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HOUSE BILL 2324

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State of Washington                      58th Legislature                      2004 Regular Session

By Representatives Shabro, McDonald, Roach, Bush and Moeller

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Committee on Judiciary.

1            AN ACT Relating to driving or physical control of a vehicle while  
2 under the influence of intoxicating liquor or any drug; amending RCW  
3 9.94A.030, 9.94A.734, 9.94A.640, 9.94A.650, 46.20.720, 46.61.502,  
4 46.61.504, 46.61.5055, and 46.61.5151; reenacting and amending RCW  
5 9.94A.515 and 9.94A.525; and providing an effective date.

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

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

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

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

13            (2) "Collect," or any derivative thereof, "collect and remit," or  
14 "collect and deliver," when used with reference to the department,  
15 means that the department, either directly or through a collection  
16 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
17 and enforcing the offender's sentence with regard to the legal  
18 financial obligation, receiving payment thereof from the offender, and,

1 consistent with current law, delivering daily the entire payment to the  
2 superior court clerk without depositing it in a departmental account.

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

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

8 (5) "Community custody" means that portion of an offender's  
9 sentence of confinement in lieu of earned release time or imposed  
10 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
11 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
12 community subject to controls placed on the offender's movement and  
13 activities by the department. For offenders placed on community  
14 custody for crimes committed on or after July 1, 2000, the department  
15 shall assess the offender's risk of reoffense and may establish and  
16 modify conditions of community custody, in addition to those imposed by  
17 the court, based upon the risk to community safety.

18 (6) "Community custody range" means the minimum and maximum period  
19 of community custody included as part of a sentence under RCW  
20 9.94A.715, as established by the commission or the legislature under  
21 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

22 (7) "Community placement" means that period during which the  
23 offender is subject to the conditions of community custody and/or  
24 postrelease supervision, which begins either upon completion of the  
25 term of confinement (postrelease supervision) or at such time as the  
26 offender is transferred to community custody in lieu of earned release.  
27 Community placement may consist of entirely community custody, entirely  
28 postrelease supervision, or a combination of the two.

29 (8) "Community restitution" means compulsory service, without  
30 compensation, performed for the benefit of the community by the  
31 offender.

32 (9) "Community supervision" means a period of time during which a  
33 convicted offender is subject to crime-related prohibitions and other  
34 sentence conditions imposed by a court pursuant to this chapter or RCW  
35 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
36 a chemical dependency that has contributed to his or her offense, the  
37 conditions of supervision may, subject to available resources, include  
38 treatment. For purposes of the interstate compact for out-of-state

1 supervision of parolees and probationers, RCW 9.95.270, community  
2 supervision is the functional equivalent of probation and should be  
3 considered the same as probation by other states.

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

5 (11) "Conviction" means an adjudication of guilt pursuant to Titles  
6 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
7 acceptance of a plea of guilty.

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

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

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

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

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

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

35 (15) "Day reporting" means a program of enhanced supervision  
36 designed to monitor the offender's daily activities and compliance with  
37 sentence conditions, and in which the offender is required to report

1 daily to a specific location designated by the department or the  
2 sentencing court.

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

4 (17) "Determinate sentence" means a sentence that states with  
5 exactitude the number of actual years, months, or days of total  
6 confinement, of partial confinement, of community supervision, the  
7 number of actual hours or days of community restitution work, or  
8 dollars or terms of a legal financial obligation. The fact that an  
9 offender through earned release can reduce the actual period of  
10 confinement shall not affect the classification of the sentence as a  
11 determinate sentence.

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

24 (19) "Drug offender sentencing alternative" is a sentencing option  
25 available to persons convicted of a felony offense other than a violent  
26 offense or a sex offense and who are eligible for the option under RCW  
27 9.94A.660.

28 (20) "Drug offense" means:

29 (a) Any felony violation of chapter 69.50 RCW except possession of  
30 a controlled substance (RCW 69.50.4013) or forged prescription for a  
31 controlled substance (RCW 69.50.403);

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

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

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

3 (22) "Escape" means:

4 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
5 first degree (RCW 9A.76.110), escape in the second degree (RCW  
6 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
7 willful failure to return from work release (RCW 72.65.070), or willful  
8 failure to be available for supervision by the department while in  
9 community custody (RCW 72.09.310); or

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

13 (23) "Felony traffic offense" means:

14 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
15 46.61.522), eluding a police officer (RCW 46.61.024), ~~(( $\epsilon$ ))~~ felony  
16 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while  
17 under the influence of intoxicating liquor or any drug (RCW  
18 46.61.502(6)), or felony physical control of a vehicle while under the  
19 influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

20 (b) 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 felony  
22 traffic offense under (a) of this subsection.

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

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

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

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

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

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

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

13 (b) Assault in the second degree;

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

15 (d) Child molestation in the second degree;

16 (e) Controlled substance homicide;

17 (f) Extortion in the first degree;

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

19 (h) Indecent liberties;

20 (i) Kidnapping in the second degree;

21 (j) Leading organized crime;

22 (k) Manslaughter in the first degree;

23 (l) Manslaughter in the second degree;

24 (m) Promoting prostitution in the first degree;

25 (n) Rape in the third degree;

26 (o) Robbery in the second degree;

27 (p) Sexual exploitation;

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

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

36 (s) Any other class B felony offense with a finding of sexual  
37 motivation;

1 (t) Any other felony with a deadly weapon verdict under RCW  
2 9.94A.602;

3 (u) Any felony offense in effect at any time prior to December 2,  
4 1993, that is comparable to a most serious offense under this  
5 subsection, or any federal or out-of-state conviction for an offense  
6 that under the laws of this state would be a felony classified as a  
7 most serious offense under this subsection;

8 (v)(i) A prior conviction for indecent liberties under RCW  
9 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
10 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
11 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
12 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

13 (ii) A prior conviction for indecent liberties under RCW  
14 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
15 if: (A) The crime was committed against a child under the age of  
16 fourteen; or (B) the relationship between the victim and perpetrator is  
17 included in the definition of indecent liberties under RCW  
18 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
19 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
20 through July 27, 1997.

21 (29) "Nonviolent offense" means an offense which is not a violent  
22 offense.

23 (30) "Offender" means a person who has committed a felony  
24 established by state law and is eighteen years of age or older or is  
25 less than eighteen years of age but whose case is under superior court  
26 jurisdiction under RCW 13.04.030 or has been transferred by the  
27 appropriate juvenile court to a criminal court pursuant to RCW  
28 13.40.110. Throughout this chapter, the terms "offender" and  
29 "defendant" are used interchangeably.

30 (31) "Partial confinement" means confinement for no more than one  
31 year in a facility or institution operated or utilized under contract  
32 by the state or any other unit of government, or, if home detention or  
33 work crew has been ordered by the court, in an approved residence, for  
34 a substantial portion of each day with the balance of the day spent in  
35 the community. Partial confinement includes work release, home  
36 detention, work crew, and a combination of work crew and home  
37 detention.

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

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

3 (ii) Has, before the commission of the offense under (a) of this  
4 subsection, been convicted as an offender on at least two separate  
5 occasions, whether in this state or elsewhere, of felonies that under  
6 the laws of this state would be considered most serious offenses and  
7 would be included in the offender score under RCW 9.94A.525; provided  
8 that of the two or more previous convictions, at least one conviction  
9 must have occurred before the commission of any of the other most  
10 serious offenses for which the offender was previously convicted; or

11 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
12 of a child in the first degree, child molestation in the first degree,  
13 rape in the second degree, rape of a child in the second degree, or  
14 indecent liberties by forcible compulsion; (B) any of the following  
15 offenses with a finding of sexual motivation: Murder in the first  
16 degree, murder in the second degree, homicide by abuse, kidnapping in  
17 the first degree, kidnapping in the second degree, assault in the first  
18 degree, assault in the second degree, assault of a child in the first  
19 degree, or burglary in the first degree; or (C) an attempt to commit  
20 any crime listed in this subsection (32)(b)(i); and

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

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

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

1 (35) "Risk assessment" means the application of an objective  
2 instrument supported by research and adopted by the department for the  
3 purpose of assessing an offender's risk of reoffense, taking into  
4 consideration the nature of the harm done by the offender, place and  
5 circumstances of the offender related to risk, the offender's  
6 relationship to any victim, and any information provided to the  
7 department by victims. The results of a risk assessment shall not be  
8 based on unconfirmed or unconfirmable allegations.

9 (36) "Serious traffic offense" means:

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

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

18 (37) "Serious violent offense" is a subcategory of violent offense  
19 and means:

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

21 (ii) Homicide by abuse;

22 (iii) Murder in the second degree;

23 (iv) Manslaughter in the first degree;

24 (v) Assault in the first degree;

25 (vi) Kidnapping in the first degree;

26 (vii) Rape in the first degree;

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

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

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

33 (38) "Sex offense" means:

34 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
35 RCW 9A.44.130(11);

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

37 (iii) A felony that is a violation of chapter 9.68A RCW other than  
38 RCW 9.68A.070 or 9.68A.080; or

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

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

6 (c) A felony with a finding of sexual motivation under RCW  
7 9.94A.835 or 13.40.135; or

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

11 (39) "Sexual motivation" means that one of the purposes for which  
12 the defendant committed the crime was for the purpose of his or her  
13 sexual gratification.

14 (40) "Standard sentence range" means the sentencing court's  
15 discretionary range in imposing a nonappealable sentence.

16 (41) "Statutory maximum sentence" means the maximum length of time  
17 for which an offender may be confined as punishment for a crime as  
18 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
19 crime, or other statute defining the maximum penalty for a crime.

20 (42) "Total confinement" means confinement inside the physical  
21 boundaries of a facility or institution operated or utilized under  
22 contract by the state or any other unit of government for twenty-four  
23 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

24 (43) "Transition training" means written and verbal instructions  
25 and assistance provided by the department to the offender during the  
26 two weeks prior to the offender's successful completion of the work  
27 ethic camp program. The transition training shall include instructions  
28 in the offender's requirements and obligations during the offender's  
29 period of community custody.

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

33 (45) "Violent offense" means:

34 (a) Any of the following felonies:

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

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

1 (iii) Manslaughter in the first degree;  
2 (iv) Manslaughter in the second degree;  
3 (v) Indecent liberties if committed by forcible compulsion;  
4 (vi) Kidnapping in the second degree;  
5 (vii) Arson in the second degree;  
6 (viii) Assault in the second degree;  
7 (ix) Assault of a child in the second degree;  
8 (x) Extortion in the first degree;  
9 (xi) Robbery in the second degree;  
10 (xii) Drive-by shooting;  
11 (xiii) Vehicular assault, when caused by the operation or driving  
12 of a vehicle by a person while under the influence of intoxicating  
13 liquor or any drug or by the operation or driving of a vehicle in a  
14 reckless manner; and  
15 (xiv) Vehicular homicide, when proximately caused by the driving of  
16 any vehicle by any person while under the influence of intoxicating  
17 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
18 any vehicle in a reckless manner;  
19 (b) Any conviction for a felony offense in effect at any time prior  
20 to July 1, 1976, that is comparable to a felony classified as a violent  
21 offense in (a) of this subsection; and  
22 (c) Any federal or out-of-state conviction for an offense that  
23 under the laws of this state would be a felony classified as a violent  
24 offense under (a) or (b) of this subsection.  
25 (46) "Work crew" means a program of partial confinement consisting  
26 of civic improvement tasks for the benefit of the community that  
27 complies with RCW 9.94A.725.  
28 (47) "Work ethic camp" means an alternative incarceration program  
29 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
30 the cost of corrections by requiring offenders to complete a  
31 comprehensive array of real-world job and vocational experiences,  
32 character-building work ethics training, life management skills  
33 development, substance abuse rehabilitation, counseling, literacy  
34 training, and basic adult education.  
35 (48) "Work release" means a program of partial confinement  
36 available to offenders who are employed or engaged as a student in a  
37 regular course of study at school.

1       **Sec. 2.** RCW 9.94A.734 and 2003 c 53 s 62 are each amended to read  
2 as follows:

3       (1) Home detention may not be imposed for offenders convicted of:

4       (a) A violent offense;

5       (b) Any sex offense;

6       (c) Any drug offense;

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

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

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

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

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

13       (2) Home detention may be imposed for:

14       (a) Offenders convicted of possession of a controlled substance  
15 under RCW 69.50.4013 or forged prescription for a controlled substance  
16 under RCW 69.50.403 if the offender fulfills the participation  
17 conditions set forth in this section and is monitored for drug use by  
18 a treatment alternatives to street crime program or a comparable court  
19 or agency-referred program.

20       ~~((2) Home detention may be imposed for)~~ (b) Offenders convicted  
21 of burglary in the second degree as defined in RCW 9A.52.030 or  
22 residential burglary conditioned upon the offender:

23       ~~((a))~~ (i) Successfully completing twenty-one days in a work  
24 release program;

25       ~~((b))~~ (ii) Having no convictions for burglary in the second  
26 degree or residential burglary during the preceding two years and not  
27 more than two prior convictions for burglary or residential burglary;

28       ~~((c))~~ (iii) Having no convictions for a violent felony offense  
29 during the preceding two years and not more than two prior convictions  
30 for a violent felony offense;

31       ~~((d))~~ (iv) Having no prior charges of escape; and

32       ~~((e))~~ (v) Fulfilling the other conditions of the home detention  
33 program.

34       (c) Offenders convicted of felony driving while under the influence  
35 of intoxicating liquor or any drug as defined in RCW 46.61.502(6) or  
36 felony physical control of a vehicle while under the influence of  
37 intoxicating liquor or any drug as defined in RCW 46.61.504(6).

1 (3) Participation in a home detention program shall be conditioned  
2 upon:

3 (a) The offender obtaining or maintaining current employment or  
4 attending a regular course of school study at regularly defined hours,  
5 or the offender performing parental duties to offspring or minors  
6 normally in the custody of the offender;

7 (b) Abiding by the rules of the home detention program; and

8 (c) Compliance with court-ordered legal financial obligations.

9 (4) The home detention program may also be made available to  
10 offenders whose charges and convictions do not otherwise disqualify  
11 them if medical or health-related conditions, concerns or treatment  
12 would be better addressed under the home detention program, or where  
13 the health and welfare of the offender, other inmates, or staff would  
14 be jeopardized by the offender's incarceration. Participation in the  
15 home detention program for medical or health-related reasons is  
16 conditioned on the offender abiding by the rules of the home detention  
17 program and complying with court-ordered restitution.

18 **Sec. 3.** RCW 9.94A.640 and 1987 c 486 s 7 are each amended to read  
19 as follows:

20 (1) Every offender who has been discharged under RCW 9.94A.637 may  
21 apply to the sentencing court for a vacation of the offender's record  
22 of conviction. If the court finds the offender meets the tests  
23 prescribed in subsection (2) of this section, the court may clear the  
24 record of conviction by: (a) Permitting the offender to withdraw the  
25 offender's plea of guilty and to enter a plea of not guilty; or (b) if  
26 the offender has been convicted after a plea of not guilty, by the  
27 court setting aside the verdict of guilty; and (c) by the court  
28 dismissing the information or indictment against the offender.

29 (2) An offender may not have the record of conviction cleared if:  
30 (a) There are any criminal charges against the offender pending in any  
31 court of this state or another state, or in any federal court; (b) the  
32 offense was a violent offense as defined in RCW 9.94A.030; (c) the  
33 offense was a crime against persons as defined in RCW 43.43.830; (d)  
34 the offense was a class C felony described in RCW 46.61.502 or  
35 46.61.504; (e) the offender has been convicted of a new crime in this  
36 state, another state, or federal court since the date of the offender's  
37 discharge under RCW 9.94A.637; (~~(e)~~) (f) the offense is a class B

1 felony and less than ten years have passed since the date the applicant  
2 was discharged under RCW 9.94A.637; (~~and (f)~~) or (g) the offense was  
3 a class C felony and less than five years have passed since the date  
4 the applicant was discharged under RCW 9.94A.637.

5 (3) Once the court vacates a record of conviction under subsection  
6 (1) of this section, the fact that the offender has been convicted of  
7 the offense shall not be included in the offender's criminal history  
8 for purposes of determining a sentence in any subsequent conviction,  
9 and the offender shall be released from all penalties and disabilities  
10 resulting from the offense. For all purposes, including responding to  
11 questions on employment applications, an offender whose conviction has  
12 been vacated may state that the offender has never been convicted of  
13 that crime. Nothing in this section affects or prevents the use of an  
14 offender's prior conviction in a later criminal prosecution.

15 **Sec. 4.** RCW 9.94A.650 and 2002 c 175 s 9 are each amended to read  
16 as follows:

17 (1) This section applies to offenders who have never been  
18 previously convicted of a felony in this state, federal court, or  
19 another state, and who have never participated in a program of deferred  
20 prosecution for a felony, and who are convicted of a felony that is  
21 not:

22 (a) Classified as a violent offense or a sex offense under this  
23 chapter;

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

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

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

33 (e) Driving while under the influence of intoxicating liquor or any  
34 drug or physical control of a vehicle while under the influence of  
35 intoxicating liquor or any drug.

36 (2) In sentencing a first-time offender the court may waive the  
37 imposition of a sentence within the standard sentence range and impose

1 a sentence which may include up to ninety days of confinement in a  
2 facility operated or utilized under contract by the county and a  
3 requirement that the offender refrain from committing new offenses.  
4 The sentence may also include a term of community supervision or  
5 community custody as specified in subsection (3) of this section,  
6 which, in addition to crime-related prohibitions, may include  
7 requirements that the offender perform any one or more of the  
8 following:

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

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

13 (c) Pursue a prescribed, secular course of study or vocational  
14 training;

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

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

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

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

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

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

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

1       **Sec. 5.** RCW 9.94A.515 and 2003 c 335 s 5, 2003 c 283 s 33, 2003 c  
2 267 s 3, 2003 c 250 s 14, 2003 c 119 s 8, 2003 c 53 s 56, and 2003 c 52  
3 s 4 are each reenacted and amended to read as follows:  
4  
5

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)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076)
X	Child Molestation 1 (RCW 9A.44.083) Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) Kidnapping 1 (RCW 9A.40.020)

1 Leading Organized Crime (RCW  
2 9A.82.060(1)(a))  
3 Malicious explosion 3 (RCW  
4 70.74.280(3))  
5 Sexually Violent Predator Escape  
6 (RCW 9A.76.115)  
7 IX Assault of a Child 2 (RCW 9A.36.130)  
8 Explosive devices prohibited (RCW  
9 70.74.180)  
10 Hit and Run--Death (RCW  
11 46.52.020(4)(a))  
12 Homicide by Watercraft, by being  
13 under the influence of intoxicating  
14 liquor or any drug (RCW  
15 79A.60.050)  
16 Inciting Criminal Profiteering (RCW  
17 9A.82.060(1)(b))  
18 Malicious placement of an explosive 2  
19 (RCW 70.74.270(2))  
20 Robbery 1 (RCW 9A.56.200)  
21 Sexual Exploitation (RCW 9.68A.040)  
22 Vehicular Homicide, by being under  
23 the influence of intoxicating  
24 liquor or any drug (RCW  
25 46.61.520)  
26 VIII Arson 1 (RCW 9A.48.020)  
27 Homicide by Watercraft, by the  
28 operation of any vessel in a  
29 reckless manner (RCW  
30 79A.60.050)  
31 Manslaughter 2 (RCW 9A.32.070)  
32 Promoting Prostitution 1 (RCW  
33 9A.88.070)  
34 Theft of Ammonia (RCW 69.55.010)  
35 Vehicular Homicide, by the operation  
36 of any vehicle in a reckless  
37 manner (RCW 46.61.520)

1 VII Burglary 1 (RCW 9A.52.020)  
2 Child Molestation 2 (RCW 9A.44.086)  
3 Civil Disorder Training (RCW  
4 9A.48.120)  
5 Dealing in depictions of minor  
6 engaged in sexually explicit  
7 conduct (RCW 9.68A.050)  
8 Drive-by Shooting (RCW 9A.36.045)  
9 Homicide by Watercraft, by disregard  
10 for the safety of others (RCW  
11 79A.60.050)  
12 Indecent Liberties (without forcible  
13 compulsion) (RCW 9A.44.100(1)  
14 (b) and (c))  
15 Introducing Contraband 1 (RCW  
16 9A.76.140)  
17 Malicious placement of an explosive 3  
18 (RCW 70.74.270(3))  
19 Sending, bringing into state depictions  
20 of minor engaged in sexually  
21 explicit conduct (RCW  
22 9.68A.060)  
23 Unlawful Possession of a Firearm in  
24 the first degree (RCW  
25 9.41.040(1))  
26 Use of a Machine Gun in Commission  
27 of a Felony (RCW 9.41.225)  
28 Vehicular Homicide, by disregard for  
29 the safety of others (RCW  
30 46.61.520)  
31 VI Bail Jumping with Murder 1 (RCW  
32 9A.76.170(3)(a))  
33 Bribery (RCW 9A.68.010)  
34 Incest 1 (RCW 9A.64.020(1))  
35 Intimidating a Judge (RCW  
36 9A.72.160)

1 Intimidating a Juror/Witness (RCW  
2 9A.72.110, 9A.72.130)  
3 Malicious placement of an imitation  
4 device 2 (RCW 70.74.272(1)(b))  
5 Rape of a Child 3 (RCW 9A.44.079)  
6 Theft of a Firearm (RCW 9A.56.300)  
7 Unlawful Storage of Ammonia (RCW  
8 69.55.020)  
9 V Abandonment of dependent person 1  
10 (RCW 9A.42.060)  
11 Advancing money or property for  
12 extortionate extension of credit  
13 (RCW 9A.82.030)  
14 Bail Jumping with class A Felony  
15 (RCW 9A.76.170(3)(b))  
16 Child Molestation 3 (RCW 9A.44.089)  
17 Criminal Mistreatment 1 (RCW  
18 9A.42.020)  
19 Custodial Sexual Misconduct 1 (RCW  
20 9A.44.160)  
21 Domestic Violence Court Order  
22 Violation (RCW 10.99.040,  
23 10.99.050, 26.09.300, 26.10.220,  
24 26.26.138, 26.50.110, 26.52.070,  
25 or 74.34.145)  
26 Extortion 1 (RCW 9A.56.120)  
27 Extortionate Extension of Credit  
28 (RCW 9A.82.020)  
29 Extortionate Means to Collect  
30 Extensions of Credit (RCW  
31 9A.82.040)  
32 Incest 2 (RCW 9A.64.020(2))  
33 Kidnapping 2 (RCW 9A.40.030)  
34 Perjury 1 (RCW 9A.72.020)  
35 Persistent prison misbehavior (RCW  
36 9.94.070)

1 Possession of a Stolen Firearm (RCW  
2 9A.56.310)  
3 Rape 3 (RCW 9A.44.060)  
4 Rendering Criminal Assistance 1  
5 (RCW 9A.76.070)  
6 Sexual Misconduct with a Minor 1  
7 (RCW 9A.44.093)  
8 Sexually Violating Human Remains  
9 (RCW 9A.44.105)  
10 Stalking (RCW 9A.46.110)  
11 Taking Motor Vehicle Without  
12 Permission 1 (RCW 9A.56.070)  
13 IV Arson 2 (RCW 9A.48.030)  
14 Assault 2 (RCW 9A.36.021)  
15 Assault by Watercraft (RCW  
16 79A.60.060)  
17 Bribing a Witness/Bribe Received by  
18 Witness (RCW 9A.72.090,  
19 9A.72.100)  
20 Cheating 1 (RCW 9.46.1961)  
21 Commercial Bribery (RCW  
22 9A.68.060)  
23 Counterfeiting (RCW 9.16.035(4))  
24 Driving While Under the Influence  
25 (RCW 46.61.502(6))  
26 Endangerment with a Controlled  
27 Substance (RCW 9A.42.100)  
28 Escape 1 (RCW 9A.76.110)  
29 Hit and Run--Injury (RCW  
30 46.52.020(4)(b))  
31 Hit and Run with Vessel--Injury  
32 Accident (RCW 79A.60.200(3))  
33 Identity Theft 1 (RCW 9.35.020(2))  
34 Indecent Exposure to Person Under  
35 Age Fourteen (subsequent sex  
36 offense) (RCW 9A.88.010)

1 Influencing Outcome of Sporting  
2 Event (RCW 9A.82.070)  
3 Malicious Harassment (RCW  
4 9A.36.080)  
5 Physical Control of a Vehicle While  
6 Under the Influence (RCW  
7 46.61.504(6))  
8 Residential Burglary (RCW  
9 9A.52.025)  
10 Robbery 2 (RCW 9A.56.210)  
11 Theft of Livestock 1 (RCW 9A.56.080)  
12 Threats to Bomb (RCW 9.61.160)  
13 Trafficking in Stolen Property 1 (RCW  
14 9A.82.050)  
15 Unlawful factoring of a credit card or  
16 payment card transaction (RCW  
17 9A.56.290(4)(b))  
18 Unlawful transaction of health  
19 coverage as a health care service  
20 contractor (RCW 48.44.016(3))  
21 Unlawful transaction of health  
22 coverage as a health maintenance  
23 organization (RCW 48.46.033(3))  
24 Unlawful transaction of insurance  
25 business (RCW 48.15.023(3))  
26 Unlicensed practice as an insurance  
27 professional (RCW 48.17.063(3))  
28 Use of Proceeds of Criminal  
29 Profiteering (RCW 9A.82.080 (1)  
30 and (2))  
31 Vehicular Assault, by being under the  
32 influence of intoxicating liquor or  
33 any drug, or by the operation or  
34 driving of a vehicle in a reckless  
35 manner (RCW 46.61.522)  
36 Willful Failure to Return from  
37 Furlough (RCW 72.66.060)

1 III Abandonment of dependent person 2  
2 (RCW 9A.42.070)  
3 Assault 3 (RCW 9A.36.031)  
4 Assault of a Child 3 (RCW 9A.36.140)  
5 Bail Jumping with class B or C Felony  
6 (RCW 9A.76.170(3)(c))  
7 Burglary 2 (RCW 9A.52.030)  
8 Communication with a Minor for  
9 Immoral Purposes (RCW  
10 9.68A.090)  
11 Criminal Gang Intimidation (RCW  
12 9A.46.120)  
13 Criminal Mistreatment 2 (RCW  
14 9A.42.030)  
15 Custodial Assault (RCW 9A.36.100)  
16 Escape 2 (RCW 9A.76.120)  
17 Extortion 2 (RCW 9A.56.130)  
18 Harassment (RCW 9A.46.020)  
19 Intimidating a Public Servant (RCW  
20 9A.76.180)  
21 Introducing Contraband 2 (RCW  
22 9A.76.150)  
23 Malicious Injury to Railroad Property  
24 (RCW 81.60.070)  
25 Patronizing a Juvenile Prostitute  
26 (RCW 9.68A.100)  
27 Perjury 2 (RCW 9A.72.030)  
28 Possession of Incendiary Device (RCW  
29 9.40.120)  
30 Possession of Machine Gun or Short-  
31 Barreled Shotgun or Rifle (RCW  
32 9.41.190)  
33 Promoting Prostitution 2 (RCW  
34 9A.88.080)  
35 Securities Act violation (RCW  
36 21.20.400)

1 Tampering with a Witness (RCW  
2 9A.72.120)  
3 Telephone Harassment (subsequent  
4 conviction or threat of death)  
5 (RCW 9.61.230(2))  
6 Theft of Livestock 2 (RCW 9A.56.083)  
7 Trafficking in Stolen Property 2 (RCW  
8 9A.82.055)  
9 Unlawful Imprisonment (RCW  
10 9A.40.040)  
11 Unlawful possession of firearm in the  
12 second degree (RCW 9.41.040(2))  
13 Vehicular Assault, by the operation or  
14 driving of a vehicle with disregard  
15 for the safety of others (RCW  
16 46.61.522)  
17 Willful Failure to Return from Work  
18 Release (RCW 72.65.070)  
19 II Computer Trespass 1 (RCW  
20 9A.52.110)  
21 Counterfeiting (RCW 9.16.035(3))  
22 Escape from Community Custody  
23 (RCW 72.09.310)  
24 Health Care False Claims (RCW  
25 48.80.030)  
26 Identity Theft 2 (RCW 9.35.020(3))  
27 Improperly Obtaining Financial  
28 Information (RCW 9.35.010)  
29 Malicious Mischief 1 (RCW  
30 9A.48.070)  
31 Possession of Stolen Property 1 (RCW  
32 9A.56.150)  
33 Theft 1 (RCW 9A.56.030)  
34 Theft of Rental, Leased, or Lease-  
35 purchased Property (valued at one  
36 thousand five hundred dollars or  
37 more) (RCW 9A.56.096(5)(a))

1 Trafficking in Insurance Claims (RCW  
2 48.30A.015)  
3 Unlawful factoring of a credit card or  
4 payment card transaction (RCW  
5 9A.56.290(4)(a))  
6 Unlawful Practice of Law (RCW  
7 2.48.180)  
8 Unlicensed Practice of a Profession or  
9 Business (RCW 18.130.190(7))  
10 I Attempting to Elude a Pursuing Police  
11 Vehicle (RCW 46.61.024)  
12 False Verification for Welfare (RCW  
13 74.08.055)  
14 Forgery (RCW 9A.60.020)  
15 Fraudulent Creation or Revocation of a  
16 Mental Health Advance Directive  
17 (RCW 9A.60.060)  
18 Malicious Mischief 2 (RCW  
19 9A.48.080)  
20 Mineral Trespass (RCW 78.44.330)  
21 Possession of Stolen Property 2 (RCW  
22 9A.56.160)  
23 Reckless Burning 1 (RCW 9A.48.040)  
24 Taking Motor Vehicle Without  
25 Permission 2 (RCW 9A.56.075)  
26 Theft 2 (RCW 9A.56.040)  
27 Theft of Rental, Leased, or Lease-  
28 purchased Property (valued at two  
29 hundred fifty dollars or more but  
30 less than one thousand five  
31 hundred dollars) (RCW  
32 9A.56.096(5)(b))  
33 Transaction of insurance business  
34 beyond the scope of licensure  
35 (RCW 48.17.063(4))  
36 Unlawful Issuance of Checks or Drafts  
37 (RCW 9A.56.060)

1 Unlawful Possession of Fictitious  
2 Identification (RCW 9A.56.320)  
3 Unlawful Possession of Instruments of  
4 Financial Fraud (RCW  
5 9A.56.320)  
6 Unlawful Possession of Payment  
7 Instruments (RCW 9A.56.320)  
8 Unlawful Possession of a Personal  
9 Identification Device (RCW  
10 9A.56.320)  
11 Unlawful Production of Payment  
12 Instruments (RCW 9A.56.320)  
13 Unlawful Trafficking in Food Stamps  
14 (RCW 9.91.142)  
15 Unlawful Use of Food Stamps (RCW  
16 9.91.144)  
17 Vehicle Prowl 1 (RCW 9A.52.095)

18 **Sec. 6.** RCW 9.94A.525 and 2002 c 290 s 3 and 2002 c 107 s 3 are  
19 each reenacted and amended to read as follows:

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

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

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

29 (2)(a) Prior convictions for class A ((and)) felonies and felony  
30 sex ((prior felony convictions)) offenses shall always be included in  
31 the offender score. Prior convictions for felony or nonfelony  
32 violations of RCW 46.61.502 or 46.61.504 shall always be included in  
33 the offender score when the present conviction is for a felony  
34 violation of RCW 46.61.502 or 46.61.504.

35 (b) Prior class B ((prior)) felony convictions other than sex  
36 offenses shall not be included in the offender score, if since the last  
37 date of release from confinement (including full-time residential

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

5 (c) Prior class C ((~~prior~~)) felony convictions other than sex  
6 offenses and felony traffic 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 (a) of this subsection, prior class C  
13 felony traffic convictions and prior nonfelony serious traffic  
14 convictions shall not be included in the offender score if, since the  
15 last date of release from confinement (including full-time residential  
16 treatment) pursuant to a felony conviction, if any, or entry of  
17 judgment and sentence, the offender spent five years in the community  
18 without committing any crime that subsequently results in a conviction.  
19 This subsection applies to both adult and juvenile prior convictions.

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

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

32 (5)(a) In the case of multiple prior convictions, for the purpose  
33 of computing the offender score, count all convictions separately,  
34 except:

35 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to  
36 encompass the same criminal conduct, shall be counted as one offense,  
37 the offense that yields the highest offender score. The current  
38 sentencing court shall determine with respect to other prior adult

1 offenses for which sentences were served concurrently or prior juvenile  
2 offenses for which sentences were served consecutively, whether those  
3 offenses shall be counted as one offense or as separate offenses using  
4 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and  
5 if the court finds that they shall be counted as one offense, then the  
6 offense that yields the highest offender score shall be used. The  
7 current sentencing court may presume that such other prior offenses  
8 were not the same criminal conduct from sentences imposed on separate  
9 dates, or in separate counties or jurisdictions, or in separate  
10 complaints, indictments, or informations;

11 (ii) In the case of multiple prior convictions for offenses  
12 committed before July 1, 1986, for the purpose of computing the  
13 offender score, count all adult convictions served concurrently as one  
14 offense, and count all juvenile convictions entered on the same date as  
15 one offense. Use the conviction for the offense that yields the  
16 highest offender score.

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

23 (6) If the present conviction is one of the anticipatory offenses  
24 of criminal attempt, solicitation, or conspiracy, count each prior  
25 conviction as if the present conviction were for a completed offense.  
26 When these convictions are used as criminal history, score them the  
27 same as a completed crime.

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

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

1 (9) If the present conviction is for a serious violent offense,  
2 count three points for prior adult and juvenile convictions for crimes  
3 in this category, two points for each prior adult and juvenile violent  
4 conviction (not already counted), one point for each prior adult  
5 nonviolent felony conviction, and 1/2 point for each prior juvenile  
6 nonviolent felony conviction.

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

12 (11) Except as otherwise provided in this subsection (11), if the  
13 present conviction is for a felony traffic offense count two points for  
14 each adult or juvenile prior conviction for Vehicular Homicide or  
15 Vehicular Assault; for each felony offense count one point for each  
16 adult and 1/2 point for each juvenile prior conviction; for each  
17 serious traffic offense, other than those used for an enhancement  
18 pursuant to RCW 46.61.520(2), count one point for each adult and 1/2  
19 point for each juvenile prior conviction. If the present conviction is  
20 for a felony violation of RCW 46.61.502 or 46.61.504 and the offender  
21 has five or more prior offenses as defined in RCW 46.61.5055 in his or  
22 her lifetime, count two points for each such prior offense.

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

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

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

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

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

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

15 (18) The fact that a prior conviction was not included in an  
16 offender's offender score or criminal history at a previous sentencing  
17 shall have no bearing on whether it is included in the criminal history  
18 or offender score for the current offense. Accordingly, prior  
19 convictions that were not counted in the offender score or included in  
20 criminal history under repealed or previous versions of the sentencing  
21 reform act shall be included in criminal history and shall count in the  
22 offender score if the current version of the sentencing reform act  
23 requires including or counting those convictions.

24 **Sec. 7.** RCW 46.20.720 and 2003 c 366 s 1 are each amended to read  
25 as follows:

26 (1) The court may order that after a period of suspension,  
27 revocation, or denial of driving privileges, and for up to as long as  
28 the court has jurisdiction, any person convicted of any offense  
29 involving the use, consumption, or possession of alcohol while  
30 operating a motor vehicle may drive only a motor vehicle equipped with  
31 a functioning ignition interlock or other biological or technical  
32 device.

33 (2)(a) The department shall require that, after any applicable  
34 period of suspension, revocation, or denial of driving privileges, a  
35 person may drive only a motor vehicle equipped with a functioning  
36 ignition interlock or other biological or technical device if the

1 person is convicted of a violation of RCW 46.61.502 or 46.61.504 or an  
2 equivalent local ordinance and it is:

3 (i) The person's first conviction or a deferred prosecution under  
4 chapter 10.05 RCW and his or her alcohol concentration was at least  
5 0.15, or by reason of the person's refusal to take a test offered  
6 pursuant to RCW 46.20.308 there is no test result indicating the  
7 person's alcohol concentration;

8 (ii) The person's second or subsequent conviction; or

9 (iii) The person's first conviction and the person has a previous  
10 deferred prosecution under chapter 10.05 RCW or it is a deferred  
11 prosecution under chapter 10.05 RCW and the person has a previous  
12 conviction.

13 (b) The department may waive the requirement for the use of such a  
14 device if it concludes that such devices are not reasonably available  
15 in the local area. Nothing in this section may be interpreted as  
16 entitling a person to more than one deferred prosecution.

17 (3) In the case of a person under subsection (1) of this section,  
18 the court shall establish a specific calibration setting at which the  
19 ignition interlock or other biological or technical device will prevent  
20 the motor vehicle from being started and the period of time that the  
21 person shall be subject to the restriction. In the case of a person  
22 under subsection (2) of this section, the ignition interlock or other  
23 biological or technical device shall be calibrated to prevent the motor  
24 vehicle from being started when the breath sample provided has an  
25 alcohol concentration of 0.025 or more, and the period of time of the  
26 restriction will be as follows:

27 (a) For a person (i) who is subject to RCW 46.61.5055 (1)(b), (2),  
28 (~~(3)~~) (3), or (4), or who is subject to a deferred prosecution program  
29 under chapter 10.05 RCW; and (ii) who has not previously been  
30 restricted under this section, a period of one year;

31 (b) For a person who has previously been restricted under (a) of  
32 this subsection, a period of five years;

33 (c) For a person who has previously been restricted under (b) of  
34 this subsection, a period of ten years.

35 For purposes of this section, "convicted" means being found guilty  
36 of an offense or being placed on a deferred prosecution program under  
37 chapter 10.05 RCW.

1       **Sec. 8.** RCW 46.61.502 and 1998 c 213 s 3 are each amended to read  
2 as follows:

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

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

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

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

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

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

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

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

37       (6) A violation of this section by a person who has four or more

1 prior offenses in his or her lifetime is punishable as a class C felony  
2 according to chapter 9A.20 RCW. For the purposes of this subsection,  
3 the definition of "prior offense" contained in RCW 46.61.5055 applies.

4 **Sec. 9.** RCW 46.61.504 and 1998 c 213 s 5 are each amended to read  
5 as follows:

6 (1) A person is guilty of being in actual physical control of a  
7 motor vehicle while under the influence of intoxicating liquor or any  
8 drug if the person has actual physical control of a vehicle within this  
9 state:

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

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

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

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

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

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

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

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

8 (6) A violation of this section by a person who has four or more  
9 prior offenses in his or her lifetime is punishable as a class C felony  
10 according to chapter 9A.20 RCW. For the purposes of this subsection,  
11 the definition of "prior offense" contained in RCW 46.61.5055 applies.

12 **Sec. 10.** RCW 46.61.5055 and 2003 c 103 s 1 are each amended to  
13 read as follows:

14 (1) A person who is convicted of a violation of RCW 46.61.502 or  
15 46.61.504 and who has no prior offense within seven years shall be  
16 punished as follows:

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

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

1 (ii) By a fine of not less than three hundred fifty dollars nor  
2 more than five thousand dollars. Three hundred fifty dollars of the  
3 fine may not be suspended or deferred unless the court finds the  
4 offender to be indigent; or

5 (b) In the case of a person whose alcohol concentration was at  
6 least 0.15, or for whom by reason of the person's refusal to take a  
7 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 two days nor more than one  
10 year. Two consecutive days of the imprisonment may not be suspended or  
11 deferred unless the court finds that the imposition of this mandatory  
12 minimum sentence would impose a substantial risk to the offender's  
13 physical or mental well-being. Whenever the mandatory minimum sentence  
14 is suspended or deferred, the court shall state in writing the reason  
15 for granting the suspension or deferral and the facts upon which the  
16 suspension or deferral is based. In lieu of the mandatory minimum term  
17 of imprisonment required under this subsection (1)(b)(i), the court may  
18 order not less than thirty days of electronic home monitoring. The  
19 offender shall pay the cost of electronic home monitoring. The county  
20 or municipality in which the penalty is being imposed shall determine  
21 the cost. The court may also require the offender's electronic home  
22 monitoring device to include an alcohol detection breathalyzer, and the  
23 court may restrict the amount of alcohol the offender may consume  
24 during the time the offender is on electronic home monitoring; and

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

29 (iii) By a court-ordered restriction under RCW 46.20.720.

30 (2) A person who is convicted of a violation of RCW 46.61.502 or  
31 46.61.504 and who has one prior offense within seven years shall be  
32 punished as follows:

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

37 (i) By imprisonment for not less than thirty days nor more than one  
38 year and sixty days of electronic home monitoring. The offender shall

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

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

18 (iii) By a court-ordered restriction under RCW 46.20.720; or

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

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

1 (ii) By a fine of not less than seven hundred fifty dollars nor  
2 more than five thousand dollars. Seven hundred fifty dollars of the  
3 fine may not be suspended or deferred unless the court finds the  
4 offender to be indigent; and

5 (iii) By a court-ordered restriction under RCW 46.20.720.

6 (3) A person who is convicted of a violation of RCW 46.61.502 or  
7 46.61.504 and who has two (~~or more~~) prior offenses within seven years  
8 shall be punished as follows:

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

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

29 (ii) By a fine of not less than one thousand dollars nor more than  
30 five thousand dollars. One thousand dollars of the fine may not be  
31 suspended or deferred unless the court finds the offender to be  
32 indigent; and

33 (iii) By a court-ordered restriction under RCW 46.20.720; or

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

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

17 (ii) By a fine of not less than one thousand five hundred dollars  
18 nor more than five thousand dollars. One thousand five hundred dollars  
19 of the fine may not be suspended or deferred unless the court finds the  
20 offender to be indigent; and

21 (iii) By a court-ordered restriction under RCW 46.20.720.

22 (4) A person who is convicted of a violation of RCW 46.61.502 or  
23 46.61.504 and who has four or more prior offenses in his or her  
24 lifetime shall be punished in accordance with chapter 9.94A RCW. In  
25 addition, the court shall impose the restrictions set forth in RCW  
26 46.20.720 and may sentence the offender to a term of home detention, as  
27 defined in RCW 9.94A.030. Any term of home detention shall be served  
28 consecutively to the term of total confinement.

29 (5) If a person who is convicted of a violation of RCW 46.61.502 or  
30 46.61.504 committed the offense while a passenger under the age of  
31 sixteen was in the vehicle, the court shall:

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

37 (b) In any case in which the installation and use of such a device

1 is otherwise mandatory, order the use of such a device for an  
2 additional sixty days.

3 ~~((+5))~~ (6) In exercising its discretion in setting penalties  
4 within the limits allowed by this section, the court shall particularly  
5 consider the following:

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

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

10 ~~((+6))~~ (7) An offender punishable under this section is subject to  
11 the alcohol assessment and treatment provisions of RCW 46.61.5056.

12 ~~((+7))~~ (8) The license, permit, or nonresident privilege of a  
13 person convicted of driving or being in physical control of a motor  
14 vehicle while under the influence of intoxicating liquor or drugs must:

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

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

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

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

25 (b) If the person's alcohol concentration was at least 0.15, or if  
26 by reason of the person's refusal to take a test offered under RCW  
27 46.20.308 there is no test result indicating the person's alcohol  
28 concentration:

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

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

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

35 For purposes of this subsection, the department shall refer to the  
36 driver's record maintained under RCW 46.52.120 when determining the  
37 existence of prior offenses.

1       (~~(8)~~) (9) After expiration of any period of suspension,  
2 revocation, or denial of the offender's license, permit, or privilege  
3 to drive required by this section, the department shall place the  
4 offender's driving privilege in probationary status pursuant to RCW  
5 46.20.355.

6       (~~(9)~~) (10)(a) In addition to any nonsuspendable and nondeferrable  
7 jail sentence required by this section, whenever the court imposes less  
8 than one year in jail, the court shall also suspend but shall not defer  
9 a period of confinement for a period not exceeding five years. The  
10 court shall impose conditions of probation that include: (i) Not  
11 driving a motor vehicle within this state without a valid license to  
12 drive and proof of financial responsibility for the future; (ii) not  
13 driving a motor vehicle within this state while having an alcohol  
14 concentration of 0.08 or more within two hours after driving; and (iii)  
15 not refusing to submit to a test of his or her breath or blood to  
16 determine alcohol concentration upon request of a law enforcement  
17 officer who has reasonable grounds to believe the person was driving or  
18 was in actual physical control of a motor vehicle within this state  
19 while under the influence of intoxicating liquor. The court may impose  
20 conditions of probation that include nonrepetition, installation of an  
21 ignition interlock or other biological or technical device on the  
22 probationer's motor vehicle, alcohol or drug treatment, supervised  
23 probation, or other conditions that may be appropriate. The sentence  
24 may be imposed in whole or in part upon violation of a condition of  
25 probation during the suspension period.

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

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

1 extension of a suspension, revocation, or denial imposed under this  
2 subsection.

3 ~~((+10+))~~ (11) A court may waive the electronic home monitoring  
4 requirements of this chapter when:

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

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

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

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

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

23 ~~((+11+))~~ (12) An offender serving a sentence under this section,  
24 whether or not a mandatory minimum term has expired, may be granted an  
25 extraordinary medical placement by the jail administrator subject to  
26 the standards and limitations set forth in RCW 9.94A.728(4).

27 ~~((+12+))~~ (13) For purposes of this section:

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

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

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

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

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

37 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
38 9A.36.050 or an equivalent local ordinance, if the conviction is the

1 result of a charge that was originally filed as a violation of RCW  
2 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
3 46.61.520 or 46.61.522;

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

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

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

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

18 **Sec. 11.** RCW 46.61.5151 and 1995 c 332 s 15 are each amended to  
19 read as follows:

20 A sentencing court may allow (~~(persons convicted of violating))~~ a  
21 person who is convicted of a nonfelony violation of RCW 46.61.502 or  
22 46.61.504 to fulfill the terms of the sentence provided in RCW  
23 46.61.5055 in nonconsecutive or intermittent time periods. However, a  
24 term of confinement of one year or more shall be served consecutively  
25 and any mandatory minimum sentence under RCW 46.61.5055 shall be served  
26 consecutively unless suspended or deferred as otherwise provided by  
27 law.

28 NEW SECTION. **Sec. 12.** This act takes effect July 1, 2004.

--- END ---