender's electronic home monitoring device to include an alcohol
20 detection breathalyzer or other separate alcohol monitoring device,
21 and the court may restrict the amount of alcohol the offender may
22 consume during the time the offender is on electronic home
23 monitoring; and

24 (ii) By a fine of not less than (~~five hundred dollars~~) \$500 nor
25 more than (~~five thousand dollars~~) \$5,000. (~~Five hundred dollars~~)
26 \$5,000 of the fine may not be suspended unless the court finds the
27 offender to be indigent.

28 (2) **One prior offense in seven years.** Except as provided in RCW
29 46.61.502(6) or 46.61.504(6), a person who is convicted of a
30 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense
31 within seven years shall be punished as follows:

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

37 (i) By imprisonment for not less than (~~thirty~~) 30 days nor more
38 than (~~three hundred sixty-four~~) 364 days and (~~sixty~~) 60 days of
39 electronic home monitoring. Thirty days of imprisonment and (~~sixty~~)
40 60 days of electronic home monitoring may not be suspended or

1 converted unless the court finds that the imposition of this
2 mandatory minimum sentence would impose a substantial risk to the
3 offender's physical or mental well-being. If the offender shows that
4 the imposition of this mandatory minimum sentence would impose a
5 substantial risk to the offender's physical or mental well-being, in
6 lieu of the mandatory term of imprisonment and electronic home
7 monitoring under this subsection (2)(a)(i), the court may order a
8 minimum of either (~~one hundred eighty~~) 180 days of electronic home
9 monitoring or a (~~one hundred twenty-day~~) 120-day period of 24/7
10 sobriety program monitoring pursuant to RCW 36.28A.300 through
11 36.28A.390. Whenever the mandatory minimum sentence is suspended or
12 converted, the court shall state in writing the reason for granting
13 the suspension or conversion and the facts upon which the suspension
14 or conversion is based. The court may consider the offender's
15 pretrial 24/7 sobriety program monitoring as fulfilling a portion of
16 posttrial sentencing. The court shall order an expanded substance use
17 disorder assessment and treatment, if deemed appropriate by the
18 assessment. The offender shall pay for the cost of the electronic
19 monitoring. The county or municipality where the penalty is being
20 imposed shall determine the cost. The court may also require the
21 offender's electronic home monitoring device include an alcohol
22 detection breathalyzer or other separate alcohol monitoring device,
23 and may restrict the amount of alcohol the offender may consume
24 during the time the offender is on electronic home monitoring; and

25 (ii) By a fine of not less than (~~five hundred dollars~~) \$500 nor
26 more than (~~five thousand dollars~~) \$5,000. (~~Five hundred dollars~~)
27 \$500 of the fine may not be suspended unless the court finds the
28 offender to be indigent; or

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

34 (i) By imprisonment for not less than (~~forty-five~~) 45 days nor
35 more than (~~three hundred sixty-four~~) 364 days and (~~ninety~~) 90
36 days of electronic home monitoring. Forty-five days of imprisonment
37 and (~~ninety~~) 90 days of electronic home monitoring may not be
38 suspended or converted unless the court finds that the imposition of
39 this mandatory minimum sentence would impose a substantial risk to
40 the offender's physical or mental well-being. If the offender shows

1 that the imposition of this mandatory minimum sentence would impose a
2 substantial risk to the offender's physical or mental well-being, in
3 lieu of the mandatory minimum term of imprisonment and electronic
4 home monitoring under this subsection (2)(b)(i), the court may order
5 a minimum of either six months of electronic home monitoring or a
6 (~~one hundred twenty day~~) 120-day period of 24/7 sobriety program
7 monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever
8 the mandatory minimum sentence is suspended or converted, the court
9 shall state in writing the reason for granting the suspension or
10 conversion and the facts upon which the suspension or conversion is
11 based. The court may consider the offender's pretrial 24/7 sobriety
12 program monitoring as fulfilling a portion of posttrial sentencing.
13 The court shall order an expanded substance use disorder assessment
14 and treatment, if deemed appropriate by the assessment. The offender
15 shall pay for the cost of the electronic monitoring. The county or
16 municipality where the penalty is being imposed shall determine the
17 cost. The court may also require the offender's electronic home
18 monitoring device include an alcohol detection breathalyzer or other
19 separate alcohol monitoring device, and may restrict the amount of
20 alcohol the offender may consume during the time the offender is on
21 electronic home monitoring; and

22 (ii) By a fine of not less than (~~seven hundred fifty dollars~~)
23 \$750 nor more than (~~five thousand dollars~~) \$5,000. (~~Seven hundred~~
24 ~~fifty dollars~~) \$750 of the fine may not be suspended unless the
25 court finds the offender to be indigent.

26 (3) **Two prior offenses in seven years.** Except as provided in RCW
27 46.61.502(6) or 46.61.504(6), a person who is convicted of a
28 violation of RCW 46.61.502 or 46.61.504 and who has two prior
29 offenses within seven years shall be punished as follows:

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

35 (i) By imprisonment for not less than (~~ninety~~) 90 days nor more
36 than (~~three hundred sixty four~~) 364 days, if available in that
37 county or city, a six-month period of 24/7 sobriety program
38 monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and (~~one~~
39 ~~hundred twenty~~) 120 days of electronic home monitoring. Ninety days
40 of imprisonment and (~~one hundred twenty~~) 120 days of electronic

1 home monitoring may not be suspended or converted unless the court
2 finds that the imposition of this mandatory minimum sentence would
3 impose a substantial risk to the offender's physical or mental well-
4 being. If the offender shows that the imposition of this mandatory
5 minimum sentence would impose a substantial risk to the offender's
6 physical or mental well-being, in lieu of the mandatory minimum term
7 of ninety days of imprisonment and (~~one hundred twenty~~) 120 days of
8 electronic home monitoring, the court may order (~~three hundred~~
9 ~~sixty~~) 360 days of electronic home monitoring or a (~~three hundred~~
10 ~~sixty-day~~) 360-day period of 24/7 sobriety monitoring pursuant to
11 RCW 36.28A.300 through 36.28A.390. Whenever the mandatory minimum
12 sentence is suspended or converted, the court shall state in writing
13 the reason for granting the suspension or conversion and the facts
14 upon which the suspension or conversion is based. The court shall
15 order an expanded substance use disorder assessment and treatment, if
16 deemed appropriate by the assessment. The offender shall pay for the
17 cost of the electronic monitoring. The county or municipality where
18 the penalty is being imposed shall determine the cost. The court may
19 also require the offender's electronic home monitoring device include
20 an alcohol detection breathalyzer or other separate alcohol
21 monitoring device, and may restrict the amount of alcohol the
22 offender may consume during the time the offender is on electronic
23 home monitoring; and

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

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

33 (i) By imprisonment for not less than (~~one hundred twenty~~) 120
34 days nor more than (~~three hundred sixty-four~~) 364 days, if
35 available in that county or city, a six-month period of 24/7 sobriety
36 program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and
37 (~~one hundred fifty~~) 150 days of electronic home monitoring. One
38 hundred twenty days of imprisonment and (~~one hundred fifty~~) 150
39 days of electronic home monitoring may not be suspended or converted
40 unless the court finds that the imposition of this mandatory minimum

1 sentence would impose a substantial risk to the offender's physical
2 or mental well-being. If the offender shows that the imposition of
3 this mandatory minimum sentence would impose a substantial risk to
4 the offender's physical or mental well-being, in lieu of the
5 mandatory minimum term of (~~one hundred twenty~~) 120 days of
6 imprisonment and (~~one hundred fifty~~) 150 days of electronic home
7 monitoring, the court may order (~~three hundred sixty~~) 360 days of
8 electronic home monitoring or a (~~three hundred sixty-day~~) 360-day
9 period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through
10 36.28A.390. Whenever the mandatory minimum sentence is suspended or
11 converted, the court shall state in writing the reason for granting
12 the suspension or conversion and the facts upon which the suspension
13 or conversion is based. The offender shall pay for the cost of the
14 electronic monitoring. The court shall order an expanded substance
15 use disorder assessment and treatment, if deemed appropriate by the
16 assessment. The county or municipality where the penalty is being
17 imposed shall determine the cost. The court may also require the
18 offender's electronic home monitoring device include an alcohol
19 detection breathalyzer or other separate alcohol monitoring device,
20 and may restrict the amount of alcohol the offender may consume
21 during the time the offender is on electronic home monitoring; and

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

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

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

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

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

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

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

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

39 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall
40 require any person convicted of a violation of RCW 46.61.502 or

1 46.61.504 or an equivalent local ordinance to comply with the rules
2 and requirements of the department regarding the installation and use
3 of a functioning ignition interlock device installed on all motor
4 vehicles operated by the person.

5 (b) **Monitoring devices.** If the court orders that a person refrain
6 from consuming any alcohol, the court may order the person to submit
7 to alcohol monitoring through an alcohol detection breathalyzer
8 device, transdermal sensor device, or other technology designed to
9 detect alcohol in a person's system. The person shall pay for the
10 cost of the monitoring, unless the court specifies that the cost of
11 monitoring will be paid with funds that are available from an
12 alternative source identified by the court. The county or
13 municipality where the penalty is being imposed shall determine the
14 cost.

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

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

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

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

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

32 (a) Order the use of an ignition interlock or other device for an
33 additional (~~twelve~~) 12 months for each passenger under the age of
34 (~~sixteen~~) 16 when the person is subject to the penalties under
35 subsection (1)(a), (2)(a), or (3)(a) of this section; and order the
36 use of an ignition interlock device for an additional (~~eighteen~~) 18
37 months for each passenger under the age of (~~sixteen~~) 16 when the
38 person is subject to the penalties under subsection (1)(b), (2)(b),
39 (3)(b), or (4) of this section;

1 (b) In any case in which the person has no prior offenses within
2 seven years, and except as provided in RCW 46.61.502(6) or
3 46.61.504(6), order an additional (~~twenty-four~~) 24 hours of
4 imprisonment to be served consecutively for each passenger under the
5 age of (~~sixteen~~) 16, and a fine of not less than (~~one-thousand~~
6 ~~dollars~~) \$1,000 and not more than (~~five-thousand-dollars~~) \$5,000
7 for each passenger under the age of (~~sixteen~~) 16. (~~One-thousand~~
8 ~~dollars~~) \$1,000 of the fine for each passenger under the age of
9 (~~sixteen~~) 16 may not be suspended unless the court finds the
10 offender to be indigent;

11 (c) In any case in which the person has one prior offense within
12 seven years, and except as provided in RCW 46.61.502(6) or
13 46.61.504(6), order an additional five days of imprisonment to be
14 served consecutively for each passenger under the age of (~~sixteen~~)
15 16, and a fine of not less than (~~two-thousand-dollars~~) \$2,000 and
16 not more than (~~five-thousand-dollars~~) \$5,000 for each passenger
17 under the age of (~~sixteen~~) 16. (~~One-thousand-dollars~~) \$1,000 of
18 the fine for each passenger under the age of (~~sixteen~~) 16 may not
19 be suspended unless the court finds the offender to be indigent;

20 (d) In any case in which the person has two 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 (~~ten~~) 10 days of imprisonment to
23 be served consecutively for each passenger under the age of
24 (~~sixteen~~) 16, and a fine of not less than (~~three-thousand~~
25 ~~dollars~~) \$3,000 and not more than (~~ten-thousand-dollars~~) \$10,000
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 (7) **Other items courts must consider while setting penalties.** In
31 exercising its discretion in setting penalties within the limits
32 allowed by this section, the court shall particularly consider the
33 following:

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

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

38 (c) Whether the driver was driving in the opposite direction of
39 the normal flow of traffic on a multiple lane highway, as defined by

1 RCW 46.04.350, with a posted speed limit of (~~forty-five~~) 45 miles
2 per hour or greater; and

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

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

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

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

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

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

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

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

35 (A) Where there has been no prior offense within seven years, be
36 revoked or denied by the department for one year or until the person
37 is evaluated by a substance use disorder agency or probation
38 department pursuant to RCW 46.20.311 and the person completes or is
39 enrolled in a (~~one hundred twenty~~) 120 day period of 24/7 sobriety

1 program monitoring. In no circumstances shall the license revocation
2 be for fewer than four days;

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

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

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

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

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

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

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

20 (ii) If a person has already served a suspension, revocation, or
21 denial under RCW 46.20.3101 for a period equal to or greater than the
22 period imposed under this subsection (9), the department shall
23 provide notice of full credit, shall provide for no further
24 suspension or revocation under this subsection provided the person
25 has completed the requirements under RCW 46.20.311 and paid the
26 probationary license fee under RCW 46.20.355 by the date specified in
27 the notice under RCW 46.20.245, and shall impose no additional
28 reissue fees for this credit.

29 (c) Upon receipt of a notice from the court under RCW 36.28A.390
30 that a participant has been removed from a 24/7 sobriety program, the
31 department must resume any suspension, revocation, or denial that had
32 been terminated early under this subsection due to participation in
33 the program, granting credit on a day-for-day basis for any portion
34 of a suspension, revocation, or denial already served under RCW
35 46.20.3101 or this section arising out of the same incident.

36 (d) Upon its own motion or upon motion by a person, a court may
37 find, on the record, that notice to the department under RCW
38 46.20.270 has been delayed for three years or more as a result of a
39 clerical or court error. If so, the court may order that the person's
40 license, permit, or nonresident privilege shall not be revoked,

1 suspended, or denied for that offense. The court shall send notice of
2 the finding and order to the department and to the person. Upon
3 receipt of the notice from the court, the department shall not
4 revoke, suspend, or deny the license, permit, or nonresident
5 privilege of the person for that offense.

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

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

14 (11) **Conditions of probation.** (a) In addition to any
15 nonsuspendable and nondeferrable jail sentence required by this
16 section, whenever the court imposes up to (~~three hundred sixty-~~
17 ~~four~~) 364 days in jail, the court shall also suspend but shall not
18 defer a period of confinement for a period not exceeding five years.
19 The court shall impose conditions of probation that include: (i) Not
20 driving a motor vehicle within this state without a valid license to
21 drive; (ii) not driving a motor vehicle within this state without
22 proof of liability insurance or other financial responsibility for
23 the future pursuant to RCW 46.30.020; (iii) not driving or being in
24 physical control of a motor vehicle within this state while having an
25 alcohol concentration of 0.08 or more or a THC concentration of 5.00
26 nanograms per milliliter of whole blood or higher, within two hours
27 after driving; (iv) not refusing to submit to a test of his or her
28 breath or blood to determine alcohol or drug concentration upon
29 request of a law enforcement officer who has reasonable grounds to
30 believe the person was driving or was in actual physical control of a
31 motor vehicle within this state while under the influence of
32 intoxicating liquor or drug; and (v) not driving a motor vehicle in
33 this state without a functioning ignition interlock device as
34 required by the department under RCW 46.20.720. The court may impose
35 conditions of probation that include nonrepetition, installation of
36 an ignition interlock device on the probationer's motor vehicle,
37 substance use disorder treatment, supervised probation, or other
38 conditions that may be appropriate. The sentence may be imposed in
39 whole or in part upon violation of a condition of probation during
40 the suspension period.

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

5 (c) For each incident involving a violation of a mandatory
6 condition of probation imposed under this subsection, the license,
7 permit, or privilege to drive of the person shall be suspended by the
8 court for (~~(thirty)~~) 30 days or, if such license, permit, or
9 privilege to drive already is suspended, revoked, or denied at the
10 time the finding of probation violation is made, the suspension,
11 revocation, or denial then in effect shall be extended by (~~(thirty)~~)
12 30 days. The court shall notify the department of any suspension,
13 revocation, or denial or any extension of a suspension, revocation,
14 or denial imposed under this subsection.

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

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

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

24 (c) The court determines that there is reason to believe that the
25 offender would violate the conditions of the electronic home
26 monitoring penalty.

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

34 Whenever the combination of jail time and electronic home
35 monitoring or alternative sentence would exceed (~~(three hundred~~
36 ~~sixty-four)~~) 364 days, the offender shall serve the jail portion of
37 the sentence first, and the electronic home monitoring or alternative
38 portion of the sentence shall be reduced so that the combination does
39 not exceed (~~(three hundred sixty-four)~~) 364 days.

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

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

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

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

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

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

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

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

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

24 (vii) A conviction for a violation of RCW 47.68.220 or an
25 equivalent local ordinance committed in a careless or reckless manner
26 if the conviction is the result of a charge that was originally filed
27 as a violation of RCW 47.68.220 or an equivalent local ordinance
28 while under the influence of intoxicating liquor or any drug;

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

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

33 (x) A conviction for a violation of RCW 46.61.520 committed while
34 under the influence of intoxicating liquor or any drug, or a
35 conviction for a violation of RCW 46.61.520 committed in a reckless
36 manner or with the disregard for the safety of others if the
37 conviction is the result of a charge that was originally filed as a
38 violation of RCW 46.61.520 committed while under the influence of
39 intoxicating liquor or any drug;

1 (xi) A conviction for a violation of RCW 46.61.522 committed
2 while under the influence of intoxicating liquor or any drug, or a
3 conviction for a violation of RCW 46.61.522 committed in a reckless
4 manner or with the disregard for the safety of others if the
5 conviction is the result of a charge that was originally filed as a
6 violation of RCW 46.61.522 committed while under the influence of
7 intoxicating liquor or any drug;

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

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

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

19 (xv) A deferred prosecution under chapter 10.05 RCW granted in a
20 prosecution for a violation of RCW 46.61.5249, or an equivalent local
21 ordinance, if the charge under which the deferred prosecution was
22 granted was originally filed as a violation of RCW 46.61.502 or
23 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
24 46.61.522;

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

31 (xvii) A deferred sentence imposed in a prosecution for a
32 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
33 equivalent local ordinance, if the charge under which the deferred
34 sentence was imposed was originally filed as a violation of RCW
35 46.61.502 or 46.61.504, or an equivalent local ordinance, or a
36 violation of RCW 46.61.520 or 46.61.522;

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

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

3 (c) "Within seven years" means that the arrest for a prior
4 offense occurred within seven years before or after the arrest for
5 the current offense; and

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

9 (15) All fines imposed by this section apply to adult offenders
10 only.

11 **Sec. 13.** RCW 46.61.504 and 2022 c 16 s 42 are each amended to
12 read as follows:

13 (1) A person is guilty of being in actual physical control of a
14 motor vehicle while under the influence of intoxicating liquor or any
15 drug if the person has actual physical control of a vehicle within
16 this state:

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

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

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

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

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

37 (3) (a) It is an affirmative defense to a violation of subsection
38 (1)(a) of this section which the defendant must prove by a
39 preponderance of the evidence that the defendant consumed a

1 sufficient quantity of alcohol after the time of being in actual
2 physical control of the vehicle and before the administration of an
3 analysis of the person's breath or blood to cause the defendant's
4 alcohol concentration to be 0.08 or more within two hours after being
5 in such control. The court shall not admit evidence of this defense
6 unless the defendant notifies the prosecution prior to the omnibus or
7 pretrial hearing in the case of the defendant's intent to assert the
8 affirmative defense.

9 (b) It is an affirmative defense to a violation of subsection
10 (1)(b) of this section, which the defendant must prove by a
11 preponderance of the evidence, that the defendant consumed a
12 sufficient quantity of cannabis after the time of being in actual
13 physical control of the vehicle and before the administration of an
14 analysis of the person's blood to cause the defendant's THC
15 concentration to be 5.00 or more within two hours after being in
16 control of the vehicle. The court shall not admit evidence of this
17 defense unless the defendant notifies the prosecution prior to the
18 omnibus or pretrial hearing in the case of the defendant's intent to
19 assert the affirmative defense.

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

29 (b) Analyses of blood samples obtained more than two hours after
30 the alleged being in actual physical control of a vehicle may be used
31 as evidence that within two hours of the alleged being in control of
32 the vehicle, a person had a THC concentration of 5.00 or more in
33 violation of subsection (1)(b) of this section, and in any case in
34 which the analysis shows a THC concentration above 0.00 may be used
35 as evidence that a person was under the influence of or affected by
36 cannabis in violation of subsection (1)(c) or (d) of this section.

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

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

1 (a) The person has three or more prior offenses within (~~ten~~) 15
2 years as defined in RCW 46.61.5055; or
3 (b) The person has ever previously been convicted of:
4 (i) Vehicular homicide while under the influence of intoxicating
5 liquor or any drug, RCW 46.61.520(1)(a);
6 (ii) Vehicular assault while under the influence of intoxicating
7 liquor or any drug, RCW 46.61.522(1)(b);
8 (iii) An out-of-state offense comparable to the offense specified
9 in (b)(i) or (ii) of this subsection; or
10 (iv) A violation of this subsection (6) or RCW 46.61.502(6).

11 NEW SECTION. **Sec. 14.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of
13 the state government and its existing public institutions, and takes
14 effect July 1, 2023.

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