

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 3317**

Chapter 73, Laws of 2006

59th Legislature  
2006 Regular Session

DRIVING UNDER THE INFLUENCE--PENALTIES

EFFECTIVE DATE: 7/1/07

Passed by the House March 8, 2006  
Yeas 98 Nays 0

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Passed by the Senate March 7, 2006  
Yeas 45 Nays 0

BRAD OWEN

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**President of the Senate**

Approved March 15, 2006.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 3317** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

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**Chief Clerk**

FILED

March 15, 2006 - 3:23 p.m.

**Secretary of State  
State of Washington**

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HOUSE BILL 3317

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AS AMENDED BY THE SENATE

Passed Legislature - 2006 Regular Session

State of Washington                      59th Legislature                      2006 Regular Session

By Representatives Lantz, Lovick, Darneille, Chase, Williams, Hunter, Clibborn, Kilmer, Hudgins, Ericks, Simpson, Conway, Takko and Morrell

Read first time 02/27/2006. Referred to Committee on Rules.

1            AN ACT Relating to making it a felony to drive or be in physical  
2 control of a vehicle while under the influence of intoxicating liquor  
3 or any drug; amending RCW 46.61.502, 46.61.504, 46.61.5055, 9.94A.030,  
4 9.94A.640, 9.94A.650, 9.94A.660, 9.94A.690, 13.40.0357, 46.20.311,  
5 46.61.524, 46.61.5152, and 46.61.5151; reenacting and amending RCW  
6 9.94A.505, 9.94A.525, 9.94A.515, and 9.94A.411; adding a new section to  
7 chapter 9.94A RCW; prescribing penalties; and providing an effective  
8 date.

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

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

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

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

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

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

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

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

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

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

27 (6) It is a class C felony punishable under chapter 9.94A RCW, or  
28 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has  
29 four or more prior offenses within ten years as defined in RCW  
30 46.61.5055; or (b) the person has ever previously been convicted of  
31 vehicular homicide while under the influence of intoxicating liquor or  
32 any drug, RCW 46.61.520(1)(a), or vehicular assault while under the  
33 influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b).

34 **Sec. 2.** RCW 46.61.504 and 1998 c 213 s 5 are each amended to read  
35 as follows:

36 (1) A person is guilty of being in actual physical control of a

1 motor vehicle while under the influence of intoxicating liquor or any  
2 drug if the person has actual physical control of a vehicle within this  
3 state:

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

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

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

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

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

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

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

1       (6) It is a class C felony punishable under chapter 9.94A RCW, or  
2 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has  
3 four or more prior offenses within ten years as defined in RCW  
4 46.61.5055; or (b) the person has ever previously been convicted of  
5 vehicular homicide while under the influence of intoxicating liquor or  
6 any drug, RCW 46.61.520(1)(a), or vehicular assault while under the  
7 influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b).

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

10       (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
11 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
12 and who has no prior offense within seven years shall be punished as  
13 follows:

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

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

35       (ii) By a fine of not less than three hundred fifty dollars nor  
36 more than five thousand dollars. Three hundred fifty dollars of the

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

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

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

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

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

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

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

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

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

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

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

35 (ii) By a fine of not less than seven hundred fifty dollars nor  
36 more than five thousand dollars. Seven hundred fifty dollars of the  
37 fine may not be suspended or deferred unless the court finds the  
38 offender to be indigent.

1           (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
2 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
3 and who has two or (~~more~~) three prior offenses within seven years  
4 shall be punished as follows:

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

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

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

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

33           (i) By imprisonment for not less than one hundred twenty days nor  
34 more than one year and one hundred fifty days of electronic home  
35 monitoring. The offender shall pay for the cost of the electronic  
36 monitoring. The county or municipality where the penalty is being  
37 imposed shall determine the cost. The court may also require the  
38 offender's electronic home monitoring device include an alcohol



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

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

15 (4) A person who is convicted of a violation of RCW 46.61.502 or  
16 46.61.504 and who has four or more prior offenses within ten years, or  
17 who has ever previously been convicted of a violation of RCW 46.61.520  
18 committed while under the influence of intoxicating liquor or any drug  
19 or RCW 46.61.522 committed while under the influence of intoxicating  
20 liquor or any drug, shall be punished in accordance with chapter 9.94A  
21 RCW.

22 (5) If a person who is convicted of a violation of RCW 46.61.502 or  
23 46.61.504 committed the offense while a passenger under the age of  
24 sixteen was in the vehicle, the court shall:

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

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

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

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

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

3 (~~(6)~~) (7) An offender punishable under this section is subject to  
4 the alcohol assessment and treatment provisions of RCW 46.61.5056.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 notify the department of any suspension, revocation, or denial or any  
2 extension of a suspension, revocation, or denial imposed under this  
3 subsection.

4 ~~((+10))~~ (11) A court may waive the electronic home monitoring  
5 requirements of this chapter when:

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

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

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

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

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

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

28 ~~((+12))~~ (13) For purposes of this section and RCW 46.61.502 and  
29 46.61.504:

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

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

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

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

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

1 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
2 9A.36.050 or an equivalent local ordinance, if the conviction is the  
3 result of a charge that was originally filed as a violation of RCW  
4 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
5 46.61.520 or 46.61.522;

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

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

12 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
13 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
14 ordinance, if the charge under which the deferred prosecution was  
15 granted was originally filed as a violation of RCW 46.61.502 or  
16 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
17 46.61.522; and

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

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.94A RCW  
21 to read as follows:

22 (1) When sentencing an offender convicted of a violation of RCW  
23 46.61.502(6) or 46.61.504(6), the court, in addition to imposing the  
24 provisions of this chapter, shall order the offender to undergo alcohol  
25 or chemical dependency treatment services during incarceration. The  
26 offender shall be liable for the cost of treatment unless the court  
27 finds the offender indigent and no third-party insurance coverage is  
28 available.

29 (2) The provisions under RCW 46.61.5055 (8) and (9) regarding the  
30 suspension, revocation, or denial of the offender's license, permit, or  
31 nonresident privilege to drive shall apply to an offender convicted of  
32 a violation of RCW 46.61.502(6) or 46.61.504(6).

33 (3) The provisions under RCW 46.20.720 and 46.61.5055(5) regarding  
34 ignition interlock devices shall apply to an offender convicted of a  
35 violation of RCW 46.61.502(6) or 46.61.504(6).

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

3       Unless the context clearly requires otherwise, the definitions in  
4 this section apply throughout this chapter.

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

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

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

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

20       (5) "Community custody" means that portion of an offender's  
21 sentence of confinement in lieu of earned release time or imposed  
22 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
23 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
24 community subject to controls placed on the offender's movement and  
25 activities by the department. For offenders placed on community  
26 custody for crimes committed on or after July 1, 2000, the department  
27 shall assess the offender's risk of reoffense and may establish and  
28 modify conditions of community custody, in addition to those imposed by  
29 the court, based upon the risk to community safety.

30       (6) "Community custody range" means the minimum and maximum period  
31 of community custody included as part of a sentence under RCW  
32 9.94A.715, as established by the commission or the legislature under  
33 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

34       (7) "Community placement" means that period during which the  
35 offender is subject to the conditions of community custody and/or  
36 postrelease supervision, which begins either upon completion of the  
37 term of confinement (postrelease supervision) or at such time as the

1 offender is transferred to community custody in lieu of earned release.  
2 Community placement may consist of entirely community custody, entirely  
3 postrelease supervision, or a combination of the two.

4 (8) "Community restitution" means compulsory service, without  
5 compensation, performed for the benefit of the community by the  
6 offender.

7 (9) "Community supervision" means a period of time during which a  
8 convicted offender is subject to crime-related prohibitions and other  
9 sentence conditions imposed by a court pursuant to this chapter or RCW  
10 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
11 a chemical dependency that has contributed to his or her offense, the  
12 conditions of supervision may, subject to available resources, include  
13 treatment. For purposes of the interstate compact for out-of-state  
14 supervision of parolees and probationers, RCW 9.95.270, community  
15 supervision is the functional equivalent of probation and should be  
16 considered the same as probation by other states.

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

18 (11) "Conviction" means an adjudication of guilt pursuant to Titles  
19 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
20 acceptance of a plea of guilty.

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

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

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

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

1 (c) The determination of a defendant's criminal history is distinct  
2 from the determination of an offender score. A prior conviction that  
3 was not included in an offender score calculated pursuant to a former  
4 version of the sentencing reform act remains part of the defendant's  
5 criminal history.

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

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

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

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

24 (18) "Disposable earnings" means that part of the earnings of an  
25 offender remaining after the deduction from those earnings of any  
26 amount required by law to be withheld. For the purposes of this  
27 definition, "earnings" means compensation paid or payable for personal  
28 services, whether denominated as wages, salary, commission, bonuses, or  
29 otherwise, and, notwithstanding any other provision of law making the  
30 payments exempt from garnishment, attachment, or other process to  
31 satisfy a court-ordered legal financial obligation, specifically  
32 includes periodic payments pursuant to pension or retirement programs,  
33 or insurance policies of any type, but does not include payments made  
34 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
35 or Title 74 RCW.

36 (19) "Drug offender sentencing alternative" is a sentencing option  
37 available to persons convicted of a felony offense other than a violent



1 offense or a sex offense and who are eligible for the option under RCW  
2 9.94A.660.

3 (20) "Drug offense" means:

4 (a) Any felony violation of chapter 69.50 RCW except possession of  
5 a controlled substance (RCW 69.50.4013) or forged prescription for a  
6 controlled substance (RCW 69.50.403);

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

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

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

15 (22) "Escape" means:

16 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
17 first degree (RCW 9A.76.110), escape in the second degree (RCW  
18 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
19 willful failure to return from work release (RCW 72.65.070), or willful  
20 failure to be available for supervision by the department while in  
21 community custody (RCW 72.09.310); or

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

25 (23) "Felony traffic offense" means:

26 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
27 46.61.522), eluding a police officer (RCW 46.61.024), ~~((e))~~ felony  
28 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while  
29 under the influence of intoxicating liquor or any drug (RCW  
30 46.61.502(6)), or felony physical control of a vehicle while under the  
31 influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

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

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

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

23 (a) Any felony defined under any law as a class A felony or  
24 criminal solicitation of or criminal conspiracy to commit a class A  
25 felony;

26 (b) Assault in the second degree;

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

28 (d) Child molestation in the second degree;

29 (e) Controlled substance homicide;

30 (f) Extortion in the first degree;

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

32 (h) Indecent liberties;

33 (i) Kidnapping in the second degree;

34 (j) Leading organized crime;

35 (k) Manslaughter in the first degree;

36 (l) Manslaughter in the second degree;

37 (m) Promoting prostitution in the first degree;

38 (n) Rape in the third degree;

- 1 (o) Robbery in the second degree;
- 2 (p) Sexual exploitation;
- 3 (q) Vehicular assault, when caused by the operation or driving of  
4 a vehicle by a person while under the influence of intoxicating liquor  
5 or any drug or by the operation or driving of a vehicle in a reckless  
6 manner;
- 7 (r) Vehicular homicide, when proximately caused by the driving of  
8 any vehicle by any person while under the influence of intoxicating  
9 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
10 any vehicle in a reckless manner;
- 11 (s) Any other class B felony offense with a finding of sexual  
12 motivation;
- 13 (t) Any other felony with a deadly weapon verdict under RCW  
14 9.94A.602;
- 15 (u) Any felony offense in effect at any time prior to December 2,  
16 1993, that is comparable to a most serious offense under this  
17 subsection, or any federal or out-of-state conviction for an offense  
18 that under the laws of this state would be a felony classified as a  
19 most serious offense under this subsection;
- 20 (v)(i) A prior conviction for indecent liberties under RCW  
21 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
22 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
23 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
24 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- 25 (ii) A prior conviction for indecent liberties under RCW  
26 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
27 if: (A) The crime was committed against a child under the age of  
28 fourteen; or (B) the relationship between the victim and perpetrator is  
29 included in the definition of indecent liberties under RCW  
30 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
31 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
32 through July 27, 1997.
- 33 (29) "Nonviolent offense" means an offense which is not a violent  
34 offense.
- 35 (30) "Offender" means a person who has committed a felony  
36 established by state law and is eighteen years of age or older or is  
37 less than eighteen years of age but whose case is under superior court  
38 jurisdiction under RCW 13.04.030 or has been transferred by the

1 appropriate juvenile court to a criminal court pursuant to RCW  
2 13.40.110. Throughout this chapter, the terms "offender" and  
3 "defendant" are used interchangeably.

4 (31) "Partial confinement" means confinement for no more than one  
5 year in a facility or institution operated or utilized under contract  
6 by the state or any other unit of government, or, if home detention or  
7 work crew has been ordered by the court, in an approved residence, for  
8 a substantial portion of each day with the balance of the day spent in  
9 the community. Partial confinement includes work release, home  
10 detention, work crew, and a combination of work crew and home  
11 detention.

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

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

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

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

33 (ii) Has, before the commission of the offense under (b)(i) of this  
34 subsection, been convicted as an offender on at least one occasion,  
35 whether in this state or elsewhere, of an offense listed in (b)(i) of  
36 this subsection or any federal or out-of-state offense or offense under  
37 prior Washington law that is comparable to the offenses listed in  
38 (b)(i) of this subsection. A conviction for rape of a child in the

1 first degree constitutes a conviction under (b)(i) of this subsection  
2 only when the offender was sixteen years of age or older when the  
3 offender committed the offense. A conviction for rape of a child in  
4 the second degree constitutes a conviction under (b)(i) of this  
5 subsection only when the offender was eighteen years of age or older  
6 when the offender committed the offense.

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

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

13 (35) "Risk assessment" means the application of an objective  
14 instrument supported by research and adopted by the department for the  
15 purpose of assessing an offender's risk of reoffense, taking into  
16 consideration the nature of the harm done by the offender, place and  
17 circumstances of the offender related to risk, the offender's  
18 relationship to any victim, and any information provided to the  
19 department by victims. The results of a risk assessment shall not be  
20 based on unconfirmed or unconfirmable allegations.

21 (36) "Serious traffic offense" means:

22 (a) Nonfelony driving while under the influence of intoxicating  
23 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
24 while under the influence of intoxicating liquor or any drug (RCW  
25 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
26 attended vehicle (RCW 46.52.020(5)); or

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

30 (37) "Serious violent offense" is a subcategory of violent offense  
31 and means:

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

33 (ii) Homicide by abuse;

34 (iii) Murder in the second degree;

35 (iv) Manslaughter in the first degree;

36 (v) Assault in the first degree;

37 (vi) Kidnapping in the first degree;

38 (vii) Rape in the first degree;

1 (viii) Assault of a child in the first degree; or  
2 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
3 commit one of these felonies; or  
4 (b) Any federal or out-of-state conviction for an offense that  
5 under the laws of this state would be a felony classified as a serious  
6 violent offense under (a) of this subsection.  
7 (38) "Sex offense" means:  
8 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
9 RCW 9A.44.130(11);  
10 (ii) A violation of RCW 9A.64.020;  
11 (iii) A felony that is a violation of chapter 9.68A RCW other than  
12 RCW 9.68A.070 or 9.68A.080; or  
13 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
14 criminal solicitation, or criminal conspiracy to commit such crimes;  
15 (b) Any conviction for a felony offense in effect at any time prior  
16 to July 1, 1976, that is comparable to a felony classified as a sex  
17 offense in (a) of this subsection;  
18 (c) A felony with a finding of sexual motivation under RCW  
19 9.94A.835 or 13.40.135; or  
20 (d) Any federal or out-of-state conviction for an offense that  
21 under the laws of this state would be a felony classified as a sex  
22 offense under (a) of this subsection.  
23 (39) "Sexual motivation" means that one of the purposes for which  
24 the defendant committed the crime was for the purpose of his or her  
25 sexual gratification.  
26 (40) "Standard sentence range" means the sentencing court's  
27 discretionary range in imposing a nonappealable sentence.  
28 (41) "Statutory maximum sentence" means the maximum length of time  
29 for which an offender may be confined as punishment for a crime as  
30 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
31 crime, or other statute defining the maximum penalty for a crime.  
32 (42) "Total confinement" means confinement inside the physical  
33 boundaries of a facility or institution operated or utilized under  
34 contract by the state or any other unit of government for twenty-four  
35 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.  
36 (43) "Transition training" means written and verbal instructions  
37 and assistance provided by the department to the offender during the  
38 two weeks prior to the offender's successful completion of the work

1 ethic camp program. The transition training shall include instructions  
2 in the offender's requirements and obligations during the offender's  
3 period of community custody.

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

7 (45) "Violent offense" means:

8 (a) Any of the following felonies:

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

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

13 (iii) Manslaughter in the first degree;

14 (iv) Manslaughter in the second degree;

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

16 (vi) Kidnapping in the second degree;

17 (vii) Arson in the second degree;

18 (viii) Assault in the second degree;

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

20 (x) Extortion in the first degree;

21 (xi) Robbery in the second degree;

22 (xii) Drive-by shooting;

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

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

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

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

37 (46) "Work crew" means a program of partial confinement consisting

1 of civic improvement tasks for the benefit of the community that  
2 complies with RCW 9.94A.725.

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

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

13 **Sec. 6.** RCW 9.94A.505 and 2002 c 290 s 17, 2002 c 289 s 6, and  
14 2002 c 175 s 6 are each reenacted and amended to read as follows:

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

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

19 (i) Unless another term of confinement applies, the court shall  
20 impose a sentence within the standard sentence range established in RCW  
21 9.94A.510 or 9.94A.517;

22 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

23 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

24 (iv) RCW 9.94A.545, relating to community custody for offenders  
25 whose term of confinement is one year or less;

26 (v) RCW 9.94A.570, relating to persistent offenders;

27 (vi) RCW 9.94A.540, relating to mandatory minimum terms;

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

29 (viii) RCW 9.94A.660, relating to the drug offender sentencing  
30 alternative;

31 (ix) RCW 9.94A.670, relating to the special sex offender sentencing  
32 alternative;

33 (x) RCW 9.94A.712, relating to certain sex offenses;

34 (xi) RCW 9.94A.535, relating to exceptional sentences;

35 (xii) RCW 9.94A.589, relating to consecutive and concurrent  
36 sentences;



1       (xiii) Section 4 of this act, 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 intoxicating  
4 liquor or any drug.

5       (b) If a standard sentence range has not been established for the  
6 offender's crime, the court shall impose a determinate sentence which  
7 may include not more than one year of confinement; community  
8 restitution work; until July 1, 2000, a term of community supervision  
9 not to exceed one year and on and after July 1, 2000, a term of  
10 community custody not to exceed one year, subject to conditions and  
11 sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other  
12 legal financial obligations. The court may impose a sentence which  
13 provides more than one year of confinement if the court finds reasons  
14 justifying an exceptional sentence as provided in RCW 9.94A.535.

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

21       (4) If a sentence imposed includes payment of a legal financial  
22 obligation, it shall be imposed as provided in RCW 9.94A.750,  
23 9.94A.753, 9.94A.760, and 43.43.7541.

24       (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a  
25 court may not impose a sentence providing for a term of confinement or  
26 community supervision, community placement, or community custody which  
27 exceeds the statutory maximum for the crime as provided in chapter  
28 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 court shall order restitution as provided in RCW 9.94A.750  
34 and 9.94A.753.

35       (8) As a part of any sentence, the court may impose and enforce  
36 crime-related prohibitions and affirmative conditions as provided in  
37 this chapter.

1 (9) The court may order an offender whose sentence includes  
2 community placement or community supervision to undergo a mental status  
3 evaluation and to participate in available outpatient mental health  
4 treatment, if the court finds that reasonable grounds exist to believe  
5 that the offender is a mentally ill person as defined in RCW 71.24.025,  
6 and that this condition is likely to have influenced the offense. An  
7 order requiring mental status evaluation or treatment must be based on  
8 a presentence report and, if applicable, mental status evaluations that  
9 have been filed with the court to determine the offender's competency  
10 or eligibility for a defense of insanity. The court may order  
11 additional evaluations at a later date if deemed appropriate.

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

16 (11) In sentencing an offender convicted of a crime of domestic  
17 violence, as defined in RCW 10.99.020, if the offender has a minor  
18 child, or if the victim of the offense for which the offender was  
19 convicted has a minor child, the court may, as part of any term of  
20 community supervision, community placement, or community custody, order  
21 the offender to participate in a domestic violence perpetrator program  
22 approved under RCW 26.50.150.

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

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

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

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

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

36 (b) Class B prior felony convictions other than sex offenses shall  
37 not be included in the offender score, if since the last date of

1 release from confinement (including full-time residential treatment)  
2 pursuant to a felony conviction, if any, or entry of judgment and  
3 sentence, the offender had spent ten consecutive years in the community  
4 without committing any crime that subsequently results in a conviction.

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

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

18 (e) If the present conviction is felony driving while under the  
19 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or  
20 felony physical control of a vehicle while under the influence of  
21 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions  
22 of felony driving while under the influence of intoxicating liquor or  
23 any drug, felony physical control of a vehicle while under the  
24 influence of intoxicating liquor or any drug, and serious traffic  
25 offenses shall be included in the offender score if: (i) The prior  
26 convictions were committed within five years since the last date of  
27 release from confinement (including full-time residential treatment) or  
28 entry of judgment and sentence; or (ii) the prior convictions would be  
29 considered "prior offenses within ten years" as defined in RCW  
30 46.61.5055.

31 (f) This subsection applies to both adult and juvenile prior  
32 convictions.

33 (3) Out-of-state convictions for offenses shall be classified  
34 according to the comparable offense definitions and sentences provided  
35 by Washington law. Federal convictions for offenses shall be  
36 classified according to the comparable offense definitions and  
37 sentences provided by Washington law. If there is no clearly  
38 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 same  
6 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), to  
11 encompass the same criminal conduct, shall be counted as one offense,  
12 the offense that yields the highest offender score. The current  
13 sentencing court shall determine with respect to other prior adult  
14 offenses for which sentences were served concurrently or prior juvenile  
15 offenses for which sentences were served consecutively, whether those  
16 offenses shall be counted as one offense or as separate offenses using  
17 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and  
18 if the court finds that they shall be counted as one offense, then the  
19 offense that yields the highest offender score shall be used. The  
20 current sentencing court may presume that such other prior offenses  
21 were not the same criminal conduct from sentences imposed on separate  
22 dates, or in separate counties or jurisdictions, or in separate  
23 complaints, indictments, or informations;

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

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

36 (6) If the present conviction is one of the anticipatory offenses  
37 of criminal attempt, solicitation, or conspiracy, count each prior

1 conviction as if the present conviction were for a completed offense.  
2 When these convictions are used as criminal history, score them the  
3 same as a completed crime.

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

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

14 (9) If the present conviction is for a serious violent offense,  
15 count three points for prior adult and juvenile convictions for crimes  
16 in this category, two points for each prior adult and juvenile violent  
17 conviction (not already counted), one point for each prior adult  
18 nonviolent felony conviction, and 1/2 point for each prior juvenile  
19 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 count  
28 one point for each adult and 1/2 point for each juvenile prior  
29 conviction; for each serious traffic offense, other than those used for  
30 an enhancement pursuant to RCW 46.61.520(2), count one point for each  
31 adult and 1/2 point for each juvenile prior conviction.

32 (12) If the present conviction is for manufacture of  
33 methamphetamine count three points for each adult prior manufacture of  
34 methamphetamine conviction and two points for each juvenile manufacture  
35 of methamphetamine offense. If the present conviction is for a drug  
36 offense and the offender has a criminal history that includes a sex  
37 offense or serious violent offense, count three points for each adult  
38 prior felony drug offense conviction and two points for each juvenile

1 drug offense. All other adult and juvenile felonies are scored as in  
2 subsection (8) of this section if the current drug offense is violent,  
3 or as in subsection (7) of this section if the current drug offense is  
4 nonviolent.

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

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

12 (15) If the present conviction is for Burglary 2 or residential  
13 burglary, count priors as in subsection (7) of this section; however,  
14 count two points for each adult and juvenile prior Burglary 1  
15 conviction, two points for each adult prior Burglary 2 or residential  
16 burglary conviction, and one point for each juvenile prior Burglary 2  
17 or residential burglary conviction.

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

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

23 (18) The fact that a prior conviction was not included in an  
24 offender's offender score or criminal history at a previous sentencing  
25 shall have no bearing on whether it is included in the criminal history  
26 or offender score for the current offense. Accordingly, prior  
27 convictions that were not counted in the offender score or included in  
28 criminal history under repealed or previous versions of the sentencing  
29 reform act shall be included in criminal history and shall count in the  
30 offender score if the current version of the sentencing reform act  
31 requires including or counting those convictions.

32 **Sec. 8.** RCW 9.94A.640 and 1987 c 486 s 7 are each amended to read  
33 as follows:

34 (1) Every offender who has been discharged under RCW 9.94A.637 may  
35 apply to the sentencing court for a vacation of the offender's record  
36 of conviction. If the court finds the offender meets the tests  
37 prescribed in subsection (2) of this section, the court may clear the

1 record of conviction by: (a) Permitting the offender to withdraw the  
2 offender's plea of guilty and to enter a plea of not guilty; or (b) if  
3 the offender has been convicted after a plea of not guilty, by the  
4 court setting aside the verdict of guilty; and (c) by the court  
5 dismissing the information or indictment against the offender.

6 (2) An offender may not have the record of conviction cleared if:  
7 (a) There are any criminal charges against the offender pending in any  
8 court of this state or another state, or in any federal court; (b) the  
9 offense was a violent offense as defined in RCW 9.94A.030; (c) the  
10 offense was a crime against persons as defined in RCW 43.43.830; (d)  
11 the offender has been convicted of a new crime in this state, another  
12 state, or federal court since the date of the offender's discharge  
13 under RCW 9.94A.637; (e) the offense is a class B felony and less than  
14 ten years have passed since the date the applicant was discharged under  
15 RCW 9.94A.637; ~~((and))~~ (f) the offense was a class C felony, other than  
16 a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and  
17 less than five years have passed since the date the applicant was  
18 discharged under RCW 9.94A.637; or (g) the offense was a class C felony  
19 described in RCW 46.61.502(6) or 46.61.504(6) and less than ten years  
20 have passed since the applicant was discharged under RCW 9.94A.637.

21 (3) Once the court vacates a record of conviction under subsection  
22 (1) of this section, the fact that the offender has been convicted of  
23 the offense shall not be included in the offender's criminal history  
24 for purposes of determining a sentence in any subsequent conviction,  
25 and the offender shall be released from all penalties and disabilities  
26 resulting from the offense. For all purposes, including responding to  
27 questions on employment applications, an offender whose conviction has  
28 been vacated may state that the offender has never been convicted of  
29 that crime. Nothing in this section affects or prevents the use of an  
30 offender's prior conviction in a later criminal prosecution.

31 **Sec. 9.** RCW 9.94A.650 and 2002 c 175 s 9 are each amended to read  
32 as follows:

33 (1) This section applies to offenders who have never been  
34 previously convicted of a felony in this state, federal court, or  
35 another state, and who have never participated in a program of deferred  
36 prosecution for a felony, and who are convicted of a felony that is  
37 not:

1 (a) Classified as a violent offense or a sex offense under this  
2 chapter;

3 (b) Manufacture, delivery, or possession with intent to manufacture  
4 or deliver a controlled substance classified in Schedule I or II that  
5 is a narcotic drug or flunitrazepam classified in Schedule IV;

6 (c) Manufacture, delivery, or possession with intent to deliver a  
7 methamphetamine, its salts, isomers, and salts of its isomers as  
8 defined in RCW 69.50.206(d)(2); (~~or~~)

9 (d) The selling for profit of any controlled substance or  
10 counterfeit substance classified in Schedule I, RCW 69.50.204, except  
11 leaves and flowering tops of marihuana; or

12 (e) Felony driving while under the influence of intoxicating liquor  
13 or any drug or felony physical control of a vehicle while under the  
14 influence of intoxicating liquor or any drug.

15 (2) In sentencing a first-time offender the court may waive the  
16 imposition of a sentence within the standard sentence range and impose  
17 a sentence which may include up to ninety days of confinement in a  
18 facility operated or utilized under contract by the county and a  
19 requirement that the offender refrain from committing new offenses.  
20 The sentence may also include a term of community supervision or  
21 community custody as specified in subsection (3) of this section,  
22 which, in addition to crime-related prohibitions, may include  
23 requirements that the offender perform any one or more of the  
24 following:

25 (a) Devote time to a specific employment or occupation;

26 (b) Undergo available outpatient treatment for up to the period  
27 specified in subsection (3) of this section, or inpatient treatment not  
28 to exceed the standard range of confinement for that offense;

29 (c) Pursue a prescribed, secular course of study or vocational  
30 training;

31 (d) Remain within prescribed geographical boundaries and notify the  
32 community corrections officer prior to any change in the offender's  
33 address or employment;

34 (e) Report as directed to a community corrections officer; or

35 (f) Pay all court-ordered legal financial obligations as provided  
36 in RCW 9.94A.030 and/or perform community restitution work.

37 (3) The terms and statuses applicable to sentences under subsection  
38 (2) of this section are:



1 (a) For sentences imposed on or after July 25, 1999, for crimes  
2 committed before July 1, 2000, up to one year of community supervision.  
3 If treatment is ordered, the period of community supervision may  
4 include up to the period of treatment, but shall not exceed two years;  
5 and

6 (b) For crimes committed on or after July 1, 2000, up to one year  
7 of community custody unless treatment is ordered, in which case the  
8 period of community custody may include up to the period of treatment,  
9 but shall not exceed two years. Any term of community custody imposed  
10 under this section is subject to conditions and sanctions as authorized  
11 in this section and in RCW 9.94A.715 (2) and (3).

12 (4) The department shall discharge from community supervision any  
13 offender sentenced under this section before July 25, 1999, who has  
14 served at least one year of community supervision and has completed any  
15 treatment ordered by the court.

16 **Sec. 10.** RCW 9.94A.660 and 2005 c 460 s 1 are each amended to read  
17 as follows:

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

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

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

28 (c) The offender has no current or prior convictions for a sex  
29 offense at any time or violent offense within ten years before  
30 conviction of the current offense, in this state, another state, or the  
31 United States;

32 ((+e)) (d) For a violation of the Uniform Controlled Substances  
33 Act under chapter 69.50 RCW or a criminal solicitation to commit such  
34 a violation under chapter 9A.28 RCW, the offense involved only a small  
35 quantity of the particular controlled substance as determined by the  
36 judge upon consideration of such factors as the weight, purity,  
37 packaging, sale price, and street value of the controlled substance;

1        ~~((d))~~ (e) The offender has not been found by the United States  
2 attorney general to be subject to a deportation detainer or order and  
3 does not become subject to a deportation order during the period of the  
4 sentence;

5        ~~((e))~~ (f) The standard sentence range for the current offense is  
6 greater than one year; and

7        ~~((f))~~ (g) The offender has not received a drug offender  
8 sentencing alternative more than once in the prior ten years before the  
9 current offense.

10        (2) A motion for a sentence under this section may be made by the  
11 court, the offender, or the state. If the sentencing court determines  
12 that the offender is eligible for this alternative, the court may order  
13 an examination of the offender. The examination shall, at a minimum,  
14 address the following issues:

15        (a) Whether the offender suffers from drug addiction;

16        (b) Whether the addiction is such that there is a probability that  
17 criminal behavior will occur in the future;

18        (c) Whether effective treatment for the offender's addiction is  
19 available from a provider that has been licensed or certified by the  
20 division of alcohol and substance abuse of the department of social and  
21 health services; and

22        (d) Whether the offender and the community will benefit from the  
23 use of the alternative.

24        (3) The examination report must contain:

25        (a) Information on the issues required to be addressed in  
26 subsection (2) of this section; and

27        (b) A proposed treatment plan that must, at a minimum, contain:

28        (i) A proposed treatment provider that has been licensed or  
29 certified by the division of alcohol and substance abuse of the  
30 department of social and health services;

31        (ii) The recommended frequency and length of treatment, including  
32 both residential chemical dependency treatment and treatment in the  
33 community;

34        (iii) A proposed monitoring plan, including any requirements  
35 regarding living conditions, lifestyle requirements, and monitoring by  
36 family members and others; and

37        (iv) Recommended crime-related prohibitions and affirmative  
38 conditions.

1 (4) After receipt of the examination report, if the court  
2 determines that a sentence under this section is appropriate, the court  
3 shall waive imposition of a sentence within the standard sentence range  
4 and impose a sentence consisting of either a prison-based alternative  
5 under subsection (5) of this section or a residential chemical  
6 dependency treatment-based alternative under subsection (6) of this  
7 section. The residential chemical dependency treatment-based  
8 alternative is only available if the midpoint of the standard range is  
9 twenty-four months or less.

10 (5) The prison-based alternative shall include:

11 (a) A period of total confinement in a state facility for one-half  
12 of the midpoint of the standard sentence range. During incarceration  
13 in the state facility, offenders sentenced under this subsection shall  
14 undergo a comprehensive substance abuse assessment and receive, within  
15 available resources, treatment services appropriate for the offender.  
16 The treatment services shall be designed by the division of alcohol and  
17 substance abuse of the department of social and health services, in  
18 cooperation with the department of corrections;

19 (b) The remainder of the midpoint of the standard range as a term  
20 of community custody which must include appropriate substance abuse  
21 treatment in a program that has been approved by the division of  
22 alcohol and substance abuse of the department of social and health  
23 services. If the department finds that conditions have been willfully  
24 violated, the offender may be reclassified to serve the remaining  
25 balance of the original sentence. An offender who fails to complete  
26 the program or who is administratively terminated from the program  
27 shall be reclassified to serve the unexpired term of his or her  
28 sentence as ordered by the sentencing court;

29 (c) Crime-related prohibitions including a condition not to use  
30 illegal controlled substances;

31 (d) A requirement to submit to urinalysis or other testing to  
32 monitor that status; and

33 (e) A term of community custody pursuant to RCW 9.94A.715 to be  
34 imposed upon failure to complete or administrative termination from the  
35 special drug offender sentencing alternative program.

36 (6) The residential chemical dependency treatment-based alternative  
37 shall include:

1 (a) A term of community custody equal to one-half of the midpoint  
2 of the standard sentence range or two years, whichever is greater,  
3 conditioned on the offender entering and remaining in residential  
4 chemical dependency treatment certified under chapter 70.96A RCW for a  
5 period set by the court between three and six months. If the court  
6 imposes a term of community custody, the department shall, within  
7 available resources, make chemical dependency assessment and treatment  
8 services available to the offender during the term of community  
9 custody. The court shall impose, as conditions of community custody,  
10 treatment and other conditions as proposed in the plan under subsection  
11 (3)(b) of this section. The department may impose conditions and  
12 sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7),  
13 9.94A.737, and 9.94A.740. The court shall schedule a progress hearing  
14 during the period of residential chemical dependency treatment, and  
15 schedule a treatment termination hearing for three months before the  
16 expiration of the term of community custody;

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

22 (i) Authorize the department to terminate the offender's community  
23 custody status on the expiration date determined under (a) of this  
24 subsection; or

25 (ii) Continue the hearing to a date before the expiration date of  
26 community custody, with or without modifying the conditions of  
27 community custody; or

28 (iii) Impose a term of total confinement equal to one-half the  
29 midpoint of the standard sentence range, followed by a term of  
30 community custody under RCW 9.94A.715;

31 (c) If the court imposes a term of total confinement under (b)(iii)  
32 of this subsection, the department shall, within available resources,  
33 make chemical dependency assessment and treatment services available to  
34 the offender during the terms of total confinement and community  
35 custody.

36 (7) If the court imposes a sentence under this section, the court  
37 may prohibit the offender from using alcohol or controlled substances  
38 and may require that the monitoring for controlled substances be

1 conducted by the department or by a treatment alternatives to street  
2 crime program or a comparable court or agency-referred program. The  
3 offender may be required to pay thirty dollars per month while on  
4 community custody to offset the cost of monitoring. In addition, the  
5 court may impose any of the following conditions:

6 (a) Devote time to a specific employment or training;

7 (b) Remain within prescribed geographical boundaries and notify the  
8 court or the community corrections officer before any change in the  
9 offender's address or employment;

10 (c) Report as directed to a community corrections officer;

11 (d) Pay all court-ordered legal financial obligations;

12 (e) Perform community restitution work;

13 (f) Stay out of areas designated by the sentencing court;

14 (g) Such other conditions as the court may require such as  
15 affirmative conditions.

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

20 (b) If the offender is brought back to court, the court may modify  
21 the terms of the community custody or impose sanctions under (c) of  
22 this subsection.

23 (c) The court may order the offender to serve a term of total  
24 confinement within the standard range of the offender's current offense  
25 at any time during the period of community custody if the offender  
26 violates the conditions of the sentence or if the offender is failing  
27 to make satisfactory progress in treatment.

28 (d) An offender ordered to serve a term of total confinement under  
29 (c) of this subsection shall receive credit for any time previously  
30 served under this section.

31 (9) If an offender sentenced to the prison-based alternative under  
32 subsection (5) of this section is found by the United States attorney  
33 general to be subject to a deportation order, a hearing shall be held  
34 by the department unless waived by the offender, and, if the department  
35 finds that the offender is subject to a valid deportation order, the  
36 department may administratively terminate the offender from the program  
37 and reclassify the offender to serve the remaining balance of the  
38 original sentence.

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

4 (11) Costs of examinations and preparing treatment plans under  
5 subsections (2) and (3) of this section may be paid, at the option of  
6 the county, from funds provided to the county from the criminal justice  
7 treatment account under RCW 70.96A.350.

8 **Sec. 11.** RCW 9.94A.690 and 2000 c 28 s 21 are each amended to read  
9 as follows:

10 (1)(a) An offender is eligible to be sentenced to a work ethic camp  
11 if the offender:

12 (i) Is sentenced to a term of total confinement of not less than  
13 twelve months and one day or more than thirty-six months;

14 (ii) Has no current or prior convictions for any sex offenses or  
15 for violent offenses; and

16 (iii) Is not currently subject to a sentence for, or being  
17 prosecuted for, a violation of felony driving while under the influence  
18 of intoxicating liquor or any drug (RCW 46.61.502(6)), a violation of  
19 physical control of a vehicle while under the influence of intoxicating  
20 liquor or any drug (RCW 46.61.504(6)), a violation of the uniform  
21 controlled substances act, or a criminal solicitation to commit such a  
22 violation under chapter 9A.28 or 69.50 RCW.

23 (b) The length of the work ethic camp shall be at least one hundred  
24 twenty days and not more than one hundred eighty days.

25 (2) If the sentencing court determines that the offender is  
26 eligible for the work ethic camp and is likely to qualify under  
27 subsection (3) of this section, the judge shall impose a sentence  
28 within the standard sentence range and may recommend that the offender  
29 serve the sentence at a work ethic camp. In sentencing an offender to  
30 the work ethic camp, the court shall specify: (a) That upon completion  
31 of the work ethic camp the offender shall be released on community  
32 custody for any remaining time of total confinement; (b) the applicable  
33 conditions of supervision on community custody status as required by  
34 RCW 9.94A.700(4) and authorized by RCW 9.94A.700(5); and (c) that  
35 violation of the conditions may result in a return to total confinement  
36 for the balance of the offender's remaining time of confinement.

1 (3) The department shall place the offender in the work ethic camp  
2 program, subject to capacity, unless: (a) The department determines  
3 that the offender has physical or mental impairments that would prevent  
4 participation and completion of the program; (b) the department  
5 determines that the offender's custody level prevents placement in the  
6 program; (c) the offender refuses to agree to the terms and conditions  
7 of the program; (d) the offender has been found by the United States  
8 attorney general to be subject to a deportation detainer or order; or  
9 (e) the offender has participated in the work ethic camp program in the  
10 past.

11 (4) An offender who fails to complete the work ethic camp program,  
12 who is administratively terminated from the program, or who otherwise  
13 violates any conditions of supervision, as defined by the department,  
14 shall be reclassified to serve the unexpired term of his or her  
15 sentence as ordered by the sentencing court and shall be subject to all  
16 rules relating to earned release time.

17 (5) During the last two weeks prior to release from the work ethic  
18 camp program the department shall provide the offender with  
19 comprehensive transition training.

20 **Sec. 12.** RCW 9.94A.515 and 2005 c 458 s 2 and 2005 c 183 s 9 are  
21 each reenacted and amended to read as follows:

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TABLE 2	
CRIMES INCLUDED WITHIN	
EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050) Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))

1 Malicious placement of an explosive 1  
2 (RCW 70.74.270(1))  
3 XII Assault 1 (RCW 9A.36.011)  
4 Assault of a Child 1 (RCW 9A.36.120)  
5 Malicious placement of an imitation  
6 device 1 (RCW 70.74.272(1)(a))  
7 Rape 1 (RCW 9A.44.040)  
8 Rape of a Child 1 (RCW 9A.44.073)  
9 Trafficking 2 (RCW 9A.40.100(2))  
10 XI Manslaughter 1 (RCW 9A.32.060)  
11 Rape 2 (RCW 9A.44.050)  
12 Rape of a Child 2 (RCW 9A.44.076)  
13 X Child Molestation 1 (RCW 9A.44.083)  
14 Indecent Liberties (with forcible  
15 compulsion) (RCW  
16 9A.44.100(1)(a))  
17 Kidnapping 1 (RCW 9A.40.020)  
18 Leading Organized Crime (RCW  
19 9A.82.060(1)(a))  
20 Malicious explosion 3 (RCW  
21 70.74.280(3))  
22 Sexually Violent Predator Escape  
23 (RCW 9A.76.115)  
24 IX Assault of a Child 2 (RCW 9A.36.130)  
25 Explosive devices prohibited (RCW  
26 70.74.180)  
27 Hit and Run--Death (RCW  
28 46.52.020(4)(a))  
29 Homicide by Watercraft, by being  
30 under the influence of intoxicating  
31 liquor or any drug (RCW  
32 79A.60.050)  
33 Inciting Criminal Profiteering (RCW  
34 9A.82.060(1)(b))  
35 Malicious placement of an explosive 2  
36 (RCW 70.74.270(2))  
37 Robbery 1 (RCW 9A.56.200)



1 Sexual Exploitation (RCW 9.68A.040)  
2 Vehicular Homicide, by being under  
3 the influence of intoxicating liquor  
4 or any drug (RCW 46.61.520)  
5 VIII Arson 1 (RCW 9A.48.020)  
6 Homicide by Watercraft, by the  
7 operation of any vessel in a  
8 reckless manner (RCW  
9 79A.60.050)  
10 Manslaughter 2 (RCW 9A.32.070)  
11 Promoting Prostitution 1 (RCW  
12 9A.88.070)  
13 Theft of Ammonia (RCW 69.55.010)  
14 Vehicular Homicide, by the operation  
15 of any vehicle in a reckless  
16 manner (RCW 46.61.520)  
17 VII Burglary 1 (RCW 9A.52.020)  
18 Child Molestation 2 (RCW 9A.44.086)  
19 Civil Disorder Training (RCW  
20 9A.48.120)  
21 Dealing in depictions of minor  
22 engaged in sexually explicit  
23 conduct (RCW 9.68A.050)  
24 Drive-by Shooting (RCW 9A.36.045)  
25 Homicide by Watercraft, by disregard  
26 for the safety of others (RCW  
27 79A.60.050)  
28 Indecent Liberties (without forcible  
29 compulsion) (RCW 9A.44.100(1)  
30 (b) and (c))  
31 Introducing Contraband 1 (RCW  
32 9A.76.140)  
33 Malicious placement of an explosive 3  
34 (RCW 70.74.270(3))  
35 Negligently Causing Death By Use of  
36 a Signal Preemption Device  
37 (RCW 46.37.675)

1 Sending, bringing into state depictions  
2 of minor engaged in sexually  
3 explicit conduct (RCW  
4 9.68A.060)  
5 Unlawful Possession of a Firearm in  
6 the first degree (RCW  
7 9.41.040(1))  
8 Use of a Machine Gun in Commission  
9 of a Felony (RCW 9.41.225)  
10 Vehicular Homicide, by disregard for  
11 the safety of others (RCW  
12 46.61.520)  
13 VI Bail Jumping with Murder 1 (RCW  
14 9A.76.170(3)(a))  
15 Bribery (RCW 9A.68.010)  
16 Incest 1 (RCW 9A.64.020(1))  
17 Intimidating a Judge (RCW  
18 9A.72.160)  
19 Intimidating a Juror/Witness (RCW  
20 9A.72.110, 9A.72.130)  
21 Malicious placement of an imitation  
22 device 2 (RCW 70.74.272(1)(b))  
23 Rape of a Child 3 (RCW 9A.44.079)  
24 Theft of a Firearm (RCW 9A.56.300)  
25 Unlawful Storage of Ammonia (RCW  
26 69.55.020)  
27 V Abandonment of dependent person 1  
28 (RCW 9A.42.060)  
29 Advancing money or property for  
30 extortionate extension of credit  
31 (RCW 9A.82.030)  
32 Bail Jumping with class A Felony  
33 (RCW 9A.76.170(3)(b))  
34 Child Molestation 3 (RCW 9A.44.089)  
35 Criminal Mistreatment 1 (RCW  
36 9A.42.020)

1 Custodial Sexual Misconduct 1 (RCW  
2 9A.44.160)  
3 Domestic Violence Court Order  
4 Violation (RCW 10.99.040,  
5 10.99.050, 26.09.300, 26.10.220,  
6 26.26.138, 26.50.110, 26.52.070,  
7 or 74.34.145)  
8 Driving While Under the Influence  
9 (RCW 46.61.502(6))  
10 Extortion 1 (RCW 9A.56.120)  
11 Extortionate Extension of Credit  
12 (RCW 9A.82.020)  
13 Extortionate Means to Collect  
14 Extensions of Credit (RCW  
15 9A.82.040)  
16 Incest 2 (RCW 9A.64.020(2))  
17 Kidnapping 2 (RCW 9A.40.030)  
18 Perjury 1 (RCW 9A.72.020)  
19 Persistent prison misbehavior (RCW  
20 9.94.070)  
21 Physical Control of a Vehicle While  
22 Under the Influence (RCW  
23 46.61.504(6))  
24 Possession of a Stolen Firearm (RCW  
25 9A.56.310)  
26 Rape 3 (RCW 9A.44.060)  
27 Rendering Criminal Assistance 1  
28 (RCW 9A.76.070)  
29 Sexual Misconduct with a Minor 1  
30 (RCW 9A.44.093)  
31 Sexually Violating Human Remains  
32 (RCW 9A.44.105)  
33 Stalking (RCW 9A.46.110)  
34 Taking Motor Vehicle Without  
35 Permission 1 (RCW 9A.56.070)  
36 IV Arson 2 (RCW 9A.48.030)  
37 Assault 2 (RCW 9A.36.021)

1 Assault 3 (of a Peace Officer with a  
2 Projectile Stun Gun) (RCW  
3 9A.36.031(1)(h))  
4 Assault by Watercraft (RCW  
5 79A.60.060)  
6 Bribing a Witness/Bribe Received by  
7 Witness (RCW 9A.72.090,  
8 9A.72.100)  
9 Cheating 1 (RCW 9.46.1961)  
10 Commercial Bribery (RCW  
11 9A.68.060)  
12 Counterfeiting (RCW 9.16.035(4))  
13 Endangerment with a Controlled  
14 Substance (RCW 9A.42.100)  
15 Escape 1 (RCW 9A.76.110)  
16 Hit and Run--Injury (RCW  
17 46.52.020(4)(b))  
18 Hit and Run with Vessel--Injury  
19 Accident (RCW 79A.60.200(3))  
20 Identity Theft 1 (RCW 9.35.020(2))  
21 Indecent Exposure to Person Under  
22 Age Fourteen (subsequent sex  
23 offense) (RCW 9A.88.010)  
24 Influencing Outcome of Sporting  
25 Event (RCW 9A.82.070)  
26 Malicious Harassment (RCW  
27 9A.36.080)  
28 Residential Burglary (RCW  
29 9A.52.025)  
30 Robbery 2 (RCW 9A.56.210)  
31 Theft of Livestock 1 (RCW 9A.56.080)  
32 Threats to Bomb (RCW 9.61.160)  
33 Trafficking in Stolen Property 1 (RCW  
34 9A.82.050)  
35 Unlawful factoring of a credit card or  
36 payment card transaction (RCW  
37 9A.56.290(4)(b))

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

1 Custodial Assault (RCW 9A.36.100)  
2 Cyberstalking (subsequent conviction  
3 or threat of death) (RCW  
4 9.61.260(3))  
5 Escape 2 (RCW 9A.76.120)  
6 Extortion 2 (RCW 9A.56.130)  
7 Harassment (RCW 9A.46.020)  
8 Intimidating a Public Servant (RCW  
9 9A.76.180)  
10 Introducing Contraband 2 (RCW  
11 9A.76.150)  
12 Malicious Injury to Railroad Property  
13 (RCW 81.60.070)  
14 Negligently Causing Substantial Bodily  
15 Harm By Use of a Signal  
16 Preemption Device (RCW  
17 46.37.674)  
18 Patronizing a Juvenile Prostitute  
19 (RCW 9.68A.100)  
20 Perjury 2 (RCW 9A.72.030)  
21 Possession of Incendiary Device (RCW  
22 9.40.120)  
23 Possession of Machine Gun or Short-  
24 Barreled Shotgun or Rifle (RCW  
25 9.41.190)  
26 Promoting Prostitution 2 (RCW  
27 9A.88.080)  
28 Securities Act violation (RCW  
29 21.20.400)  
30 Tampering with a Witness (RCW  
31 9A.72.120)  
32 Telephone Harassment (subsequent  
33 conviction or threat of death)  
34 (RCW 9.61.230(2))  
35 Theft of Livestock 2 (RCW 9A.56.083)  
36 Trafficking in Stolen Property 2 (RCW  
37 9A.82.055)

1 Unlawful Imprisonment (RCW  
2 9A.40.040)  
3 Unlawful possession of firearm in the  
4 second degree (RCW 9.41.040(2))  
5 Vehicular Assault, by the operation or  
6 driving of a vehicle with disregard  
7 for the safety of others (RCW  
8 46.61.522)  
9 Willful Failure to Return from Work  
10 Release (RCW 72.65.070)  
11 II Computer Trespass 1 (RCW  
12 9A.52.110)  
13 Counterfeiting (RCW 9.16.035(3))  
14 Escape from Community Custody  
15 (RCW 72.09.310)  
16 Health Care False Claims (RCW  
17 48.80.030)  
18 Identity Theft 2 (RCW 9.35.020(3))  
19 Improperly Obtaining Financial  
20 Information (RCW 9.35.010)  
21 Malicious Mischief 1 (RCW  
22 9A.48.070)  
23 Possession of Stolen Property 1 (RCW  
24 9A.56.150)  
25 Theft 1 (RCW 9A.56.030)  
26 Theft of Rental, Leased, or Lease-  
27 purchased Property (valued at one  
28 thousand five hundred dollars or  
29 more) (RCW 9A.56.096(5)(a))  
30 Trafficking in Insurance Claims (RCW  
31 48.30A.015)  
32 Unlawful factoring of a credit card or  
33 payment card transaction (RCW  
34 9A.56.290(4)(a))  
35 Unlawful Practice of Law (RCW  
36 2.48.180)

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



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

11 **Sec. 13.** RCW 9.94A.411 and 2000 c 119 s 28 and 2000 c 28 s 17 are  
12 each reenacted and amended to read as follows:

13 (1) Decision not to prosecute.

14 STANDARD: A prosecuting attorney may decline to prosecute, even  
15 though technically sufficient evidence to prosecute exists, in  
16 situations where prosecution would serve no public purpose, would  
17 defeat the underlying purpose of the law in question or would result in  
18 decreased respect for the law.

19 GUIDELINE/COMMENTARY:

20 Examples

21 The following are examples of reasons not to prosecute which could  
22 satisfy the standard.

23 (a) Contrary to Legislative Intent - It may be proper to decline to  
24 charge where the application of criminal sanctions would be clearly  
25 contrary to the intent of the legislature in enacting the particular  
26 statute.

27 (b) Antiquated Statute - It may be proper to decline to charge  
28 where the statute in question is antiquated in that:

29 (i) It has not been enforced for many years; and

30 (ii) Most members of society act as if it were no longer in  
31 existence; and

32 (iii) It serves no deterrent or protective purpose in today's  
33 society; and

34 (iv) The statute has not been recently reconsidered by the  
35 legislature.

36 This reason is not to be construed as the basis for declining cases

1 because the law in question is unpopular or because it is difficult to  
2 enforce.

3 (c) De Minimis Violation - It may be proper to decline to charge  
4 where the violation of law is only technical or insubstantial and where  
5 no public interest or deterrent purpose would be served by prosecution.

6 (d) Confinement on Other Charges - It may be proper to decline to  
7 charge because the accused has been sentenced on another charge to a  
8 lengthy period of confinement; and

9 (i) Conviction of the new offense would not merit any additional  
10 direct or collateral punishment;

11 (ii) The new offense is either a misdemeanor or a felony which is  
12 not particularly aggravated; and

13 (iii) Conviction of the new offense would not serve any significant  
14 deterrent purpose.

15 (e) Pending Conviction on Another Charge - It may be proper to  
16 decline to charge because the accused is facing a pending prosecution  
17 in the same or another county; and

18 (i) Conviction of the new offense would not merit any additional  
19 direct or collateral punishment;

20 (ii) Conviction in the pending prosecution is imminent;

21 (iii) The new offense is either a misdemeanor or a felony which is  
22 not particularly aggravated; and

23 (iv) Conviction of the new offense would not serve any significant  
24 deterrent purpose.

25 (f) High Disproportionate Cost of Prosecution - It may be proper to  
26 decline to charge where the cost of locating or transporting, or the  
27 burden on, prosecution witnesses is highly disproportionate to the  
28 importance of prosecuting the offense in question. This reason should  
29 be limited to minor cases and should not be relied upon in serious  
30 cases.

31 (g) Improper Motives of Complainant - It may be proper to decline  
32 charges because the motives of the complainant are improper and  
33 prosecution would serve no public purpose, would defeat the underlying  
34 purpose of the law in question or would result in decreased respect for  
35 the law.

36 (h) Immunity - It may be proper to decline to charge where immunity  
37 is to be given to an accused in order to prosecute another where the

1 accused's information or testimony will reasonably lead to the  
2 conviction of others who are responsible for more serious criminal  
3 conduct or who represent a greater danger to the public interest.

4 (i) Victim Request - It may be proper to decline to charge because  
5 the victim requests that no criminal charges be filed and the case  
6 involves the following crimes or situations:

7 (i) Assault cases where the victim has suffered little or no  
8 injury;

9 (ii) Crimes against property, not involving violence, where no  
10 major loss was suffered;

11 (iii) Where doing so would not jeopardize the safety of society.

12 Care should be taken to insure that the victim's request is freely  
13 made and is not the product of threats or pressure by the accused.

14 The presence of these factors may also justify the decision to  
15 dismiss a prosecution which has been commenced.

#### 16 Notification

17 The prosecutor is encouraged to notify the victim, when practical,  
18 and the law enforcement personnel, of the decision not to prosecute.

19 (2) Decision to prosecute.

20 (a) STANDARD:

21 Crimes against persons will be filed if sufficient admissible  
22 evidence exists, which, when considered with the most plausible,  
23 reasonably foreseeable defense that could be raised under the evidence,  
24 would justify conviction by a reasonable and objective fact-finder.  
25 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,  
26 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and  
27 9A.64.020 the prosecutor should avoid pre-filing agreements or  
28 diversions intended to place the accused in a program of treatment or  
29 counseling, so that treatment, if determined to be beneficial, can be  
30 provided pursuant to RCW 9.94A.670.

31 Crimes against property/other crimes will be filed if the  
32 admissible evidence is of such convincing force as to make it probable  
33 that a reasonable and objective fact-finder would convict after hearing  
34 all the admissible evidence and the most plausible defense that could  
35 be raised.

36 See table below for the crimes within these categories.

#### 37 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

#### 38 CRIMES AGAINST PERSONS

1 Aggravated Murder  
2 1st Degree Murder  
3 2nd Degree Murder  
4 1st Degree Manslaughter  
5 2nd Degree Manslaughter  
6 1st Degree Kidnapping  
7 2nd Degree Kidnapping  
8 1st Degree Assault  
9 2nd Degree Assault  
10 3rd Degree Assault  
11 1st Degree Assault of a Child  
12 2nd Degree Assault of a Child  
13 3rd Degree Assault of a Child  
14 1st Degree Rape  
15 2nd Degree Rape  
16 3rd Degree Rape  
17 1st Degree Rape of a Child  
18 2nd Degree Rape of a Child  
19 3rd Degree Rape of a Child  
20 1st Degree Robbery  
21 2nd Degree Robbery  
22 1st Degree Arson  
23 1st Degree Burglary  
24 1st Degree Extortion  
25 2nd Degree Extortion  
26 Indecent Liberties  
27 Incest  
28 Vehicular Homicide  
29 Vehicular Assault  
30 1st Degree Child Molestation  
31 2nd Degree Child Molestation  
32 3rd Degree Child Molestation  
33 1st Degree Promoting Prostitution  
34 Intimidating a Juror  
35 Communication with a Minor  
36 Intimidating a Witness  
37 Intimidating a Public Servant  
38 Bomb Threat (if against person)

1 Unlawful Imprisonment  
2 Promoting a Suicide Attempt  
3 Riot (if against person)  
4 Stalking  
5 Custodial Assault  
6 Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050,  
7 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)  
8 Counterfeiting (if a violation of RCW 9.16.035(4))  
9 Felony Driving a Motor Vehicle While Under the Influence of  
10 Intoxicating Liquor or Any Drug (RCW 46.61.502(6))  
11 Felony Physical Control of a Motor Vehicle While Under the  
12 Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))  
13 CRIMES AGAINST PROPERTY/OTHER CRIMES  
14 2nd Degree Arson  
15 1st Degree Escape  
16 2nd Degree Escape  
17 2nd Degree Burglary  
18 1st Degree Theft  
19 2nd Degree Theft  
20 1st Degree Perjury  
21 2nd Degree Perjury  
22 1st Degree Introducing Contraband  
23 2nd Degree Introducing Contraband  
24 1st Degree Possession of Stolen Property  
25 2nd Degree Possession of Stolen Property  
26 Bribery  
27 Bribing a Witness  
28 Bribe received by a Witness  
29 Bomb Threat (if against property)  
30 1st Degree Malicious Mischief  
31 2nd Degree Malicious Mischief  
32 1st Degree Reckless Burning  
33 Taking a Motor Vehicle without Authorization  
34 Forgery  
35 2nd Degree Promoting Prostitution  
36 Tampering with a Witness  
37 Trading in Public Office  
38 Trading in Special Influence

- 1 Receiving/Granting Unlawful Compensation
- 2 Bigamy
- 3 Eluding a Pursuing Police Vehicle
- 4 Willful Failure to Return from Furlough
- 5 Escape from Community Custody
- 6 Riot (if against property)
- 7 1st Degree Theft of Livestock
- 8 2nd Degree Theft of Livestock

9 ALL OTHER UNCLASSIFIED FELONIES

10 Selection of Charges/Degree of Charge

11 (i) The prosecutor should file charges which adequately describe  
12 the nature of defendant's conduct. Other offenses may be charged only  
13 if they are necessary to ensure that the charges:

- 14 (A) Will significantly enhance the strength of the state's case at  
15 trial; or
- 16 (B) Will result in restitution to all victims.

17 (ii) The prosecutor should not overcharge to obtain a guilty plea.

18 Overcharging includes:

- 19 (A) Charging a higher degree;
- 20 (B) Charging additional counts.

21 This standard is intended to direct prosecutors to charge those  
22 crimes which demonstrate the nature and seriousness of a defendant's  
23 criminal conduct, but to decline to charge crimes which are not  
24 necessary to such an indication. Crimes which do not merge as a matter  
25 of law, but which arise from the same course of conduct, do not all  
26 have to be charged.

27 (b) GUIDELINES/COMMENTARY:

28 (i) Police Investigation

29 A prosecuting attorney is dependent upon law enforcement agencies  
30 to conduct the necessary factual investigation which must precede the  
31 decision to prosecute. The prosecuting attorney shall ensure that a  
32 thorough factual investigation has been conducted before a decision to  
33 prosecute is made. In ordinary circumstances the investigation should  
34 include the following:

- 35 (A) The interviewing of all material witnesses, together with the  
36 obtaining of written statements whenever possible;
- 37 (B) The completion of necessary laboratory tests; and

1 (C) The obtaining, in accordance with constitutional requirements,  
2 of the suspect's version of the events.

3 If the initial investigation is incomplete, a prosecuting attorney  
4 should insist upon further investigation before a decision to prosecute  
5 is made, and specify what the investigation needs to include.

6 (ii) Exceptions

7 In certain situations, a prosecuting attorney may authorize filing  
8 of a criminal complaint before the investigation is complete if:

9 (A) Probable cause exists to believe the suspect is guilty; and

10 (B) The suspect presents a danger to the community or is likely to  
11 flee if not apprehended; or

12 (C) The arrest of the suspect is necessary to complete the  
13 investigation of the crime.

14 In the event that the exception to the standard is applied, the  
15 prosecuting attorney shall obtain a commitment from the law enforcement  
16 agency involved to complete the investigation in a timely manner. If  
17 the subsequent investigation does not produce sufficient evidence to  
18 meet the normal charging standard, the complaint should be dismissed.

19 (iii) Investigation Techniques

20 The prosecutor should be fully advised of the investigatory  
21 techniques that were used in the case investigation including:

22 (A) Polygraph testing;

23 (B) Hypnosis;

24 (C) Electronic surveillance;

25 (D) Use of informants.

26 (iv) Pre-Filing Discussions with Defendant

27 Discussions with the defendant or his/her representative regarding  
28 the selection or disposition of charges may occur prior to the filing  
29 of charges, and potential agreements can be reached.

30 (v) Pre-Filing Discussions with Victim(s)

31 Discussions with the victim(s) or victims' representatives  
32 regarding the selection or disposition of charges may occur before the  
33 filing of charges. The discussions may be considered by the prosecutor  
34 in charging and disposition decisions, and should be considered before  
35 reaching any agreement with the defendant regarding these decisions.

36 **Sec. 14.** RCW 13.40.0357 and 2004 c 117 s 1 are each amended to  
37 read as follows:

**DESCRIPTION AND OFFENSE CATEGORY**

JUVENILE DISPOSITION

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
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**Arson and Malicious Mischief**

9	A	Arson 1 (9A.48.020)	B+
10	B	Arson 2 (9A.48.030)	C
11	C	Reckless Burning 1 (9A.48.040)	D
12	D	Reckless Burning 2 (9A.48.050)	E
13	B	Malicious Mischief 1 (9A.48.070)	C
14	C	Malicious Mischief 2 (9A.48.080)	D
15	D	Malicious Mischief 3 (9A.48.090(2) (a) and	
16		(c))	E
17	E	Malicious Mischief 3 (9A.48.090(2)(b))	E
18	E	Tampering with Fire Alarm Apparatus	
19		(9.40.100)	E
20	E	Tampering with Fire Alarm Apparatus with	
21		Intent to Commit Arson (9.40.105)	E
22	A	Possession of Incendiary Device (9.40.120)	B+

**Assault and Other Crimes Involving**

**Physical Harm**

25	A	Assault 1 (9A.36.011)	B+
26	B+	Assault 2 (9A.36.021)	C+
27	C+	Assault 3 (9A.36.031)	D+
28	D+	Assault 4 (9A.36.041)	E
29	B+	Drive-By Shooting (9A.36.045)	C+
30	D+	Reckless Endangerment (9A.36.050)	E
31	C+	Promoting Suicide Attempt (9A.36.060)	D+
32	D+	Coercion (9A.36.070)	E
33	C+	Custodial Assault (9A.36.100)	D+

**Burglary and Trespass**

34	B+	Burglary 1 (9A.52.020)	C+
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1	B	Residential Burglary (9A.52.025)	C
2	B	Burglary 2 (9A.52.030)	C
3	D	Burglary Tools (Possession of) (9A.52.060)	E
4	D	Criminal Trespass 1 (9A.52.070)	E
5	E	Criminal Trespass 2 (9A.52.080)	E
6	C	Mineral Trespass (78.44.330)	C
7	C	Vehicle Prowling 1 (9A.52.095)	D
8	D	Vehicle Prowling 2 (9A.52.100)	E
9		<b>Drugs</b>	
10	E	Possession/Consumption of Alcohol	
11		(66.44.270)	E
12	C	Illegally Obtaining Legend Drug	
13		(69.41.020)	D
14	C+	Sale, Delivery, Possession of Legend Drug	
15		with Intent to Sell (69.41.030(2)(a))	D+
16	E	Possession of Legend Drug	
17		(69.41.030(2)(b))	E
18	B+	Violation of Uniform Controlled Substances	
19		Act - Narcotic, Methamphetamine, or	
20		Flunitrazepam Sale (69.50.401(2) (a) or	
21		(b))	B+
22	C	Violation of Uniform Controlled Substances	
23		Act - Nonnarcotic Sale (69.50.401(2)(c))	C
24	E	Possession of Marihuana <40 grams	
25		(69.50.4014)	E
26	C	Fraudulently Obtaining Controlled	
27		Substance (69.50.403)	C
28	C+	Sale of Controlled Substance for Profit	
29		(69.50.410)	C+
30	E	Unlawful Inhalation (9.47A.020)	E
31	B	Violation of Uniform Controlled Substances	
32		Act - Narcotic, Methamphetamine, or	
33		Flunitrazepam Counterfeit Substances	
34		(69.50.4011(2) (a) or (b))	B
35	C	Violation of Uniform Controlled Substances	
36		Act - Nonnarcotic Counterfeit Substances	
37		(69.50.4011(2) (c), (d), or (e))	C

1	C	Violation of Uniform Controlled Substances	
2		Act - Possession of a Controlled Substance	
3		(69.50.4013)	C
4	C	Violation of Uniform Controlled Substances	
5		Act - Possession of a Controlled Substance	
6		(69.50.4012)	C
7		<b>Firearms and Weapons</b>	
8	B	Theft of Firearm (9A.56.300)	C
9	B	Possession of Stolen Firearm (9A.56.310)	C
10	E	Carrying Loaded Pistol Without Permit	
11		(9.41.050)	E
12	C	Possession of Firearms by Minor (<18)	
13		(9.41.040(2)(a)(iii))	C
14	D+	Possession of Dangerous Weapon	
15		(9.41.250)	E
16	D	Intimidating Another Person by use of	
17		Weapon (9.41.270)	E
18		<b>Homicide</b>	
19	A+	Murder 1 (9A.32.030)	A
20	A+	Murder 2 (9A.32.050)	B+
21	B+	Manslaughter 1 (9A.32.060)	C+
22	C+	Manslaughter 2 (9A.32.070)	D+
23	B+	Vehicle Homicide (46.61.520)	C+
24		<b>Kidnapping</b>	
25	A	Kidnap 1 (9A.40.020)	B+
26	B+	Kidnap 2 (9A.40.030)	C+
27	C+	Unlawful Imprisonment (9A.40.040)	D+
28		<b>Obstructing Governmental Operation</b>	
29	D	Obstructing a Law Enforcement Officer	
30		(9A.76.020)	E
31	E	Resisting Arrest (9A.76.040)	E
32	B	Introducing Contraband 1 (9A.76.140)	C
33	C	Introducing Contraband 2 (9A.76.150)	D
34	E	Introducing Contraband 3 (9A.76.160)	E
35	B+	Intimidating a Public Servant (9A.76.180)	C+
36	B+	Intimidating a Witness (9A.72.110)	C+

1		<b>Public Disturbance</b>	
2	C+	Riot with Weapon (9A.84.010(2)(b))	D+
3	D+	Riot Without Weapon (9A.84.010(2)(a))	E
4	E	Failure to Disperse (9A.84.020)	E
5	E	Disorderly Conduct (9A.84.030)	E
6		<b>Sex Crimes</b>	
7	A	Rape 1 (9A.44.040)	B+
8	A-	Rape 2 (9A.44.050)	B+
9	C+	Rape 3 (9A.44.060)	D+
10	A-	Rape of a Child 1 (9A.44.073)	B+
11	B+	Rape of a Child 2 (9A.44.076)	C+
12	B	Incest 1 (9A.64.020(1))	C
13	C	Incest 2 (9A.64.020(2))	D
14	D+	Indecent Exposure (Victim <14)	
15		(9A.88.010)	E
16	E	Indecent Exposure (Victim 14 or over)	
17		(9A.88.010)	E
18	B+	Promoting Prostitution 1 (9A.88.070)	C+
19	C+	Promoting Prostitution 2 (9A.88.080)	D+
20	E	O & A (Prostitution) (9A.88.030)	E
21	B+	Indecent Liberties (9A.44.100)	C+
22	A-	Child Molestation 1 (9A.44.083)	B+
23	B	Child Molestation 2 (9A.44.086)	C+
24		<b>Theft, Robbery, Extortion, and Forgery</b>	
25	B	Theft 1 (9A.56.030)	C
26	C	Theft 2 (9A.56.040)	D
27	D	Theft 3 (9A.56.050)	E
28	B	Theft of Livestock 1 and 2 (9A.56.080 and	
29		9A.56.083)	C
30	C	Forgery (9A.60.020)	D
31	A	Robbery 1 (9A.56.200)	B+
32	B+	Robbery 2 (9A.56.210)	C+
33	B+	Extortion 1 (9A.56.120)	C+
34	C+	Extortion 2 (9A.56.130)	D+
35	C	Identity Theft 1 (9.35.020(2))	D
36	D	Identity Theft 2 (9.35.020(3))	E

1	D	Improperly Obtaining Financial Information	
2		(9.35.010)	E
3	B	Possession of Stolen Property 1	
4		(9A.56.150)	C
5	C	Possession of Stolen Property 2	
6		(9A.56.160)	D
7	D	Possession of Stolen Property 3	
8		(9A.56.170)	E
9	C	Taking Motor Vehicle Without Permission	
10		1 and 2 (9A.56.070 and 9A.56.075)	D
11		<b>Motor Vehicle Related Crimes</b>	
12	E	Driving Without a License (46.20.005)	E
13	B+	Hit and Run - Death (46.52.020(4)(a))	C+
14	C	Hit and Run - Injury (46.52.020(4)(b))	D
15	D	Hit and Run-Attended (46.52.020(5))	E
16	E	Hit and Run-Unattended (46.52.010)	E
17	C	Vehicular Assault (46.61.522)	D
18	C	Attempting to Elude Pursuing Police	
19		Vehicle (46.61.024)	D
20	E	Reckless Driving (46.61.500)	E
21	D	Driving While Under the Influence	
22		(46.61.502 and 46.61.504)	E
23	<u>B+</u>	<u>Felony Driving While Under the Influence</u>	
24		<u>(46.61.502(6))</u>	<u>B</u>
25	<u>B+</u>	<u>Felony Physical Control of a Vehicle While</u>	
26		<u>Under the Influence (46.61.504(6))</u>	<u>B</u>
27		<b>Other</b>	
28	B	Animal Cruelty 1 (16.52.205)	C
29	B	Bomb Threat (9.61.160)	C
30	C	Escape 1 <sup>1</sup> (9A.76.110)	C
31	C	Escape 2 <sup>1</sup> (9A.76.120)	C
32	D	Escape 3 (9A.76.130)	E
33	E	Obscene, Harassing, Etc., Phone Calls	
34		(9.61.230)	E
35	A	Other Offense Equivalent to an Adult Class	
36		A Felony	B+

1	B	Other Offense Equivalent to an Adult Class	
2		B Felony	C
3	C	Other Offense Equivalent to an Adult Class	
4		C Felony	D
5	D	Other Offense Equivalent to an Adult Gross	
6		Misdemeanor	E
7	E	Other Offense Equivalent to an Adult	
8		Misdemeanor	E
9	V	Violation of Order of Restitution,	
10		Community Supervision, or Confinement	
11		(13.40.200) <sup>2</sup>	V

12 <sup>1</sup>Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses  
13 and the standard range is established as follows:

14 1st escape or attempted escape during 12-month period - 4 weeks  
15 confinement

16 2nd escape or attempted escape during 12-month period - 8 weeks  
17 confinement

18 3rd and subsequent escape or attempted escape during 12-month  
19 period - 12 weeks confinement

20 <sup>2</sup>If the court finds that a respondent has violated terms of an order,  
21 it may impose a penalty of up to 30 days of confinement.

22 **JUVENILE SENTENCING STANDARDS**

23 This schedule must be used for juvenile offenders. The court may  
24 select sentencing option A, B, C, D, or RCW 13.40.167.

25 **OPTION A**

26 **JUVENILE OFFENDER SENTENCING GRID**

27 **STANDARD RANGE**

---

28 A+ 180 WEEKS TO AGE 21 YEARS

---

29

30 A 103 WEEKS TO 129 WEEKS

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31

32 A-	15-36	52-65	80-100	103-129
33	WEEKS	WEEKS	WEEKS	WEEKS
34	EXCEPT			
35	30-40			

		WEEKS FOR 15-17 YEAR OLDS				
Current Offense Category	B+	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS	
B	LOCAL SANCTIONS (LS)		15-36 WEEKS		52-65 WEEKS	
C+	LS			15-36 WEEKS		
C	LS				15-36 WEEKS	
Local Sanctions:						
0 to 30 Days						
D+	LS	0 to 12 Months Community Supervision				
0 to 150 Hours Community Restitution						
D	LS	\$0 to \$500 Fine				
E	LS					
		0	1	2	3	4 or more
PRIOR ADJUDICATIONS						

NOTE: References in the grid to days or weeks mean periods of confinement.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an

1 offense category of E. However, a disposition for a violation shall  
2 not include confinement.

3 OR

4 **OPTION B**

5 **SUSPENDED DISPOSITION ALTERNATIVE**

6 (1) If the offender is subject to a standard range disposition  
7 involving confinement by the department, the court may impose the  
8 standard range and suspend the disposition on condition that the  
9 offender comply with one or more local sanctions and any educational or  
10 treatment requirement. The treatment programs provided to the offender  
11 must be research-based best practice programs as identified by the  
12 Washington state institute for public policy or the joint legislative  
13 audit and review committee.

14 (2) If the offender fails to comply with the suspended disposition,  
15 the court may impose sanctions pursuant to RCW 13.40.200 or may revoke  
16 the suspended disposition and order the disposition's execution.

17 (3) An offender is ineligible for the suspended disposition option  
18 under this section if the offender is:

19 (a) Adjudicated of an A+ offense;

20 (b) Fourteen years of age or older and is adjudicated of one or  
21 more of the following offenses:

22 (i) A class A offense, or an attempt, conspiracy, or solicitation  
23 to commit a class A offense;

24 (ii) Manslaughter in the first degree (RCW 9A.32.060); or

25 (iii) Assault in the second degree (RCW 9A.36.021), extortion in  
26 the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW  
27 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential  
28 burglary (RCW 9A.52.025), burglary in the second degree (RCW  
29 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW  
30 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a  
31 witness (RCW 9A.72.110), violation of the uniform controlled substances  
32 act (RCW 69.50.401 (2)(a) and (b)), or manslaughter 2 (RCW 9A.32.070),  
33 when the offense includes infliction of bodily harm upon another or  
34 when during the commission or immediate withdrawal from the offense the  
35 respondent was armed with a deadly weapon;

36 (c) Ordered to serve a disposition for a firearm violation under  
37 RCW 13.40.193; or

1 (d) Adjudicated of a sex offense as defined in RCW 9.94A.030.

2 OR

3 OPTION C

4 CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE

5 If the juvenile offender is subject to a standard range disposition  
6 of local sanctions or 15 to 36 weeks of confinement and has not  
7 committed an A- or B+ offense, the court may impose a disposition under  
8 RCW 13.40.160(4) and 13.40.165.

9 OR

10 OPTION D

11 MANIFEST INJUSTICE

12 If the court determines that a disposition under option A, B, or C  
13 would effectuate a manifest injustice, the court shall impose a  
14 disposition outside the standard range under RCW 13.40.160(2).

15 **Sec. 15.** RCW 46.20.311 and 2005 c 314 s 308 are each amended to  
16 read as follows:

17 (1)(a) The department shall not suspend a driver's license or  
18 privilege to drive a motor vehicle on the public highways for a fixed  
19 period of more than one year, except as specifically permitted under  
20 RCW 46.20.267, 46.20.342, or other provision of law.

21 (b) Except for a suspension under RCW 46.20.267, 46.20.289,  
22 46.20.291(5), 46.61.740, or 74.20A.320, whenever the license or driving  
23 privilege of any person is suspended by reason of a conviction, a  
24 finding that a traffic infraction has been committed, pursuant to  
25 chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the  
26 suspension shall remain in effect until the person gives and thereafter  
27 maintains proof of financial responsibility for the future as provided  
28 in chapter 46.29 RCW.

29 (c) If the suspension is the result of a nonfelony violation of RCW  
30 46.61.502 or 46.61.504, the department shall determine the person's  
31 eligibility for licensing based upon the reports provided by the  
32 alcoholism agency or probation department designated under RCW  
33 46.61.5056 and shall deny reinstatement until enrollment and  
34 participation in an approved program has been established and the  
35 person is otherwise qualified. If the suspension is the result of a



1 violation of RCW 46.61.502(6) or 46.61.504(6), the department shall  
2 determine the person's eligibility for licensing based upon the reports  
3 provided by the alcohol or drug dependency agency required under RCW  
4 46.61.524 and shall deny reinstatement until satisfactory progress in  
5 an approved program has been established and the person is otherwise  
6 qualified. If the suspension is the result of a violation of RCW  
7 46.61.502 or 46.61.504, and the person is required pursuant to RCW  
8 46.20.720 to drive only a motor vehicle equipped with a functioning  
9 ignition interlock, the department shall determine the person's  
10 eligibility for licensing based upon written verification by a company  
11 doing business in the state that it has installed the required device  
12 on a vehicle owned or operated by the person seeking reinstatement.  
13 If, based upon notification from the interlock provider or otherwise,  
14 the department determines that an interlock required under RCW  
15 46.20.720 is no longer installed or functioning as required, the  
16 department shall suspend the person's license or privilege to drive.  
17 Whenever the license or driving privilege of any person is suspended or  
18 revoked as a result of noncompliance with an ignition interlock  
19 requirement, the suspension shall remain in effect until the person  
20 provides notice issued by a company doing business in the state that a  
21 vehicle owned or operated by the person is equipped with a functioning  
22 ignition interlock device.

23 (d) Whenever the license or driving privilege of any person is  
24 suspended as a result of certification of noncompliance with a child  
25 support order under chapter 74.20A RCW or a residential or visitation  
26 order, the suspension shall remain in effect until the person provides  
27 a release issued by the department of social and health services  
28 stating that the person is in compliance with the order.

29 (e)(i) The department shall not issue to the person a new,  
30 duplicate, or renewal license until the person pays a reissue fee of  
31 seventy-five dollars.

32 (ii) If the suspension is the result of a violation of RCW  
33 46.61.502 or 46.61.504, or is the result of administrative action under  
34 RCW 46.20.308, the reissue fee shall be one hundred fifty dollars.

35 (2)(a) Any person whose license or privilege to drive a motor  
36 vehicle on the public highways has been revoked, unless the revocation  
37 was for a cause which has been removed, is not entitled to have the  
38 license or privilege renewed or restored until: (i) After the

1 expiration of one year from the date the license or privilege to drive  
2 was revoked; (ii) after the expiration of the applicable revocation  
3 period provided by RCW 46.20.3101 or 46.61.5055; (iii) after the  
4 expiration of two years for persons convicted of vehicular homicide; or  
5 (iv) after the expiration of the applicable revocation period provided  
6 by RCW 46.20.265.

7 (b)(i) After the expiration of the appropriate period, the person  
8 may make application for a new license as provided by law together with  
9 a reissue fee in the amount of seventy-five dollars.

10 (ii) If the revocation is the result of a violation of RCW  
11 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one  
12 hundred fifty dollars. If the revocation is the result of a nonfelony  
13 violation of RCW 46.61.502 or 46.61.504, the department shall determine  
14 the person's eligibility for licensing based upon the reports provided  
15 by the alcoholism agency or probation department designated under RCW  
16 46.61.5056 and shall deny reissuance of a license, permit, or privilege  
17 to drive until enrollment and participation in an approved program has  
18 been established and the person is otherwise qualified. If the  
19 suspension is the result of a violation of RCW 46.61.502(6) or  
20 46.61.504(6), the department shall determine the person's eligibility  
21 for licensing based upon the reports provided by the alcohol or drug  
22 dependency agency required under RCW 46.61.524 and shall deny  
23 reinstatement until satisfactory progress in an approved program has  
24 been established and the person is otherwise qualified. If the  
25 revocation is the result of a violation of RCW 46.61.502 or 46.61.504,  
26 and the person is required pursuant to RCW 46.20.720 to drive only a  
27 motor vehicle equipped with a functioning ignition interlock or other  
28 biological or technical device, the department shall determine the  
29 person's eligibility for licensing based upon written verification by  
30 a company doing business in the state that it has installed the  
31 required device on a vehicle owned or operated by the person applying  
32 for a new license. If, following issuance of a new license, the  
33 department determines, based upon notification from the interlock  
34 provider or otherwise, that an interlock required under RCW 46.20.720  
35 is no longer functioning, the department shall suspend the person's  
36 license or privilege to drive until the department has received written  
37 verification from an interlock provider that a functioning interlock is  
38 installed.

1 (c) Except for a revocation under RCW 46.20.265, the department  
2 shall not then issue a new license unless it is satisfied after  
3 investigation of the driving ability of the person that it will be safe  
4 to grant the privilege of driving a motor vehicle on the public  
5 highways, and until the person gives and thereafter maintains proof of  
6 financial responsibility for the future as provided in chapter 46.29  
7 RCW. For a revocation under RCW 46.20.265, the department shall not  
8 issue a new license unless it is satisfied after investigation of the  
9 driving ability of the person that it will be safe to grant that person  
10 the privilege of driving a motor vehicle on the public highways.

11 (3)(a) Whenever the driver's license of any person is suspended  
12 pursuant to Article IV of the nonresident violators compact or RCW  
13 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue  
14 to the person any new or renewal license until the person pays a  
15 reissue fee of seventy-five dollars.

16 (b) If the suspension is the result of a violation of the laws of  
17 this or any other state, province, or other jurisdiction involving (i)  
18 the operation or physical control of a motor vehicle upon the public  
19 highways while under the influence of intoxicating liquor or drugs, or  
20 (ii) the refusal to submit to a chemical test of the driver's blood  
21 alcohol content, the reissue fee shall be one hundred fifty dollars.

22 **Sec. 16.** RCW 46.61.524 and 2001 c 64 s 7 are each amended to read  
23 as follows:

24 (1) A person convicted under RCW 46.61.502(6), 46.61.504(6),  
25 46.61.520(1)(a), or 46.61.522(1)(b) shall, as a condition of community  
26 custody imposed under RCW 9.94A.545 or community placement imposed  
27 under RCW 9.94A.660, complete a diagnostic evaluation by an alcohol or  
28 drug dependency agency approved by the department of social and health  
29 services or a qualified probation department, as defined under RCW  
30 46.61.516 that has been approved by the department of social and health  
31 services. This report shall be forwarded to the department of  
32 licensing. If the person is found to have an alcohol or drug problem  
33 that requires treatment, the person shall complete treatment in a  
34 program approved by the department of social and health services under  
35 chapter 70.96A RCW. If the person is found not to have an alcohol or  
36 drug problem that requires treatment, he or she shall complete a course  
37 in an information school approved by the department of social and

1 health services under chapter 70.96A RCW. The convicted person shall  
2 pay all costs for any evaluation, education, or treatment required by  
3 this section, unless the person is eligible for an existing program  
4 offered or approved by the department of social and health services.  
5 Nothing in chapter 348, Laws of 1991 requires the addition of new  
6 treatment or assessment facilities nor affects the department of social  
7 and health services use of existing programs and facilities authorized  
8 by law.

9 (2) As provided for under RCW 46.20.285, the department shall  
10 revoke the license, permit to drive, or a nonresident privilege of a  
11 person convicted of vehicular homicide under RCW 46.61.520 or vehicular  
12 assault under RCW 46.61.522. The department shall determine the  
13 eligibility of a person convicted of vehicular homicide under RCW  
14 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to  
15 receive a license based upon the report provided by the designated  
16 alcoholism treatment facility or probation department, and shall deny  
17 reinstatement until satisfactory progress in an approved program has  
18 been established and the person is otherwise qualified.

19 **Sec. 17.** RCW 46.61.5152 and 1998 c 41 s 9 are each amended to read  
20 as follows:

21 In addition to penalties that may be imposed under RCW 46.61.5055,  
22 the court may require a person who is convicted of a nonfelony  
23 violation of RCW 46.61.502 or 46.61.504 or who enters a deferred  
24 prosecution program under RCW 10.05.020 based on a nonfelony violation  
25 of RCW 46.61.502 or 46.61.504, to attend an educational program  
26 focusing on the emotional, physical, and financial suffering of victims  
27 who were injured by persons convicted of driving while under the  
28 influence of intoxicants.

29 **Sec. 18.** RCW 46.61.5151 and 1995 c 332 s 15 are each amended to  
30 read as follows:

31 A sentencing court may allow (~~persons~~) a person convicted of  
32 (~~violating~~) a nonfelony violation of RCW 46.61.502 or 46.61.504 to  
33 fulfill the terms of the sentence provided in RCW 46.61.5055 in  
34 nonconsecutive or intermittent time periods. However, any mandatory  
35 minimum sentence under RCW 46.61.5055 shall be served consecutively

1 unless suspended or deferred as otherwise provided by law.

2 NEW SECTION. **Sec. 19.** This act takes effect July 1, 2007.  
Passed by the House March 8, 2006.  
Passed by the Senate March 7, 2006.  
Approved by the Governor March 15, 2006.  
Filed in Office of Secretary of State March 15, 2006.