

INITIATIVE 792

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 792 to the People is a true and correct copy as it was received by this office.

1 AN ACT Relating to vehicular assault while driving under the
2 influence; amending RCW 46.61.522, 7.68.020, 7.68.035, 9.94A.589,
3 9.94A.728, 9A.04.080, 13.40.0357, 38.52.430, 46.01.260, 46.20.285,
4 46.20.342, 46.61.513, 46.61.524, 46.63.020, 46.65.020, 46.72.100, and
5 46.72A.100; reenacting and amending RCW 9.94A.030, 9.94A.411,
6 9.94A.515, 46.20.308, 46.20.391, 46.61.5054, and 46.61.5055; adding a
7 new section to chapter 46.61 RCW; and prescribing penalties.

8 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.61 RCW
10 to read as follows:

11 (1) A person is guilty of vehicular assault while driving under the
12 influence if he or she operates or drives any vehicle while under the
13 influence of intoxicating liquor or any drug, as defined by RCW
14 46.61.502, and causes bodily harm to another.

15 (2) Vehicular assault while driving under the influence is a class
16 A felony punishable under chapter 9A.20 RCW.

17 (3) As used in this section, "bodily harm" has the same meaning as
18 in RCW 9A.04.110.

1 **Sec. 2.** RCW 46.61.522 and 2001 c 300 s 1 are each amended to read
2 as follows:

3 (1) A person is guilty of vehicular assault if he or she operates
4 or drives any vehicle:

5 (a) In a reckless manner and causes substantial bodily harm to
6 another; or

7 (b) ~~((While under the influence of intoxicating liquor or any drug,~~
8 ~~as defined by RCW 46.61.502, and causes substantial bodily harm to~~
9 ~~another; or~~

10 (c)) With disregard for the safety of others and causes
11 substantial bodily harm to another.

12 (2) Vehicular assault is a class B felony punishable under chapter
13 9A.20 RCW.

14 (3) As used in this section, "substantial bodily harm" has the same
15 meaning as in RCW 9A.04.110.

16 **Sec. 3.** RCW 7.68.020 and 2002 c 10 (SHB 2381) s 3 are each amended
17 to read as follows:

18 The following words and phrases as used in this chapter have the
19 meanings set forth in this section unless the context otherwise
20 requires.

21 (1) "Department" means the department of labor and industries.

22 (2) "Criminal act" means an act committed or attempted in this
23 state which is: (a) Punishable as a federal offense that is comparable
24 to a felony or gross misdemeanor in this state; (b) punishable as a
25 felony or gross misdemeanor under the laws of this state; (c) an act
26 committed outside the state of Washington against a resident of the
27 state of Washington which would be compensable had it occurred inside
28 this state and the crime occurred in a state which does not have a
29 crime victims compensation program, for which the victim is eligible as
30 set forth in the Washington compensation law; or (d) an act of
31 terrorism as defined in 18 U.S.C. Sec. 2331, as it exists on May 2,
32 1997, committed outside of the United States against a resident of the
33 state of Washington, except as follows:

34 (i) The operation of a motor vehicle, motorcycle, train, boat, or
35 aircraft in violation of law does not constitute a "criminal act"
36 unless:

37 (A) The injury or death was intentionally inflicted;

1 (B) The operation thereof was part of the commission of another
2 non-vehicular criminal act as defined in this section;

3 (C) The death or injury was the result of the operation of a motor
4 vehicle after July 24, 1983, and a preponderance of the evidence
5 establishes that the death was the result of vehicular homicide under
6 RCW 46.61.520, or a conviction of vehicular assault under RCW 46.61.522
7 or vehicular assault while driving under the influence under section 1
8 of this act, has been obtained: PROVIDED, That in cases where a
9 probable criminal defendant has died in perpetration of either type of
10 vehicular assault or, in cases where the perpetrator of ((the)) either
11 type of vehicular assault is unascertainable because he or she left the
12 scene of the accident in violation of RCW 46.52.020 or, because of
13 physical or mental infirmity or disability the perpetrator is incapable
14 of standing trial for either type of vehicular assault, the department
15 may, by a preponderance of the evidence, establish that a vehicular
16 assault of either type had been committed and authorize benefits; or

17 (D) The injury or death was caused by a driver in violation of RCW
18 46.61.502;

19 (ii) Neither an acquittal in a criminal prosecution nor the absence
20 of any such prosecution is admissible in any claim or proceeding under
21 this chapter as evidence of the noncriminal character of the acts
22 giving rise to such claim or proceeding, except as provided for in
23 (d)(i)(C) of this subsection;

24 (iii) Evidence of a criminal conviction arising from acts which are
25 the basis for a claim or proceeding under this chapter is admissible in
26 such claim or proceeding for the limited purpose of proving the
27 criminal character of the acts; and

28 (iv) Acts which, but for the insanity or mental irresponsibility of
29 the perpetrator, would constitute criminal conduct are deemed to be
30 criminal conduct within the meaning of this chapter.

31 (3) "Victim" means a person who suffers bodily injury or death as
32 a proximate result of a criminal act of another person, the victim's
33 own good faith and reasonable effort to prevent a criminal act, or his
34 or her good faith effort to apprehend a person reasonably suspected of
35 engaging in a criminal act. For the purposes of receiving benefits
36 pursuant to this chapter, "victim" is interchangeable with "employee"
37 or "worker" as defined in chapter 51.08 RCW as now or hereafter
38 amended.

1 (4) "Child," "accredited school," "dependent," "beneficiary,"
2 "average monthly wage," "director," "injury," "invalid," "permanent
3 partial disability," and "permanent total disability" have the meanings
4 assigned to them in chapter 51.08 RCW as now or hereafter amended.

5 (5) "Gainfully employed" means engaging on a regular and continuous
6 basis in a lawful activity from which a person derives a livelihood.

7 (6) "Private insurance" means any source of recompense provided by
8 contract available as a result of the claimed injury or death at the
9 time of such injury or death, or which becomes available any time
10 thereafter.

11 (7) "Public insurance" means any source of recompense provided by
12 statute, state or federal, available as a result of the claimed injury
13 or death at the time of such injury or death, or which becomes
14 available any time thereafter.

15 **Sec. 4.** RCW 7.68.035 and 2000 c 71 s 3 are each amended to read as
16 follows:

17 (1)(a) When any person is found guilty in any superior court of
18 having committed a crime, except as provided in subsection (2) of this
19 section, there shall be imposed by the court upon such convicted person
20 a penalty assessment. The assessment shall be in addition to any other
21 penalty or fine imposed by law and shall be five hundred dollars for
22 each case or cause of action that includes one or more convictions of
23 a felony or gross misdemeanor and two hundred fifty dollars for any
24 case or cause of action that includes convictions of only one or more
25 misdemeanors.

26 (b) When any juvenile is adjudicated of any offense in any juvenile
27 offense disposition under Title 13 RCW, except as provided in
28 subsection (2) of this section, there shall be imposed upon the
29 juvenile offender a penalty assessment. The assessment shall be in
30 addition to any other penalty or fine imposed by law and shall be one
31 hundred dollars for each case or cause of action that includes one or
32 more adjudications for a felony or gross misdemeanor and seventy-five
33 dollars for each case or cause of action that includes adjudications of
34 only one or more misdemeanors.

35 (2) The assessment imposed by subsection (1) of this section shall
36 not apply to motor vehicle crimes defined in Title 46 RCW except those
37 defined in the following sections: RCW 46.61.520, section 1 of this
38 act, 46.61.522, 46.61.024, 46.52.090, 46.70.140, 46.61.502, 46.61.504,

1 46.52.101, 46.20.410, 46.52.020, 46.10.130, 46.09.130, 46.61.5249,
2 46.61.525, 46.61.685, 46.61.530, 46.61.500, 46.61.015, 46.52.010,
3 46.44.180, 46.10.090(2), and 46.09.120(2).

4 (3) When any person accused of having committed a crime posts bail
5 in superior court pursuant to the provisions of chapter 10.19 RCW and
6 such bail is forfeited, there shall be deducted from the proceeds of
7 such forfeited bail a penalty assessment, in addition to any other
8 penalty or fine imposed by law, equal to the assessment which would be
9 applicable under subsection (1) of this section if the person had been
10 convicted of the crime.

11 (4) Such penalty assessments shall be paid by the clerk of the
12 superior court to the county treasurer who shall monthly transmit the
13 money as provided in RCW 10.82.070. Each county shall deposit fifty
14 percent of the money it receives per case or cause of action under
15 subsection (1) of this section and retains under RCW 10.82.070, not
16 less than one and seventy-five one-hundredths percent of the remaining
17 money it retains under RCW 10.82.070 and the money it retains under
18 chapter 3.62 RCW, and all money it receives under subsection (7) of
19 this section into a fund maintained exclusively for the support of
20 comprehensive programs to encourage and facilitate testimony by the
21 victims of crimes and witnesses to crimes. A program shall be
22 considered "comprehensive" only after approval of the department upon
23 application by the county prosecuting attorney. The department shall
24 approve as comprehensive only programs which:

25 (a) Provide comprehensive services to victims and witnesses of all
26 types of crime with particular emphasis on serious crimes against
27 persons and property. It is the intent of the legislature to make
28 funds available only to programs which do not restrict services to
29 victims or witnesses of a particular type or types of crime and that
30 such funds supplement, not supplant, existing local funding levels;

31 (b) Are administered by the county prosecuting attorney either
32 directly through the prosecuting attorney's office or by contract
33 between the county and agencies providing services to victims of crime;

34 (c) Make a reasonable effort to inform the known victim or his
35 surviving dependents of the existence of this chapter and the procedure
36 for making application for benefits;

37 (d) Assist victims in the restitution and adjudication process; and

1 (e) Assist victims of violent crimes in the preparation and
2 presentation of their claims to the department of labor and industries
3 under this chapter.

4 Before a program in any county west of the Cascade mountains is
5 submitted to the department for approval, it shall be submitted for
6 review and comment to each city within the county with a population of
7 more than one hundred fifty thousand. The department will consider if
8 the county's proposed comprehensive plan meets the needs of crime
9 victims in cases adjudicated in municipal, district or superior courts
10 and of crime victims located within the city and county.

11 (5) Upon submission to the department of a letter of intent to
12 adopt a comprehensive program, the prosecuting attorney shall retain
13 the money deposited by the county under subsection (4) of this section
14 until such time as the county prosecuting attorney has obtained
15 approval of a program from the department. Approval of the
16 comprehensive plan by the department must be obtained within one year
17 of the date of the letter of intent to adopt a comprehensive program.
18 The county prosecuting attorney shall not make any expenditures from
19 the money deposited under subsection (4) of this section until approval
20 of a comprehensive plan by the department. If a county prosecuting
21 attorney has failed to obtain approval of a program from the department
22 under subsection (4) of this section or failed to obtain approval of a
23 comprehensive program within one year after submission of a letter of
24 intent under this section, the county treasurer shall monthly transmit
25 one hundred percent of the money deposited by the county under
26 subsection (4) of this section to the state treasurer for deposit in
27 the public safety and education account established under RCW
28 43.08.250.

29 (6) County prosecuting attorneys are responsible to make every
30 reasonable effort to insure that the penalty assessments of this
31 chapter are imposed and collected.

32 (7) Every city and town shall transmit monthly one and seventy-five
33 one-hundredths percent of all money, other than money received for
34 parking infractions, retained under RCW 3.46.120, 3.50.100, and
35 35.20.220 to the county treasurer for deposit as provided in subsection
36 (4) of this section.

37 **Sec. 5.** RCW 9.94A.030 and 2001 2nd sp.s. c 12 s 301, 2001 c 300 s
38 3, and 2001 c 7 s 2 are each reenacted and amended to read as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

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

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

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

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

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

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

32 (7) "Community placement" means that period during which the
33 offender is subject to the conditions of community custody and/or
34 postrelease supervision, which begins either upon completion of the
35 term of confinement (postrelease supervision) or at such time as the
36 offender is transferred to community custody in lieu of earned release.
37 Community placement may consist of entirely community custody, entirely
38 postrelease supervision, or a combination of the two.

1 (8) "Community service" means compulsory service, without
2 compensation, performed for the benefit of the community by the
3 offender.

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

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

15 (11) "Conviction" means an adjudication of guilt pursuant to Titles
16 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
17 acceptance of a plea of guilty.

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

25 (13) "Criminal history" means the list of a defendant's prior
26 convictions and juvenile adjudications, whether in this state, in
27 federal court, or elsewhere. The history shall include, where known,
28 for each conviction (a) whether the defendant has been placed on
29 probation and the length and terms thereof; and (b) whether the
30 defendant has been incarcerated and the length of incarceration.

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
38 daily to a specific location designated by the department or the
39 sentencing court.

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

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

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

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

26 (20) "Drug offense" means:

27 (a) Any felony violation of chapter 69.50 RCW except possession of
28 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
29 controlled substance (RCW 69.50.403);

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

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

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

38 (22) "Escape" means:

1 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
2 first degree (RCW 9A.76.110), escape in the second degree (RCW
3 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
4 willful failure to return from work release (RCW 72.65.070), or willful
5 failure to be available for supervision by the department while in
6 community custody (RCW 72.09.310); or

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

10 (23) "Felony traffic offense" means:

11 (a) Vehicular homicide (RCW 46.61.520), vehicular assault while
12 driving under the influence (section 1 of this act), vehicular assault
13 (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony
14 hit-and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

27 (27) "Legal financial obligation" means a sum of money that is
28 ordered by a superior court of the state of Washington for legal
29 financial obligations which may include restitution to the victim,
30 statutorily imposed crime victims' compensation fees as assessed
31 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
32 court-appointed attorneys' fees, and costs of defense, fines, and any
33 other financial obligation that is assessed to the offender as a result
34 of a felony conviction. Upon conviction for vehicular assault while
35 driving under the influence ((of intoxicating liquor or any drug, RCW
36 46.61.522(1)(b))), section 1 of this act, or vehicular homicide while
37 under the influence of intoxicating liquor or any drug, RCW
38 46.61.520(1)(a), legal financial obligations may also include payment

1 to a public agency of the expense of an emergency response to the
2 incident resulting in the conviction, subject to RCW 38.52.430.

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

5 (a) Any felony defined under any law as a class A felony or
6 criminal solicitation of or criminal conspiracy to commit a class A
7 felony;

8 (b) Assault in the second degree;

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

10 (d) Child molestation in the second degree;

11 (e) Controlled substance homicide;

12 (f) Extortion in the first degree;

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

14 (h) Indecent liberties;

15 (i) Kidnapping in the second degree;

16 (j) Leading organized crime;

17 (k) Manslaughter in the first degree;

18 (l) Manslaughter in the second degree;

19 (m) Promoting prostitution in the first degree;

20 (n) Rape in the third degree;

21 (o) Robbery in the second degree;

22 (p) Sexual exploitation;

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

27 (r) 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 (s) Any other class B felony offense with a finding of sexual
32 motivation;

33 (t) Any other felony with a deadly weapon verdict under RCW
34 9.94A.602;

35 (u) Any felony offense in effect at any time prior to December 2,
36 1993, that is comparable to a most serious offense under this
37 subsection, or any federal or out-of-state conviction for an offense
38 that under the laws of this state would be a felony classified as a
39 most serious offense under this subsection;

1 (v)(i) A prior conviction for indecent liberties under RCW
2 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
3 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
4 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
5 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

6 (ii) A prior conviction for indecent liberties under RCW
7 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
8 if: (A) The crime was committed against a child under the age of
9 fourteen; or (B) the relationship between the victim and perpetrator is
10 included in the definition of indecent liberties under RCW
11 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
12 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
13 through July 27, 1997.

14 (29) "Nonviolent offense" means an offense which is not a violent
15 offense.

16 (30) "Offender" means a person who has committed a felony
17 established by state law and is eighteen years of age or older or is
18 less than eighteen years of age but whose case is under superior court
19 jurisdiction under RCW 13.04.030 or has been transferred by the
20 appropriate juvenile court to a criminal court pursuant to RCW
21 13.40.110. Throughout this chapter, the terms "offender" and
22 "defendant" are used interchangeably.

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

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

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

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

1 must have occurred before the commission of any of the other most
2 serious offenses for which the offender was previously convicted; or

3 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
4 of a child in the first degree, child molestation in the first degree,
5 rape in the second degree, rape of a child in the second degree, or
6 indecent liberties by forcible compulsion; (B) any of the following
7 offenses with a finding of sexual motivation: Murder in the first
8 degree, murder in the second degree, homicide by abuse, kidnapping in
9 the first degree, kidnapping in the second degree, assault in the first
10 degree, assault in the second degree, assault of a child in the first
11 degree, or burglary in the first degree; or (C) an attempt to commit
12 any crime listed in this subsection (32)(b)(i); and

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

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

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

31 (35) "Risk assessment" means the application of an objective
32 instrument supported by research and adopted by the department for the
33 purpose of assessing an offender's risk of reoffense, taking into
34 consideration the nature of the harm done by the offender, place and
35 circumstances of the offender related to risk, the offender's
36 relationship to any victim, and any information provided to the
37 department by victims. The results of a risk assessment shall not be
38 based on unconfirmed or unconfirmable allegations.

39 (36) "Serious traffic offense" means:

1 (a) Driving while under the influence of intoxicating liquor or any
2 drug (RCW 46.61.502), actual physical control while under the influence
3 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
4 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
5 or

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

9 (37) "Serious violent offense" is a subcategory of violent offense
10 and means:

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

12 (ii) Homicide by abuse;

13 (iii) Murder in the second degree;

14 (iv) Manslaughter in the first degree;

15 (v) Assault in the first degree;

16 (vi) Kidnapping in the first degree;

17 (vii) Rape in the first degree;

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

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

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

24 (38) "Sex offense" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (45) "Violent offense" means:

24 (a) Any of the following felonies:

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

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

29 (iii) Manslaughter in the first degree;

30 (iv) Manslaughter in the second degree;

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

32 (vi) Kidnapping in the second degree;

33 (vii) Arson in the second degree;

34 (viii) Assault in the second degree;

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

36 (x) Extortion in the first degree;

37 (xi) Robbery in the second degree;

38 (xii) Drive-by shooting;

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

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

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

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

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

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

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

28 **Sec. 6.** RCW 9.94A.411 and 2000 c 119 s 28 and 2000 c 28 s 17 are
29 each reenacted and amended to read as follows:

30 (1) Decision not to prosecute.

31 **STANDARD:** A prosecuting attorney may decline to prosecute, even
32 though technically sufficient evidence to prosecute exists, in
33 situations where prosecution would serve no public purpose, would
34 defeat the underlying purpose of the law in question or would result in
35 decreased respect for the law.

36 **GUIDELINE/COMMENTARY:**

37 **Examples**

1 The following are examples of reasons not to prosecute which could
2 satisfy the standard.

3 (a) Contrary to Legislative Intent - It may be proper to decline to
4 charge where the application of criminal sanctions would be clearly
5 contrary to the intent of the legislature in enacting the particular
6 statute.

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

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

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

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

14 (iv) The statute has not been recently reconsidered by the
15 legislature.

16 This reason is not to be construed as the basis for declining cases
17 because the law in question is unpopular or because it is difficult to
18 enforce.

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

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

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

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

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

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

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

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

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

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

3 (f) High Disproportionate Cost of Prosecution - It may be proper to
4 decline to charge where the cost of locating or transporting, or the
5 burden on, prosecution witnesses is highly disproportionate to the
6 importance of prosecuting the offense in question. This reason should
7 be limited to minor cases and should not be relied upon in serious
8 cases.

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

14 (h) Immunity - It may be proper to decline to charge where immunity
15 is to be given to an accused in order to prosecute another where the
16 accused's information or testimony will reasonably lead to the
17 conviction of others who are responsible for more serious criminal
18 conduct or who represent a greater danger to the public interest.

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

22 (i) Assault cases where the victim has suffered little or no
23 injury;

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

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

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

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

31 Notification

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

34 (2) Decision to prosecute.

35 (a) STANDARD:

36 Crimes against persons will be filed if sufficient admissible
37 evidence exists, which, when considered with the most plausible,
38 reasonably foreseeable defense that could be raised under the evidence,
39 would justify conviction by a reasonable and objective fact-finder.

1 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
2 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
3 9A.64.020 the prosecutor should avoid pre-filing agreements or
4 diversions intended to place the accused in a program of treatment or
5 counseling, so that treatment, if determined to be beneficial, can be
6 provided pursuant to RCW 9.94A.670.

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

12 See table below for the crimes within these categories.

13 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

14 CRIMES AGAINST PERSONS

15 Aggravated Murder

16 1st Degree Murder

17 2nd Degree Murder

18 1st Degree Manslaughter

19 2nd Degree Manslaughter

20 1st Degree Kidnapping

21 2nd Degree Kidnapping

22 1st Degree Assault

23 2nd Degree Assault

24 3rd Degree Assault

25 1st Degree Assault of a Child

26 2nd Degree Assault of a Child

27 3rd Degree Assault of a Child

28 1st Degree Rape

29 2nd Degree Rape

30 3rd Degree Rape

31 1st Degree Rape of a Child

32 2nd Degree Rape of a Child

33 3rd Degree Rape of a Child

34 1st Degree Robbery

35 2nd Degree Robbery

36 1st Degree Arson

37 1st Degree Burglary

38 1st Degree Extortion

1 2nd Degree Extortion
2 Indecent Liberties
3 Incest
4 Vehicular Homicide
5 Vehicular Assault while Driving Under the Influence
6 Vehicular Assault
7 1st Degree Child Molestation
8 2nd Degree Child Molestation
9 3rd Degree Child Molestation
10 1st Degree Promoting Prostitution
11 Intimidating a Juror
12 Communication with a Minor
13 Intimidating a Witness
14 Intimidating a Public Servant
15 Bomb Threat (if against person)
16 Unlawful Imprisonment
17 Promoting a Suicide Attempt
18 Riot (if against person)
19 Stalking
20 Custodial Assault
21 Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050,
22 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
23 Counterfeiting (if a violation of RCW 9.16.035(4))

24 CRIMES AGAINST PROPERTY/OTHER CRIMES
25 2nd Degree Arson
26 1st Degree Escape
27 2nd Degree Escape
28 2nd Degree Burglary
29 1st Degree Theft
30 2nd Degree Theft
31 1st Degree Perjury
32 2nd Degree Perjury
33 1st Degree Introducing Contraband
34 2nd Degree Introducing Contraband
35 1st Degree Possession of Stolen Property
36 2nd Degree Possession of Stolen Property
37 Bribery
38 Bribing a Witness
39 Bribe received by a Witness

1 Bomb Threat (if against property)
2 1st Degree Malicious Mischief
3 2nd Degree Malicious Mischief
4 1st Degree Reckless Burning
5 Taking a Motor Vehicle without Authorization
6 Forgery
7 2nd Degree Promoting Prostitution
8 Tampering with a Witness
9 Trading in Public Office
10 Trading in Special Influence
11 Receiving/Granting Unlawful Compensation
12 Bigamy
13 Eluding a Pursuing Police Vehicle
14 Willful Failure to Return from Furlough
15 Escape from Community Custody
16 Riot (if against property)
17 1st Degree Theft of Livestock
18 2nd Degree Theft of Livestock

19 ALL OTHER UNCLASSIFIED FELONIES

20 Selection of Charges/Degree of Charge

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

24 (A) Will significantly enhance the strength of the state's case at
25 trial; or

26 (B) Will result in restitution to all victims.

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

28 Overcharging includes:

29 (A) Charging a higher degree;

30 (B) Charging additional counts.

31 This standard is intended to direct prosecutors to charge those
32 crimes which demonstrate the nature and seriousness of a defendant's
33 criminal conduct, but to decline to charge crimes which are not
34 necessary to such an indication. Crimes which do not merge as a matter
35 of law, but which arise from the same course of conduct, do not all
36 have to be charged.

1 (b) GUIDELINES/COMMENTARY:

2 (i) Police Investigation

3 A prosecuting attorney is dependent upon law enforcement agencies
4 to conduct the necessary factual investigation which must precede the
5 decision to prosecute. The prosecuting attorney shall ensure that a
6 thorough factual investigation has been conducted before a decision to
7 prosecute is made. In ordinary circumstances the investigation should
8 include the following:

9 (A) The interviewing of all material witnesses, together with the
10 obtaining of written statements whenever possible;

11 (B) The completion of necessary laboratory tests; and

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

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

17 (ii) Exceptions

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

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

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

23 (C) The arrest of the suspect is necessary to complete the
24 investigation of the crime.

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

30 (iii) Investigation Techniques

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

33 (A) Polygraph testing;

34 (B) Hypnosis;

35 (C) Electronic surveillance;

36 (D) Use of informants.

37 (iv) Pre-Filing Discussions with Defendant

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

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

5 Discussions with the victim(s) or victims' representatives
6 regarding the selection or disposition of charges may occur before the
7 filing of charges. The discussions may be considered by the prosecutor
8 in charging and disposition decisions, and should be considered before
9 reaching any agreement with the defendant regarding these decisions.

10 **Sec. 7.** RCW 9.94A.515 and 2001 2nd sp.s. c 12 s 361, 2001 c 300 s
11 4, 2001 c 217 s 12, and 2001 c 17 s 1 are each reenacted and amended to
12 read as follows:

13 TABLE 2

14 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

15	XVI	Aggravated Murder 1 (RCW 10.95.020)
16	XV	Homicide by abuse (RCW 9A.32.055)
17		Malicious explosion 1 (RCW 70.74.280(1))
18		Murder 1 (RCW 9A.32.030)
19	XIV	Murder 2 (RCW 9A.32.050)
20	XIII	Malicious explosion 2 (RCW 70.74.280(2))
21		Malicious placement of an explosive 1 (RCW
22		70.74.270(1))
23	XII	Assault 1 (RCW 9A.36.011)
24		Assault of a Child 1 (RCW 9A.36.120)
25		Malicious placement of an imitation device
26		1 (RCW 70.74.272(1)(a))
27		Rape 1 (RCW 9A.44.040)
28		Rape of a Child 1 (RCW 9A.44.073)
29	XI	Manslaughter 1 (RCW 9A.32.060)
30		Rape 2 (RCW 9A.44.050)
31		Rape of a Child 2 (RCW 9A.44.076)
32	X	Child Molestation 1 (RCW 9A.44.083)
33		Indecent Liberties (with forcible
34		compulsion) (RCW 9A.44.100(1)(a))

1 Kidnapping 1 (RCW 9A.40.020)
2 Leading Organized Crime (RCW
3 9A.82.060(1)(a))
4 Malicious explosion 3 (RCW 70.74.280(3))
5 Manufacture of methamphetamine (RCW
6 69.50.401(a)(1)(ii))
7 Over 18 and deliver heroin,
8 methamphetamine, a narcotic from
9 Schedule I or II, or flunitrazepam
10 from Schedule IV to someone under 18
11 (RCW 69.50.406)
12 Sexually Violent Predator Escape (RCW
13 9A.76.115)

14 IX Assault of a Child 2 (RCW 9A.36.130)
15 Controlled Substance Homicide (RCW
16 69.50.415)
17 Explosive devices prohibited (RCW
18 70.74.180)
19 Hit and Run--Death (RCW 46.52.020(4)(a))
20 Homicide by Watercraft, by being under the
21 influence of intoxicating liquor or
22 any drug (RCW 79A.60.050)
23 Inciting Criminal Profiteering (RCW
24 9A.82.060(1)(b))
25 Malicious placement of an explosive 2 (RCW
26 70.74.270(2))
27 Over 18 and deliver narcotic from Schedule
28 III, IV, or V or a nonnarcotic, except
29 flunitrazepam or methamphetamine, from
30 Schedule I-V to someone under 18 and 3
31 years junior (RCW 69.50.406)
32 Robbery 1 (RCW 9A.56.200)
33 Sexual Exploitation (RCW 9.68A.040)
34 Vehicular Homicide, by being under the
35 influence of intoxicating liquor or
36 any drug (RCW 46.61.520)

37 VIII Arson 1 (RCW 9A.48.020)

1 Deliver or possess with intent to deliver
2 methamphetamine (RCW
3 69.50.401(a)(1)(ii))
4 Homicide by Watercraft, by the operation of
5 any vessel in a reckless manner (RCW
6 79A.60.050)
7 Manslaughter 2 (RCW 9A.32.070)
8 Manufacture, deliver, or possess with
9 intent to deliver amphetamine (RCW
10 69.50.401(a)(1)(ii))
11 Manufacture, deliver, or possess with
12 intent to deliver heroin or cocaine
13 (RCW 69.50.401(a)(1)(i))
14 Possession of Ephedrine, Pseudoephedrine,
15 or Anhydrous Ammonia with intent to
16 manufacture methamphetamine (RCW
17 69.50.440)
18 Promoting Prostitution 1 (RCW 9A.88.070)
19 Selling for profit (controlled or
20 counterfeit) any controlled substance
21 (RCW 69.50.410)
22 Theft of Anhydrous Ammonia (RCW 69.55.010)
23 Vehicular Homicide, by the operation of any
24 vehicle in a reckless manner (RCW
25 46.61.520)
26 VII Burglary 1 (RCW 9A.52.020)
27 Child Molestation 2 (RCW 9A.44.086)
28 Dealing in depictions of minor engaged in
29 sexually explicit conduct (RCW
30 9.68A.050)
31 Drive-by Shooting (RCW 9A.36.045)
32 Homicide by Watercraft, by disregard for
33 the safety of others (RCW 79A.60.050)
34 Indecent Liberties (without forcible
35 compulsion) (RCW 9A.44.100(1) (b) and
36 (c))
37 Introducing Contraband 1 (RCW 9A.76.140)
38 Involving a minor in drug dealing (RCW
39 69.50.401(f))

1 Malicious placement of an explosive 3 (RCW
2 70.74.270(3))
3 Sending, bringing into state depictions of
4 minor engaged in sexually explicit
5 conduct (RCW 9.68A.060)
6 Unlawful Possession of a Firearm in the
7 first degree (RCW 9.41.040(1)(a))
8 Use of a Machine Gun in Commission of a
9 Felony (RCW 9.41.225)
10 Vehicular Homicide, by disregard for the
11 safety of others (RCW 46.61.520)

12 VI Bail Jumping with Murder 1 (RCW
13 9A.76.170(3)(a))
14 Bribery (RCW 9A.68.010)
15 Incest 1 (RCW 9A.64.020(1))
16 Intimidating a Judge (RCW 9A.72.160)
17 Intimidating a Juror/Witness (RCW
18 9A.72.110, 9A.72.130)
19 Malicious placement of an imitation device
20 2 (RCW 70.74.272(1)(b))
21 Manufacture, deliver, or possess with
22 intent to deliver narcotics from
23 Schedule I or II (except heroin or
24 cocaine) or flunitrazepam from
25 Schedule IV (RCW 69.50.401(a)(1)(i))
26 Rape of a Child 3 (RCW 9A.44.079)
27 Theft of a Firearm (RCW 9A.56.300)
28 Unlawful Storage of Anhydrous Ammonia (RCW
29 69.55.020)

30 V Abandonment of dependent person 1 (RCW
31 9A.42.060)
32 Advancing money or property for
33 extortionate extension of credit (RCW
34 9A.82.030)
35 Bail Jumping with class A Felony (RCW
36 9A.76.170(3)(b))
37 Child Molestation 3 (RCW 9A.44.089)
38 Criminal Mistreatment 1 (RCW 9A.42.020)

1 Custodial Sexual Misconduct 1 (RCW
2 9A.44.160)
3 Delivery of imitation controlled substance
4 by person eighteen or over to person
5 under eighteen (RCW 69.52.030(2))
6 Domestic Violence Court Order Violation
7 (RCW 10.99.040, 10.99.050, 26.09.300,
8 26.10.220, 26.26.138, 26.50.110,
9 26.52.070, or 74.34.145)
10 Extortion 1 (RCW 9A.56.120)
11 Extortionate Extension of Credit (RCW
12 9A.82.020)
13 Extortionate Means to Collect Extensions of
14 Credit (RCW 9A.82.040)
15 Incest 2 (RCW 9A.64.020(2))
16 Kidnapping 2 (RCW 9A.40.030)
17 Perjury 1 (RCW 9A.72.020)
18 Persistent prison misbehavior (RCW
19 9.94.070)
20 Possession of a Stolen Firearm (RCW
21 9A.56.310)
22 Rape 3 (RCW 9A.44.060)
23 Rendering Criminal Assistance 1 (RCW
24 9A.76.070)
25 Sexual Misconduct with a Minor 1 (RCW
26 9A.44.093)
27 Sexually Violating Human Remains (RCW
28 9A.44.105)
29 Stalking (RCW 9A.46.110)
30 Vehicular Assault While Driving Under the
31 Influence (section 1 of this act)
32 IV Arson 2 (RCW 9A.48.030)
33 Assault 2 (RCW 9A.36.021)
34 Assault by Watercraft (RCW 79A.60.060)
35 Bribing a Witness/Bribe Received by Witness
36 (RCW 9A.72.090, 9A.72.100)
37 Commercial Bribery (RCW 9A.68.060)
38 Counterfeiting (RCW 9.16.035(4))
39 Escape 1 (RCW 9A.76.110)

1 Hit and Run--Injury (RCW 46.52.020(4)(b))
2 Hit and Run with Vessel--Injury Accident
3 (RCW 79A.60.200(3))
4 Identity Theft 1 (RCW 9.35.020(2)(a))
5 Indecent Exposure to Person Under Age
6 Fourteen (subsequent sex offense) (RCW
7 9A.88.010)
8 Influencing Outcome of Sporting Event (RCW
9 9A.82.070)
10 Knowingly Trafficking in Stolen Property
11 (RCW 9A.82.050(2))
12 Malicious Harassment (RCW 9A.36.080)
13 Manufacture, deliver, or possess with
14 intent to deliver narcotics from
15 Schedule III, IV, or V or nonnarcotics
16 from Schedule I-V (except marijuana,
17 amphetamine, methamphetamines, or
18 flunitrazepam) (RCW 69.50.401(a)(1)
19 (iii) through (v))
20 Residential Burglary (RCW 9A.52.025)
21 Robbery 2 (RCW 9A.56.210)
22 Theft of Livestock 1 (RCW 9A.56.080)
23 Threats to Bomb (RCW 9.61.160)
24 Use of Proceeds of Criminal Profiteering
25 (RCW 9A.82.080 (1) and (2))
26 Vehicular Assault, (~~by being under the~~
27 ~~influence of intoxicating liquor or~~
28 ~~any drug, or~~) by the operation or
29 driving of a vehicle in a reckless
30 manner (RCW 46.61.522)
31 Willful Failure to Return from Furlough
32 (RCW 72.66.060)

33 III Abandonment of dependent person 2 (RCW
34 9A.42.070)
35 Assault 3 (RCW 9A.36.031)
36 Assault of a Child 3 (RCW 9A.36.140)
37 Bail Jumping with class B or C Felony (RCW
38 9A.76.170(3)(c))
39 Burglary 2 (RCW 9A.52.030)

1 Communication with a Minor for Immoral
2 Purposes (RCW 9.68A.090)
3 Criminal Gang Intimidation (RCW 9A.46.120)
4 Criminal Mistreatment 2 (RCW 9A.42.030)
5 Custodial Assault (RCW 9A.36.100)
6 Delivery of a material in lieu of a
7 controlled substance (RCW
8 69.50.401(c))
9 Escape 2 (RCW 9A.76.120)
10 Extortion 2 (RCW 9A.56.130)
11 Harassment (RCW 9A.46.020)
12 Intimidating a Public Servant (RCW
13 9A.76.180)
14 Introducing Contraband 2 (RCW 9A.76.150)
15 Maintaining a Dwelling or Place for
16 Controlled Substances (RCW
17 69.50.402(a)(6))
18 Malicious Injury to Railroad Property (RCW
19 81.60.070)
20 Manufacture, deliver, or possess with
21 intent to deliver marijuana (RCW
22 69.50.401(a)(1)(iii))
23 Manufacture, distribute, or possess with
24 intent to distribute an imitation
25 controlled substance (RCW
26 69.52.030(1))
27 Patronizing a Juvenile Prostitute (RCW
28 9.68A.100)
29 Perjury 2 (RCW 9A.72.030)
30 Possession of Incendiary Device (RCW
31 9.40.120)
32 Possession of Machine Gun or Short-Barreled
33 Shotgun or Rifle (RCW 9.41.190)
34 Promoting Prostitution 2 (RCW 9A.88.080)
35 Recklessly Trafficking in Stolen Property
36 (RCW 9A.82.050(1))
37 Securities Act violation (RCW 21.20.400)
38 Tampering with a Witness (RCW 9A.72.120)

1 Telephone Harassment (subsequent conviction
2 or threat of death) (RCW 9.61.230)
3 Theft of Livestock 2 (RCW 9A.56.080)
4 Unlawful Imprisonment (RCW 9A.40.040)
5 Unlawful possession of firearm in the
6 second degree (RCW 9.41.040(1)(b))
7 Unlawful Use of Building for Drug Purposes
8 (RCW 69.53.010)
9 Vehicular Assault, by the operation or
10 driving of a vehicle with disregard
11 for the safety of others (RCW
12 46.61.522)
13 Willful Failure to Return from Work Release
14 (RCW 72.65.070)

15 II Computer Trespass 1 (RCW 9A.52.110)
16 Counterfeiting (RCW 9.16.035(3))
17 Create, deliver, or possess a counterfeit
18 controlled substance (RCW
19 69.50.401(b))
20 Escape from Community Custody (RCW
21 72.09.310)
22 Health Care False Claims (RCW 48.80.030)
23 Identity Theft 2 (RCW 9.35.020(2)(b))
24 Improperly Obtaining Financial Information
25 (RCW 9.35.010)
26 Malicious Mischief 1 (RCW 9A.48.070)
27 Possession of controlled substance that is
28 either heroin or narcotics from
29 Schedule I or II or flunitrazepam from
30 Schedule IV (RCW 69.50.401(d))
31 Possession of phencyclidine (PCP) (RCW
32 69.50.401(d))
33 Possession of Stolen Property 1 (RCW
34 9A.56.150)
35 Theft 1 (RCW 9A.56.030)
36 Theft of Rental, Leased, or Lease-purchased
37 Property (valued at one thousand five
38 hundred dollars or more) (RCW
39 9A.56.096(4))

1 Trafficking in Insurance Claims (RCW
2 48.30A.015)
3 Unlawful Practice of Law (RCW 2.48.180)
4 Unlicensed Practice of a Profession or
5 Business (RCW 18.130.190(7))
6 I Attempting to Elude a Pursuing Police
7 Vehicle (RCW 46.61.024)
8 False Verification for Welfare (RCW
9 74.08.055)
10 Forged Prescription (RCW 69.41.020)
11 Forged Prescription for a Controlled
12 Substance (RCW 69.50.403)
13 Forgery (RCW 9A.60.020)
14 Malicious Mischief 2 (RCW 9A.48.080)
15 Possess Controlled Substance that is a
16 Narcotic from Schedule III, IV, or V
17 or Non-narcotic from Schedule I-V
18 (except phencyclidine or
19 flunitrazepam) (RCW 69.50.401(d))
20 Possession of Stolen Property 2 (RCW
21 9A.56.160)
22 Reckless Burning 1 (RCW 9A.48.040)
23 Taking Motor Vehicle Without Permission
24 (RCW 9A.56.070)
25 Theft 2 (RCW 9A.56.040)
26 Theft of Rental, Leased, or Lease-purchased
27 Property (valued at two hundred fifty
28 dollars or more but less than one
29 thousand five hundred dollars) (RCW
30 9A.56.096(4))
31 Unlawful Issuance of Checks or Drafts (RCW
32 9A.56.060)
33 Unlawful Use of Food Stamps (RCW 9.91.140
34 (2) and (3))
35 Vehicle Prowl 1 (RCW 9A.52.095)

36 **Sec. 8.** RCW 9.94A.589 and 2000 c 28 s 14 are each amended to read
37 as follows:

1 (1)(a) Except as provided in (b) or (c) of this subsection,
2 whenever a person is to be sentenced for two or more current offenses,
3 the sentence range for each current offense shall be determined by
4 using all other current and prior convictions as if they were prior
5 convictions for the purpose of the offender score: PROVIDED, That if
6 the court enters a finding that some or all of the current offenses
7 encompass the same criminal conduct then those current offenses shall
8 be counted as one crime. Sentences imposed under this subsection shall
9 be served concurrently. Consecutive sentences may only be imposed
10 under the exceptional sentence provisions of RCW 9.94A.535. "Same
11 criminal conduct," as used in this subsection, means two or more crimes
12 that require the same criminal intent, are committed at the same time
13 and place, and involve the same victim. This definition applies in
14 cases involving any type of vehicular assault or vehicular homicide
15 even if the victims occupied the same vehicle.

16 (b) Whenever a person is convicted of two or more serious violent
17 offenses arising from separate and distinct criminal conduct, the
18 standard sentence range for the offense with the highest seriousness
19 level under RCW 9.94A.515 shall be determined using the offender's
20 prior convictions and other current convictions that are not serious
21 violent offenses in the offender score and the standard sentence range
22 for other serious violent offenses shall be determined by using an
23 offender score of zero. The standard sentence range for any offenses
24 that are not serious violent offenses shall be determined according to
25 (a) of this subsection. All sentences imposed under (b) of this
26 subsection shall be served consecutively to each other and concurrently
27 with sentences imposed under (a) of this subsection.

28 (c) If an offender is convicted under RCW 9.41.040 for unlawful
29 possession of a firearm in the first or second degree and for the
30 felony crimes of theft of a firearm or possession of a stolen firearm,
31 or both, the standard sentence range for each of these current offenses
32 shall be determined by using all other current and prior convictions,
33 except other current convictions for the felony crimes listed in this
34 subsection (1)(c), as if they were prior convictions. The offender
35 shall serve consecutive sentences for each conviction of the felony
36 crimes listed in this subsection (1)(c), and for each firearm
37 unlawfully possessed.

38 (2)(a) Except as provided in (b) of this subsection, whenever a
39 person while under sentence for conviction of a felony commits another

1 felony and is sentenced to another term of confinement, the latter term
2 shall not begin until expiration of all prior terms.

3 (b) Whenever a second or later felony conviction results in
4 community supervision with conditions not currently in effect, under
5 the prior sentence or sentences of community supervision the court may
6 require that the conditions of community supervision contained in the
7 second or later sentence begin during the immediate term of community
8 supervision and continue throughout the duration of the consecutive
9 term of community supervision.

10 (3) Subject to subsections (1) and (2) of this section, whenever a
11 person is sentenced for a felony that was committed while the person
12 was not under sentence for conviction of a felony, the sentence shall
13 run concurrently with any felony sentence which has been imposed by any
14 court in this or another state or by a federal court subsequent to the
15 commission of the crime being sentenced unless the court pronouncing
16 the current sentence expressly orders that they be served
17 consecutively.

18 (4) Whenever any person granted probation under RCW 9.95.210 or
19 9.92.060, or both, has the probationary sentence revoked and a prison
20 sentence imposed, that sentence shall run consecutively to any sentence
21 imposed pursuant to this chapter, unless the court pronouncing the
22 subsequent sentence expressly orders that they be served concurrently.

23 (5) In the case of consecutive sentences, all periods of total
24 confinement shall be served before any partial confinement, community
25 service, community supervision, or any other requirement or conditions
26 of any of the sentences. Except for exceptional sentences as
27 authorized under RCW 9.94A.535, if two or more sentences that run
28 consecutively include periods of community supervision, the aggregate
29 of the community supervision period shall not exceed twenty-four
30 months.

31 **Sec. 9.** RCW 9.94A.728 and 2002 c 50 s 2 are each amended to read
32 as follows:

33 No person serving a sentence imposed pursuant to this chapter and
34 committed to the custody of the department shall leave the confines of
35 the correctional facility or be released prior to the expiration of the
36 sentence except as follows:

37 (1) Except as otherwise provided for in subsection (2) of this
38 section, the term of the sentence of an offender committed to a

1 correctional facility operated by the department may be reduced by
2 earned release time in accordance with procedures that shall be
3 developed and promulgated by the correctional agency having
4 jurisdiction in which the offender is confined. The earned release
5 time shall be for good behavior and good performance, as determined by
6 the correctional agency having jurisdiction. The correctional agency
7 shall not credit the offender with earned release credits in advance of
8 the offender actually earning the credits. Any program established
9 pursuant to this section shall allow an offender to earn early release
10 credits for presentence incarceration. If an offender is transferred
11 from a county jail to the department, the administrator of a county
12 jail facility shall certify to the department the amount of time spent
13 in custody at the facility and the amount of earned release time. An
14 offender who has been convicted of a felony committed after July 23,
15 1995, that involves any applicable deadly weapon enhancements under RCW
16 9.94A.510 (3) or (4), or both, shall not receive any good time credits
17 or earned release time for that portion of his or her sentence that
18 results from any deadly weapon enhancements. In the case of an
19 offender convicted of a serious violent offense, or a sex offense that
20 is a class A felony, committed on or after July 1, 1990, the aggregate
21 earned release time may not exceed fifteen percent of the sentence. In
22 no other case shall the aggregate earned release time exceed one-third
23 of the total sentence;

24 (2)(a) A person convicted of a sex offense or an offense
25 categorized as a serious violent offense, assault in the second degree,
26 vehicular homicide, vehicular assault of any type, assault of a child
27 in the second degree, any crime against persons where it is determined
28 in accordance with RCW 9.94A.602 that the offender or an accomplice was
29 armed with a deadly weapon at the time of commission, or any felony
30 offense under chapter 69.50 or 69.52 RCW, committed before July 1,
31 2000, may become eligible, in accordance with a program developed by
32 the department, for transfer to community custody status in lieu of
33 earned release time pursuant to subsection (1) of this section;

34 (b) A person convicted of a sex offense, a violent offense, any
35 crime against persons under RCW 9.94A.411(2), or a felony offense under
36 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may
37 become eligible, in accordance with a program developed by the
38 department, for transfer to community custody status in lieu of earned
39 release time pursuant to subsection (1) of this section;

1 (c) The department shall, as a part of its program for release to
2 the community in lieu of earned release, require the offender to
3 propose a release plan that includes an approved residence and living
4 arrangement. All offenders with community placement or community
5 custody terms eligible for release to community custody status in lieu
6 of earned release shall provide an approved residence and living
7 arrangement prior to release to the community;

8 (d) The department may deny transfer to community custody status in
9 lieu of earned release time pursuant to subsection (1) of this section
10 if the department determines an offender's release plan, including
11 proposed residence location and living arrangements, may violate the
12 conditions of the sentence or conditions of supervision, place the
13 offender at risk to violate the conditions of the sentence, place the
14 offender at risk to reoffend, or present a risk to victim safety or
15 community safety. The department's authority under this section is
16 independent of any court-ordered condition of sentence or statutory
17 provision regarding conditions for community custody or community
18 placement;

19 (3) An offender may leave a correctional facility pursuant to an
20 authorized furlough or leave of absence. In addition, offenders may
21 leave a correctional facility when in the custody of a corrections
22 officer or officers;

23 (4)(a) The secretary may authorize an extraordinary medical
24 placement for an offender when all of the following conditions exist:

25 (i) The offender has a medical condition that is serious enough to
26 require costly care or treatment;

27 (ii) The offender poses a low risk to the community because he or
28 she is physically incapacitated due to age or the medical condition;
29 and

30 (iii) Granting the extraordinary medical placement will result in
31 a cost savings to the state.

32 (b) An offender sentenced to death or to life imprisonment without
33 the possibility of release or parole is not eligible for an
34 extraordinary medical placement.

35 (c) The secretary shall require electronic monitoring for all
36 offenders in extraordinary medical placement unless the electronic
37 monitoring equipment interferes with the function of the offender's
38 medical equipment or results in the loss of funding for the offender's
39 medical care. The secretary shall specify who shall provide the

1 monitoring services and the terms under which the monitoring shall be
2 performed.

3 (d) The secretary may revoke an extraordinary medical placement
4 under this subsection at any time.

5 (5) The governor, upon recommendation from the clemency and pardons
6 board, may grant an extraordinary release for reasons of serious health
7 problems, senility, advanced age, extraordinary meritorious acts, or
8 other extraordinary circumstances;

9 (6) No more than the final six months of the sentence may be served
10 in partial confinement designed to aid the offender in finding work and
11 reestablishing himself or herself in the community;

12 (7) The governor may pardon any offender;

13 (8) The department may release an offender from confinement any
14 time within ten days before a release date calculated under this
15 section; and

16 (9) An offender may leave a correctional facility prior to
17 completion of his or her sentence if the sentence has been reduced as
18 provided in RCW 9.94A.870.

19 Notwithstanding any other provisions of this section, an offender
20 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a
21 mandatory minimum sentence of total confinement shall not be released
22 from total confinement before the completion of the listed mandatory
23 minimum sentence for that felony crime of conviction unless allowed
24 under RCW 9.94A.540, however persistent offenders are not eligible for
25 extraordinary medical placement.

26 **Sec. 10.** RCW 9A.04.080 and 1998 c 221 s 2 are each amended to read
27 as follows:

28 (1) Prosecutions for criminal offenses shall not be commenced after
29 the periods prescribed in this section.

30 (a) The following offenses may be prosecuted at any time after
31 their commission:

32 (i) Murder;

33 (ii) Homicide by abuse;

34 (iii) Arson if a death results;

35 (iv) Vehicular homicide;

36 (v) Vehicular assault of any type if a death results;

37 (vi) Hit-and-run injury-accident if a death results (RCW
38 46.52.020(4)).

1 (b) The following offenses shall not be prosecuted more than ten
2 years after their commission:

3 (i) Any felony committed by a public officer if the commission is
4 in connection with the duties of his or her office or constitutes a
5 breach of his or her public duty or a violation of the oath of office;

6 (ii) Arson if no death results; or

7 (iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is
8 reported to a law enforcement agency within one year of its commission;
9 except that if the victim is under fourteen years of age when the rape
10 is committed and the rape is reported to a law enforcement agency
11 within one year of its commission, the violation may be prosecuted up
12 to three years after the victim's eighteenth birthday or up to ten
13 years after the rape's commission, whichever is later. If a violation
14 of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape
15 may not be prosecuted: (A) More than three years after its commission
16 if the violation was committed against a victim fourteen years of age
17 or older; or (B) more than three years after the victim's eighteenth
18 birthday or more than seven years after the rape's commission,
19 whichever is later, if the violation was committed against a victim
20 under fourteen years of age.

21 (c) Violations of the following statutes shall not be prosecuted
22 more than three years after the victim's eighteenth birthday or more
23 than seven years after their commission, whichever is later: RCW
24 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080,
25 9A.44.100(1)(b), or 9A.64.020.

26 (d) The following offenses shall not be prosecuted more than six
27 years after their commission: Violations of RCW 9A.82.060 or
28 9A.82.080.

29 (e) The following offenses shall not be prosecuted more than five
30 years after their commission: Any class C felony under chapter 74.09,
31 82.36, or 82.38 RCW.

32 (f) Bigamy shall not be prosecuted more than three years after the
33 time specified in RCW 9A.64.010.

34 (g) A violation of RCW 9A.56.030 must not be prosecuted more than
35 three years after the discovery of the offense when the victim is a tax
36 exempt corporation under 26 U.S.C. Sec. 501(c)(3).

37 (h) No other felony may be prosecuted more than three years after
38 its commission; except that in a prosecution under RCW 9A.44.115, if
39 the person who was viewed, photographed, or filmed did not realize at

1 the time that he or she was being viewed, photographed, or filmed, the
 2 prosecution must be commenced within two years of the time the person
 3 who was viewed or in the photograph or film first learns that he or she
 4 was viewed, photographed, or filmed.

5 (i) No gross misdemeanor may be prosecuted more than two years
 6 after its commission.

7 (j) No misdemeanor may be prosecuted more than one year after its
 8 commission.

9 (2) The periods of limitation prescribed in subsection (1) of this
 10 section do not run during any time when the person charged is not
 11 usually and publicly resident within this state.

12 (3) If, before the end of a period of limitation prescribed in
 13 subsection (1) of this section, an indictment has been found or a
 14 complaint or an information has been filed, and the indictment,
 15 complaint, or information is set aside, then the period of limitation
 16 is extended by a period equal to the length of time from the finding or
 17 filing to the setting aside.

18 **Sec. 11.** RCW 13.40.0357 and 2001 c 217 s 13 are each amended to
 19 read as follows:

20 **DESCRIPTION AND OFFENSE CATEGORY**

21	JUVENILE		JUVENILE DISPOSITION
22	DISPOSITION		CATEGORY FOR ATTEMPT,
23	OFFENSE		BAILJUMP, CONSPIRACY,
24	CATEGORY	DESCRIPTION (RCW CITATION)	OR SOLICITATION
25		

26 **Arson and Malicious Mischief**

27	A	Arson 1 (9A.48.020)	B+
28	B	Arson 2 (9A.48.030)	C
29	C	Reckless Burning 1 (9A.48.040)	D
30	D	Reckless Burning 2 (9A.48.050)	E
31	B	Malicious Mischief 1 (9A.48.070)	C
32	C	Malicious Mischief 2 (9A.48.080)	D
33	D	Malicious Mischief 3 (<\$50 is	
34		E class) (9A.48.090)	E
35	E	Tampering with Fire Alarm	
36		Apparatus (9.40.100)	E

1	A	Possession of Incendiary Device	
2		(9.40.120)	B+
3		Assault and Other Crimes	
4		Involving Physical Harm	
5	A	Assault 1 (9A.36.011)	B+
6	B+	Assault 2 (9A.36.021)	C+
7	C+	Assault 3 (9A.36.031)	D+
8	D+	Assault 4 (9A.36.041)	E
9	B+	Drive-By Shooting	
10		(9A.36.045)	C+
11	D+	Reckless Endangerment	
12		(9A.36.050)	E
13	C+	Promoting Suicide Attempt	
14		(9A.36.060)	D+
15	D+	Coercion (9A.36.070)	E
16	C+	Custodial Assault (9A.36.100)	D+
17		Burglary and Trespass	
18	B+	Burglary 1 (9A.52.020)	C+
19	B	Residential Burglary	
20		(9A.52.025)	C
21	B	Burglary 2 (9A.52.030)	C
22	D	Burglary Tools (Possession of)	
23		(9A.52.060)	E
24	D	Criminal Trespass 1 (9A.52.070)	E
25	E	Criminal Trespass 2 (9A.52.080)	E
26	C	Vehicle Prowling 1 (9A.52.095)	D
27	D	Vehicle Prowling 2 (9A.52.100)	E
28		Drugs	
29	E	Possession/Consumption of Alcohol	
30		(66.44.270)	E
31	C	Illegally Obtaining Legend Drug	
32		(69.41.020)	D
33	C+	Sale, Delivery, Possession of Legend	
34		Drug with Intent to Sell	
35		(69.41.030)	D+
36	E	Possession of Legend Drug	
37		(69.41.030)	E

1	B+	Violation of Uniform Controlled	
2		Substances Act - Narcotic,	
3		Methamphetamine, or Flunitrazepam	
4		Sale (69.50.401(a)(1) (i) or (ii))	B+
5	C	Violation of Uniform Controlled	
6		Substances Act - Nonnarcotic Sale	
7		(69.50.401(a)(1)(iii))	C
8	E	Possession of Marihuana <40 grams	
9		(69.50.401(e))	E
10	C	Fraudulently Obtaining Controlled	
11		Substance (69.50.403)	C
12	C+	Sale of Controlled Substance	
13		for Profit (69.50.410)	C+
14	E	Unlawful Inhalation (9.47A.020)	E
15	B	Violation of Uniform Controlled	
16		Substances Act - Narcotic,	
17		Methamphetamine, or Flunitrazepam	
18		Counterfeit Substances	
19		(69.50.401(b)(1) (i) or (ii))	B
20	C	Violation of Uniform Controlled	
21		Substances Act - Nonnarcotic	
22		Counterfeit Substances	
23		(69.50.401(b)(1) (iii), (iv), (v))	C
24	C	Violation of Uniform Controlled	
25		Substances Act - Possession of a	
26		Controlled Substance	
27		(69.50.401(d))	C
28	C	Violation of Uniform Controlled	
29		Substances Act - Possession of a	
30		Controlled Substance	
31		(69.50.401(c))	C
32		Firearms and Weapons	
33	B	Theft of Firearm (9A.56.300)	C
34	B	Possession of Stolen Firearm	
35		(9A.56.310)	C
36	E	Carrying Loaded Pistol Without	
37		Permit (9.41.050)	E

1	C	Possession of Firearms by Minor (<18)	
2		(9.41.040(1)(b)(iii))	C
3	D+	Possession of Dangerous Weapon	
4		(9.41.250)	E
5	D	Intimidating Another Person by use	
6		of Weapon (9.41.270)	E
7		Homicide	
8	A+	Murder 1 (9A.32.030)	A
9	A+	Murder 2 (9A.32.050)	B+
10	B+	Manslaughter 1 (9A.32.060)	C+
11	C+	Manslaughter 2 (9A.32.070)	D+
12	B+	Vehicular Homicide (46.61.520)	C+
13		Kidnapping	
14	A	Kidnap 1 (9A.40.020)	B+
15	B+	Kidnap 2 (9A.40.030)	C+
16	C+	Unlawful Imprisonment	
17		(9A.40.040)	D+
18		Obstructing Governmental Operation	
19	D	Obstructing a Law Enforcement	
20		Officer (9A.76.020)	E
21	E	Resisting Arrest (9A.76.040)	E
22	B	Introducing Contraband 1	
23		(9A.76.140)	C
24	C	Introducing Contraband 2	
25		(9A.76.150)	D
26	E	Introducing Contraband 3	
27		(9A.76.160)	E
28	B+	Intimidating a Public Servant	
29		(9A.76.180)	C+
30	B+	Intimidating a Witness	
31		(9A.72.110)	C+
32		Public Disturbance	
33	C+	Riot with Weapon (9A.84.010)	D+
34	D+	Riot Without Weapon	
35		(9A.84.010)	E
36	E	Failure to Disperse (9A.84.020)	E
37	E	Disorderly Conduct (9A.84.030)	E

1		Sex Crimes	
2	A	Rape 1 (9A.44.040)	B+
3	A-	Rape 2 (9A.44.050)	B+
4	C+	Rape 3 (9A.44.060)	D+
5	A-	Rape of a Child 1 (9A.44.073)	B+
6	B+	Rape of a Child 2 (9A.44.076)	C+
7	B	Incest 1 (9A.64.020(1))	C
8	C	Incest 2 (9A.64.020(2))	D
9	D+	Indecent Exposure	
10		(Victim <14) (9A.88.010)	E
11	E	Indecent Exposure	
12		(Victim 14 or over) (9A.88.010)	E
13	B+	Promoting Prostitution 1	
14		(9A.88.070)	C+
15	C+	Promoting Prostitution 2	
16		(9A.88.080)	D+
17	E	O & A (Prostitution) (9A.88.030)	E
18	B+	Indecent Liberties (9A.44.100)	C+
19	A-	Child Molestation 1 (9A.44.083)	B+
20	B	Child Molestation 2 (9A.44.086)	C+
21		Theft, Robbery, Extortion, and Forgery	
22	B	Theft 1 (9A.56.030)	C
23	C	Theft 2 (9A.56.040)	D
24	D	Theft 3 (9A.56.050)	E
25	B	Theft of Livestock (9A.56.080)	C
26	C	Forgery (9A.60.020)	D
27	A	Robbery 1 (9A.56.200)	B+
28	B+	Robbery 2 (9A.56.210)	C+
29	B+	Extortion 1 (9A.56.120)	C+
30	C+	Extortion 2 (9A.56.130)	D+
31	C	Identity Theft 1 (9.35.020(2)(a))	D
32	D	Identity Theft 2 (9.35.020(2)(b))	E
33	D	Improperly Obtaining Financial	
34		Information (((9.35.010)))	
35		<u>(9.35.010)</u>	E
36	B	Possession of Stolen Property 1	
37		(9A.56.150)	C

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

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

10 Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses
11 and the standard range is established as follows:

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

14 2nd escape or attempted escape during 12-month period - 8 weeks
15 confinement

16 3rd and subsequent escape or attempted escape during 12-month
17 period - 12 weeks confinement

18 If the court finds that a respondent has violated terms of an order,
19 it may impose a penalty of up to 30 days of confinement.

20 **JUVENILE SENTENCING STANDARDS**

21 This schedule must be used for juvenile offenders. The court may
22 select sentencing option A, B, or C.

OPTION A
JUVENILE OFFENDER SENTENCING GRID
STANDARD RANGE

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Current Offense Category	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS	
A+	180 WEEKS TO AGE 21 YEARS				
A	103 WEEKS TO 129 WEEKS				
A-	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS	
	EXCEPT 30-40 WEEKS FOR 15-17 YEAR OLDS				
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 Service			
D	LS	\$0 to \$500 Fine			
E	LS				
	0	1	2	3	4 or more
	PRIOR ADJUDICATIONS				

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

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

41 (2) The horizontal axis of the grid is the number of prior
42 adjudications included in the juvenile's criminal history. Each prior
43 felony adjudication shall count as one point. Each prior violation,

1 misdemeanor, and gross misdemeanor adjudication shall count as 1/4
2 point. Fractional points shall be rounded down.

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

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

8 (5) A current offense that is a violation is equivalent to an
9 offense category of E. However, a disposition for a violation shall
10 not include confinement.

11 OR

12 OPTION B

13 CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE

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

18 OR

19 OPTION C

20 MANIFEST INJUSTICE

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

24 **Sec. 12.** RCW 38.52.430 and 1993 c 251 s 2 are each amended to read
25 as follows:

26 A person whose intoxication causes an incident resulting in an
27 appropriate emergency response, and who, in connection with the
28 incident, has been found guilty of or has had their prosecution
29 deferred for (1) driving while under the influence of intoxicating
30 liquor or any drug, RCW 46.61.502; (2) operating an aircraft under the
31 influence of intoxicants or drugs, RCW 47.68.220; (3) use of a vessel
32 while under the influence of alcohol or drugs, RCW ((88.12.100))
33 79A.60.040; (4) vehicular homicide while under the influence of
34 intoxicating liquor or any drug, RCW 46.61.520(1)(a); or (5) vehicular
35 assault while driving under the influence ((of intoxicating liquor or

1 ~~any drug, RCW 46.61.522(1)(b))~~, section 1 of this act, is liable for
2 the expense of an emergency response by a public agency to the
3 incident.

4 The expense of an emergency response is a charge against the person
5 liable for expenses under this section. The charge constitutes a debt
6 of that person and is collectible by the public agency incurring those
7 costs in the same manner as in the case of an obligation under a
8 contract, expressed or implied.

9 In no event shall a person's liability under this section for the
10 expense of an emergency response exceed one thousand dollars for a
11 particular incident.

12 If more than one public agency makes a claim for payment from an
13 individual for an emergency response to a single incident under the
14 provisions of this section, and the sum of the claims exceeds the
15 amount recovered, the division of the amount recovered shall be
16 determined by an interlocal agreement consistent with the requirements
17 of chapter 39.34 RCW.

18 **Sec. 13.** RCW 46.01.260 and 1999 c 86 s 2 are each amended to read
19 as follows:

20 (1) Except as provided in subsection (2) of this section, the
21 director, in his or her discretion, may destroy applications for
22 vehicle licenses, copies of vehicle licenses issued, applications for
23 drivers' licenses, copies of issued drivers' licenses, certificates of
24 title and registration or other documents, records or supporting papers
25 on file in his or her office which have been microfilmed or
26 photographed or are more than five years old. If the applications for
27 vehicle licenses are renewal applications, the director may destroy
28 such applications when the computer record thereof has been updated.

29 (2)(a) The director shall not destroy records of convictions or
30 adjudications of RCW 46.61.520 (~~and~~), section 1 of this act, or
31 46.61.522 or records of deferred prosecutions granted under RCW
32 10.05.120 and shall maintain such records permanently on file.

33 (b) The director shall not, within fifteen years from the date of
34 conviction or adjudication, destroy records of the following:

35 (i) Convictions or adjudications of the following offenses: RCW
36 46.61.502 or 46.61.504; or

37 (ii) If the offense was originally charged as one of the offenses
38 designated in (a) or (b)(i) of this subsection, convictions or

1 adjudications of the following offenses: RCW 46.61.500 or 46.61.5249
2 or any other violation that was originally charged as one of the
3 offenses designated in (a) or (b)(i) of this subsection.

4 (c) For purposes of RCW 46.52.101 and 46.52.130, offenses subject
5 to this subsection shall be considered "alcohol-related" offenses.

6 **Sec. 14.** RCW 46.20.285 and 2001 c 64 s 6 are each amended to read
7 as follows:

8 The department shall forthwith revoke the license of any driver for
9 the period of one calendar year unless otherwise provided in this
10 section, upon receiving a record of the driver's conviction of any of
11 the following offenses, when the conviction has become final:

12 (1) For vehicular homicide the period of revocation shall be two
13 years. The revocation period shall be tolled during any period of
14 total confinement for the offense;

15 (2) Vehicular assault of any type. The revocation period shall be
16 tolled during any period of total confinement for the offense;

17 (3) Driving a motor vehicle while under the influence of
18 intoxicating liquor or a narcotic drug, or under the influence of any
19 other drug to a degree which renders the driver incapable of safely
20 driving a motor vehicle, for the period prescribed in RCW 46.61.5055;

21 (4) Any felony in the commission of which a motor vehicle is used;

22 (5) Failure to stop and give information or render aid as required
23 under the laws of this state in the event of a motor vehicle accident
24 resulting in the death or personal injury of another or resulting in
25 damage to a vehicle that is driven or attended by another;

26 (6) Perjury or the making of a false affidavit or statement under
27 oath to the department under Title 46 RCW or under any other law
28 relating to the ownership or operation of motor vehicles;

29 (7) Reckless driving upon a showing by the department's records
30 that the conviction is the third such conviction for the driver within
31 a period of two years.

32 **Sec. 15.** RCW 46.20.308 and 1999 c 331 s 2 and 1999 c 274 s 2 are
33 each reenacted and amended to read as follows:

34 (1) Any person who operates a motor vehicle within this state is
35 deemed to have given consent, subject to the provisions of RCW
36 46.61.506, to a test or tests of his or her breath or blood for the
37 purpose of determining the alcohol concentration or presence of any

1 drug in his or her breath or blood if arrested for any offense where,
2 at the time of the arrest, the arresting officer has reasonable grounds
3 to believe the person had been driving or was in actual physical
4 control of a motor vehicle while under the influence of intoxicating
5 liquor or any drug or was in violation of RCW 46.61.503.

6 (2) The test or tests of breath shall be administered at the
7 direction of a law enforcement officer having reasonable grounds to
8 believe the person to have been driving or in actual physical control
9 of a motor vehicle within this state while under the influence of
10 intoxicating liquor or any drug or the person to have been driving or
11 in actual physical control of a motor vehicle while having alcohol in
12 a concentration in violation of RCW 46.61.503 in his or her system and
13 being under the age of twenty-one. However, in those instances where
14 the person is incapable due to physical injury, physical incapacity, or
15 other physical limitation, of providing a breath sample or where the
16 person is being treated in a hospital, clinic, doctor's office,
17 emergency medical vehicle, ambulance, or other similar facility in
18 which a breath testing instrument is not present or where the officer
19 has reasonable grounds to believe that the person is under the
20 influence of a drug, a blood test shall be administered by a qualified
21 person as provided in RCW 46.61.506(4). The officer shall inform the
22 person of his or her right to refuse the breath or blood test, and of
23 his or her right to have additional tests administered by any qualified
24 person of his or her choosing as provided in RCW 46.61.506. The
25 officer shall warn the driver that:

26 (a) His or her license, permit, or privilege to drive will be
27 revoked or denied if he or she refuses to submit to the test;

28 (b) His or her license, permit, or privilege to drive will be
29 suspended, revoked, or denied if the test is administered and the test
30 indicates the alcohol concentration of the person's breath or blood is
31 0.08 or more, in the case of a person age twenty-one or over, or in
32 violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a
33 person under age twenty-one; and

34 (c) His or her refusal to take the test may be used in a criminal
35 trial.

36 (3) Except as provided in this section, the test administered shall
37 be of the breath only. If an individual is unconscious or is under
38 arrest for the crime of vehicular homicide as provided in RCW
39 46.61.520, vehicular assault while driving under the influence as

1 provided in section 1 of this act, or vehicular assault as provided in
2 RCW 46.61.522, or if an individual is under arrest for the crime of
3 driving while under the influence of intoxicating liquor or drugs as
4 provided in RCW 46.61.502, which arrest results from an accident in
5 which there has been serious bodily injury to another person, a breath
6 or blood test may be administered without the consent of the individual
7 so arrested.

8 (4) Any person who is dead, unconscious, or who is otherwise in a
9 condition rendering him or her incapable of refusal, shall be deemed
10 not to have withdrawn the consent provided by subsection (1) of this
11 section and the test or tests may be administered, subject to the
12 provisions of RCW 46.61.506, and the person shall be deemed to have
13 received the warnings required under subsection (2) of this section.

14 (5) If, following his or her arrest and receipt of warnings under
15 subsection (2) of this section, the person arrested refuses upon the
16 request of a law enforcement officer to submit to a test or tests of
17 his or her breath or blood, no test shall be given except as authorized
18 under subsection (3) or (4) of this section.

19 (6) If, after arrest and after the other applicable conditions and
20 requirements of this section have been satisfied, a test or tests of
21 the person's blood or breath is administered and the test results
22 indicate that the alcohol concentration of the person's breath or blood
23 is 0.08 or more if the person is age twenty-one or over, or is in
24 violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is
25 under the age of twenty-one, or the person refuses to submit to a test,
26 the arresting officer or other law enforcement officer at whose
27 direction any test has been given, or the department, where applicable,
28 if the arrest results in a test of the person's blood, shall:

29 (a) Serve notice in writing on the person on behalf of the
30 department of its intention to suspend, revoke, or deny the person's
31 license, permit, or privilege to drive as required by subsection (7) of
32 this section;

33 (b) Serve notice in writing on the person on behalf of the
34 department of his or her right to a hearing, specifying the steps he or
35 she must take to obtain a hearing as provided by subsection (8) of this
36 section;

37 (c) Mark the person's Washington state driver's license or permit
38 to drive, if any, in a manner authorized by the department;

1 (d) Serve notice in writing that the marked license or permit, if
2 any, is a temporary license that is valid for sixty days from the date
3 of arrest or from the date notice has been given in the event notice is
4 given by the department following a blood test, or until the
5 suspension, revocation, or denial of the person's license, permit, or
6 privilege to drive is sustained at a hearing pursuant to subsection (8)
7 of this section, whichever occurs first. No temporary license is valid
8 to any greater degree than the license or permit that it replaces; and

9 (e) Immediately notify the department of the arrest and transmit to
10 the department within seventy-two hours, except as delayed as the
11 result of a blood test, a sworn report or report under a declaration
12 authorized by RCW 9A.72.085 that states:

13 (i) That the officer had reasonable grounds to believe the arrested
14 person had been driving or was in actual physical control of a motor
15 vehicle within this state while under the influence of intoxicating
16 liquor or drugs, or both, or was under the age of twenty-one years and
17 had been driving or was in actual physical control of a motor vehicle
18 while having an alcohol concentration in violation of RCW 46.61.503;

19 (ii) That after receipt of the warnings required by subsection (2)
20 of this section the person refused to submit to a test of his or her
21 blood or breath, or a test was administered and the results indicated
22 that the alcohol concentration of the person's breath or blood was 0.08
23 or more if the person is age twenty-one or over, or was in violation of
24 RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age
25 of twenty-one; and

26 (iii) Any other information that the director may require by rule.

27 (7) The department of licensing, upon the receipt of a sworn report
28 or report under a declaration authorized by RCW 9A.72.085 under
29 subsection (6)(e) of this section, shall suspend, revoke, or deny the
30 person's license, permit, or privilege to drive or any nonresident
31 operating privilege, as provided in RCW 46.20.3101, such suspension,
32 revocation, or denial to be effective beginning sixty days from the
33 date of arrest or from the date notice has been given in the event
34 notice is given by the department following a blood test, or when
35 sustained at a hearing pursuant to subsection (8) of this section,
36 whichever occurs first.

37 (8) A person receiving notification under subsection (6)(b) of this
38 section may, within thirty days after the notice has been given,
39 request in writing a formal hearing before the department. The person

1 shall pay a fee of one hundred dollars as part of the request. If the
2 request is mailed, it must be postmarked within thirty days after
3 receipt of the notification. Upon timely receipt of such a request for
4 a formal hearing, including receipt of the required one hundred dollar
5 fee, the department shall afford the person an opportunity for a
6 hearing. The department may waive the required one hundred dollar fee
7 if the person is an indigent as defined in RCW 10.101.010. Except as
8 otherwise provided in this section, the hearing is subject to and shall
9 be scheduled and conducted in accordance with RCW 46.20.329 and
10 46.20.332. The hearing shall be conducted in the county of the arrest,
11 except that all or part of the hearing may, at the discretion of the
12 department, be conducted by telephone or other electronic means. The
13 hearing shall be held within sixty days following the arrest or
14 following the date notice has been given in the event notice is given
15 by the department following a blood test, unless otherwise agreed to by
16 the department and the person, in which case the action by the
17 department shall be stayed, and any valid temporary license marked
18 under subsection (6)(c) of this section extended, if the person is
19 otherwise eligible for licensing. For the purposes of this section,
20 the scope of the hearing shall cover the issues of whether a law
21 enforcement officer had reasonable grounds to believe the person had
22 been driving or was in actual physical control of a motor vehicle
23 within this state while under the influence of intoxicating liquor or
24 any drug or had been driving or was in actual physical control of a
25 motor vehicle within this state while having alcohol in his or her
26 system in a concentration in violation of RCW 46.61.503 and was under
27 the age of twenty-one, whether the person was placed under arrest, and
28 (a) whether the person refused to submit to the test or tests upon
29 request of the officer after having been informed that such refusal
30 would result in the revocation of the person's license, permit, or
31 privilege to drive, or (b) if a test or tests were administered,
32 whether the applicable requirements of this section were satisfied
33 before the administration of the test or tests, whether the person
34 submitted to the test or tests, or whether a test was administered
35 without express consent as permitted under this section, and whether
36 the test or tests indicated that the alcohol concentration of the
37 person's breath or blood was 0.08 or more if the person was age twenty-
38 one or over at the time of the arrest, or was in violation of RCW
39 46.61.502, 46.61.503, or 46.61.504 if the person was under the age of

1 twenty-one at the time of the arrest. The sworn report or report under
2 a declaration authorized by RCW 9A.72.085 submitted by a law
3 enforcement officer is prima facie evidence that the officer had
4 reasonable grounds to believe the person had been driving or was in
5 actual physical control of a motor vehicle within this state while
6 under the influence of intoxicating liquor or drugs, or both, or the
7 person had been driving or was in actual physical control of a motor
8 vehicle within this state while having alcohol in his or her system in
9 a concentration in violation of RCW 46.61.503 and was under the age of
10 twenty-one and that the officer complied with the requirements of this
11 section.

12 A hearing officer shall conduct the hearing, may issue subpoenas
13 for the attendance of witnesses and the production of documents, and
14 shall administer oaths to witnesses. The hearing officer shall not
15 issue a subpoena for the attendance of a witness at the request of the
16 person unless the request is accompanied by the fee required by RCW
17 5.56.010 for a witness in district court. The sworn report or report
18 under a declaration authorized by RCW 9A.72.085 of the law enforcement
19 officer and any other evidence accompanying the report shall be
20 admissible without further evidentiary foundation and the
21 certifications authorized by the criminal rules for courts of limited
22 jurisdiction shall be admissible without further evidentiary
23 foundation. The person may be represented by counsel, may question
24 witnesses, may present evidence, and may testify. The department shall
25 order that the suspension, revocation, or denial either be rescinded or
26 sustained.

27 (9) If the suspension, revocation, or denial is sustained after
28 such a hearing, the person whose license, privilege, or permit is
29 suspended, revoked, or denied has the right to file a petition in the
30 superior court of the county of arrest to review the final order of
31 revocation by the department in the same manner as an appeal from a
32 decision of a court of limited jurisdiction. Notice of appeal must be
33 filed within thirty days after the date the final order is served or
34 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
35 1.1, or other statutes or rules referencing de novo review, the appeal
36 shall be limited to a review of the record of the administrative
37 hearing. The appellant must pay the costs associated with obtaining
38 the record of the hearing before the hearing officer. The filing of
39 the appeal does not stay the effective date of the suspension,

1 revocation, or denial. A petition filed under this subsection must
2 include the petitioner's grounds for requesting review. Upon granting
3 petitioner's request for review, the court shall review the
4 department's final order of suspension, revocation, or denial as
5 expeditiously as possible. The review must be limited to a
6 determination of whether the department has committed any errors of
7 law. The superior court shall accept those factual determinations
8 supported by substantial evidence in the record: (a) That were
9 expressly made by the department; or (b) that may reasonably be
10 inferred from the final order of the department. The superior court
11 may reverse, affirm, or modify the decision of the department or remand
12 the case back to the department for further proceedings. The decision
13 of the superior court must be in writing and filed in the clerk's
14 office with the other papers in the case. The court shall state the
15 reasons for the decision. If judicial relief is sought for a stay or
16 other temporary remedy from the department's action, the court shall
17 not grant such relief unless the court finds that the appellant is
18 likely to prevail in the appeal and that without a stay the appellant
19 will suffer irreparable injury. If the court stays the suspension,
20 revocation, or denial it may impose conditions on such stay.

21 (10) If a person whose driver's license, permit, or privilege to
22 drive has been or will be suspended, revoked, or denied under
23 subsection (7) of this section, other than as a result of a breath or
24 blood test refusal, and who has not committed an offense for which he
25 or she was granted a deferred prosecution under chapter 10.05 RCW,
26 petitions a court for a deferred prosecution on criminal charges
27 arising out of the arrest for which action has been or will be taken
28 under subsection (7) of this section, the court may direct the
29 department to stay any actual or proposed suspension, revocation, or
30 denial for at least forty-five days but not more than ninety days. If
31 the court stays the suspension, revocation, or denial, it may impose
32 conditions on such stay. If the person is otherwise eligible for
33 licensing, the department shall issue a temporary license, or extend
34 any valid temporary license marked under subsection (6) of this
35 section, for the period of the stay. If a deferred prosecution
36 treatment plan is not recommended in the report made under RCW
37 10.05.050, or if treatment is rejected by the court, or if the person
38 declines to accept an offered treatment plan, or if the person violates
39 any condition imposed by the court, then the court shall immediately

1 direct the department to cancel the stay and any temporary marked
2 license or extension of a temporary license issued under this
3 subsection.

4 A suspension, revocation, or denial imposed under this section,
5 other than as a result of a breath or blood test refusal, shall be
6 stayed if the person is accepted for deferred prosecution as provided
7 in chapter 10.05 RCW for the incident upon which the suspension,
8 revocation, or denial is based. If the deferred prosecution is
9 terminated, the stay shall be lifted and the suspension, revocation, or
10 denial reinstated. If the deferred prosecution is completed, the stay
11 shall be lifted and the suspension, revocation, or denial canceled.

12 (11) When it has been finally determined under the procedures of
13 this section that a nonresident's privilege to operate a motor vehicle
14 in this state has been suspended, revoked, or denied, the department
15 shall give information in writing of the action taken to the motor
16 vehicle administrator of the state of the person's residence and of any
17 state in which he or she has a license.

18 **Sec. 16.** RCW 46.20.342 and 2001 c 325 s 3 are each amended to read
19 as follows:

20 (1) It is unlawful for any person to drive a motor vehicle in this
21 state while that person is in a suspended or revoked status or when his
22 or her privilege to drive is suspended or revoked in this or any other
23 state. Any person who has a valid Washington driver's license is not
24 guilty of a violation of this section.

25 (a) A person found to be an habitual offender under chapter 46.65
26 RCW, who violates this section while an order of revocation issued
27 under chapter 46.65 RCW prohibiting such operation is in effect, is
28 guilty of driving while license suspended or revoked in the first
29 degree, a gross misdemeanor. Upon the first such conviction, the
30 person shall be punished by imprisonment for not less than ten days.
31 Upon the second conviction, the person shall be punished by
32 imprisonment for not less than ninety days. Upon the third or
33 subsequent conviction, the person shall be punished by imprisonment for
34 not less than one hundred eighty days. If the person is also convicted
35 of the offense defined in RCW 46.61.502 or 46.61.504, when both
36 convictions arise from the same event, the minimum sentence of
37 confinement shall be not less than ninety days. The minimum sentence
38 of confinement required shall not be suspended or deferred. A

1 conviction under this subsection does not prevent a person from
2 petitioning for reinstatement as provided by RCW 46.65.080.

3 (b) A person who violates this section while an order of suspension
4 or revocation prohibiting such operation is in effect and while the
5 person is not eligible to reinstate his or her driver's license or
6 driving privilege, other than for a suspension for the reasons
7 described in (c) of this subsection, is guilty of driving while license
8 suspended or revoked in the second degree, a gross misdemeanor. This
9 subsection applies when a person's driver's license or driving
10 privilege has been suspended or revoked by reason of:

11 (i) A conviction of a felony in the commission of which a motor
12 vehicle was used;

13 (ii) A previous conviction under this section;

14 (iii) A notice received by the department from a court or diversion
15 unit as provided by RCW 46.20.265, relating to a minor who has
16 committed, or who has entered a diversion unit concerning an offense
17 relating to alcohol, legend drugs, controlled substances, or imitation
18 controlled substances;

19 (iv) A conviction of RCW 46.20.410, relating to the violation of
20 restrictions of an occupational driver's license;

21 (v) A conviction of RCW 46.20.345, relating to the operation of a
22 motor vehicle with a suspended or revoked license;

23 (vi) A conviction of RCW 46.52.020, relating to duty in case of
24 injury to or death of a person or damage to an attended vehicle;

25 (vii) A conviction of RCW 46.61.024, relating to attempting to
26 elude pursuing police vehicles;

27 (viii) A conviction of RCW 46.61.500, relating to reckless driving;

28 (ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a
29 person under the influence of intoxicating liquor or drugs;

30 (x) A conviction of RCW 46.61.520, relating to vehicular homicide;

31 (xi) A conviction of section 1 of this act, relating to vehicular
32 assault while driving under the influence;

33 (xii) A conviction of RCW 46.61.522, relating to vehicular assault;

34 (~~(xiii)~~) (xiii) A conviction of RCW 46.61.527(4), relating to
35 reckless endangerment of roadway workers;

36 (~~(xiv)~~) (xiv) A conviction of RCW 46.61.530, relating to racing
37 of vehicles on highways;

38 (~~(xv)~~) (xv) A conviction of RCW 46.61.685, relating to leaving
39 children in an unattended vehicle with motor running;

1 (~~(xv)~~) (xvi) A conviction of RCW 46.61.740, relating to theft of
2 motor vehicle fuel;

3 (~~(xvi)~~) (xvii) A conviction of RCW 46.64.048, relating to
4 attempting, aiding, abetting, coercing, and committing crimes;

5 (~~(xvii)~~) (xviii) An administrative action taken by the department
6 under chapter 46.20 RCW; or

7 (~~(xviii)~~) (xix) A conviction of a local law, ordinance,
8 regulation, or resolution of a political subdivision of this state, the
9 federal government, or any other state, of an offense substantially
10 similar to a violation included in this subsection.

11 (c) A person who violates this section when his or her driver's
12 license or driving privilege is, at the time of the violation,
13 suspended or revoked solely because (i) the person must furnish proof
14 of satisfactory progress in a required alcoholism or drug treatment
15 program, (ii) the person must furnish proof of financial responsibility
16 for the future as provided by chapter 46.29 RCW, (iii) the person has
17 failed to comply with the provisions of chapter 46.29 RCW relating to
18 uninsured accidents, (iv) the person has failed to respond to a notice
19 of traffic infraction, failed to appear at a requested hearing,
20 violated a written promise to appear in court, or has failed to comply
21 with the terms of a notice of traffic infraction or citation, as
22 provided in RCW 46.20.289, (v) the person has committed an offense in
23 another state that, if committed in this state, would not be grounds
24 for the suspension or revocation of the person's driver's license, (vi)
25 the person has been suspended or revoked by reason of one or more of
26 the items listed in (b) of this subsection, but was eligible to
27 reinstate his or her driver's license or driving privilege at the time
28 of the violation, or (vii) the person has received traffic citations or
29 notices of traffic infraction that have resulted in a suspension under
30 RCW 46.20.267 relating to intermediate drivers' licenses, or any
31 combination of (i) through (vii), is guilty of driving while license
32 suspended or revoked in the third degree, a misdemeanor.

33 (2) Upon receiving a record of conviction of any person or upon
34 receiving an order by any juvenile court or any duly authorized court
35 officer of the conviction of any juvenile under this section, the
36 department shall:

37 (a) For a conviction of driving while suspended or revoked in the
38 first degree, as provided by subsection (1)(a) of this section, extend
39 the period of administrative revocation imposed under chapter 46.65 RCW

1 for an additional period of one year from and after the date the person
2 would otherwise have been entitled to apply for a new license or have
3 his or her driving privilege restored; or

4 (b) For a conviction of driving while suspended or revoked in the
5 second degree, as provided by subsection (1)(b) of this section, not
6 issue a new license or restore the driving privilege for an additional
7 period of one year from and after the date the person would otherwise
8 have been entitled to apply for a new license or have his or her
9 driving privilege restored; or

10 (c) Not extend the period of suspension or revocation if the
11 conviction was under subsection (1)(c) of this section. If the
12 conviction was under subsection (1)(a) or (b) of this section and the
13 court recommends against the extension and the convicted person has
14 obtained a valid driver's license, the period of suspension or
15 revocation shall not be extended.

16 **Sec. 17.** RCW 46.20.391 and 1999 c 274 s 4 and 1999 c 272 s 1 are
17 each reenacted and amended to read as follows:

18 (1) Any person licensed under this chapter who is convicted of an
19 offense relating to motor vehicles for which suspension or revocation
20 of the driver's license is mandatory, other than vehicular homicide or
21 vehicular assault, or who has had his or her license suspended under
22 RCW 46.20.3101 (2)(a) or (3)(a), may submit to the department an
23 application for an occupational driver's license. The department, upon
24 receipt of the prescribed fee and upon determining that the petitioner
25 is engaged in an occupation or trade that makes it essential that the
26 petitioner operate a motor vehicle, may issue an occupational driver's
27 license and may set definite restrictions as provided in RCW 46.20.394.
28 No person may petition for, and the department shall not issue, an
29 occupational driver's license that is effective during the first thirty
30 days of any suspension or revocation imposed either for a violation of
31 RCW 46.61.502 or 46.61.504 or under RCW 46.20.3101 (2)(a) or (3)(a), or
32 for both a violation of RCW 46.61.502 or 46.61.504 and under RCW
33 46.20.3101 (2)(a) or (3)(a) where the action arises from the same
34 incident. A person aggrieved by the decision of the department on the
35 application for an occupational driver's license may request a hearing
36 as provided by rule of the department.

37 (2)(a) A person licensed under this chapter whose driver's license
38 is suspended administratively due to failure to appear or pay a traffic

1 ticket under RCW 46.20.289; a violation of the financial responsibility
2 laws under chapter 46.29 RCW; or for multiple violations within a
3 specified period of time under RCW 46.20.291, may apply to the
4 department for an occupational driver's license if the applicant
5 demonstrates to the satisfaction of the department that one of the
6 following additional conditions are met:

7 (i) The applicant is in an apprenticeship program or an on-the-job
8 training program for which a driver's license is required;

9 (ii) The applicant presents evidence that he or she has applied for
10 a position in an apprenticeship or on-the-job training program and the
11 program has certified that a driver's license is required to begin the
12 program, provided that a license granted under this provision shall be
13 in effect no longer than fourteen days;

14 (iii) The applicant is in a program that assists persons who are
15 enrolled in a WorkFirst program pursuant to chapter 74.08A RCW to
16 become gainfully employed and the program requires a driver's license;
17 or

18 (iv) The applicant is undergoing substance abuse treatment or is
19 participating in meetings of a twelve-step group such as alcoholics
20 anonymous.

21 (b) If the suspension is for failure to respond, pay, or comply
22 with a notice of traffic infraction or conviction, the applicant must
23 enter into a payment plan with the court.

24 (c) An occupational driver's license issued to an applicant
25 described in (a) of this subsection shall be valid for the period of
26 the suspension or revocation but not more than two years.

27 (d) Upon receipt of evidence that a holder of an occupational
28 driver's license granted under this subsection is no longer enrolled in
29 an apprenticeship or on-the-job training program, the director shall
30 give written notice by first class mail to the driver that the
31 occupational driver's license shall be canceled. The effective date of
32 cancellation shall be fifteen days from the date of mailing the notice.
33 If at any time before the cancellation goes into effect the driver
34 submits evidence of continued enrollment in the program, the
35 cancellation shall be stayed. If the cancellation becomes effective,
36 the driver may obtain, at no additional charge, a new occupational
37 driver's license upon submittal of evidence of enrollment in another
38 program that meets the criteria set forth in this subsection.

1 (e) The department shall not issue an occupational driver's license
2 under (a)(iv) of this subsection if the applicant is able to receive
3 transit services sufficient to allow for the applicant's participation
4 in the programs referenced under (a)(iv) of this subsection.

5 (3) An applicant for an occupational driver's license is eligible
6 to receive such license only if:

7 (a) Within one year immediately preceding the date of the offense
8 that gave rise to the present conviction, the applicant has not
9 committed any offense relating to motor vehicles for which suspension
10 or revocation of a driver's license is mandatory; and

11 (b) Within seven years immediately preceding the date of the
12 offense that gave rise to the present conviction or incident, the
13 applicant has not committed any of the following offenses: (i) Driving
14 or being in actual physical control of a motor vehicle while under the
15 influence of intoxicating liquor; (ii) vehicular homicide under RCW
16 46.61.520; (iii) vehicular assault while driving under the influence
17 under section 1 of this act; or (({iii})) (iv) vehicular assault under
18 RCW 46.61.522; and

19 (c) The applicant is engaged in an occupation or trade that makes
20 it essential that he or she operate a motor vehicle, except as allowed
21 under subsection (2)(a) of this section; and

22 (d) The applicant files satisfactory proof of financial
23 responsibility under chapter 46.29 RCW.

24 (4) The director shall cancel an occupational driver's license upon
25 receipt of notice that the holder thereof has been convicted of
26 operating a motor vehicle in violation of its restrictions, or of a
27 separate offense that under chapter 46.20 RCW would warrant suspension
28 or revocation of a regular driver's license. The cancellation is
29 effective as of the date of the conviction, and continues with the same
30 force and effect as any suspension or revocation under this title.

31 **Sec. 18.** RCW 46.61.5054 and 1995 c 398 s 15 and 1995 c 332 s 13
32 are each reenacted and amended to read as follows:

33 (1)(a) In addition to penalties set forth in ((RCW 46.61.5051
34 through 46.61.5053 until September 1, 1995, and)) RCW 46.61.5055
35 ((thereafter)), a one hundred twenty-five dollar fee shall be assessed
36 to a person who is either convicted, sentenced to a lesser charge, or
37 given deferred prosecution, as a result of an arrest for violating RCW
38 46.61.502, 46.61.504, 46.61.520, section 1 of this act, or 46.61.522.

1 This fee is for the purpose of funding the Washington state toxicology
2 laboratory and the Washington state patrol for grants and activities to
3 increase the conviction rate and decrease the incidence of persons
4 driving under the influence of alcohol or drugs.

5 (b) Upon a verified petition by the person assessed the fee, the
6 court may suspend payment of all or part of the fee if it finds that
7 the person does not have the ability to pay.

8 (c) When a minor has been adjudicated a juvenile offender for an
9 offense which, if committed by an adult, would constitute a violation
10 of RCW 46.61.502, 46.61.504, 46.61.520, section 1 of this act, or
11 46.61.522, the court shall assess the one hundred twenty-five dollar
12 fee under (a) of this subsection. Upon a verified petition by a minor
13 assessed the fee, the court may suspend payment of all or part of the
14 fee if it finds that the minor does not have the ability to pay the
15 fee.

16 (2) The fee assessed under subsection (1) of this section shall be
17 collected by the clerk of the court and distributed as follows:

18 (a) Forty percent shall be subject to distribution under RCW
19 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

20 (b) (~~The remainder of the fee shall be forwarded to the state~~
21 ~~treasurer who shall, through June 30, 1997, deposit: Fifty percent in~~
22 ~~the death investigations' account to be used solely for funding the~~
23 ~~state toxicology laboratory blood or breath testing programs; and fifty~~
24 ~~percent in the state patrol highway account to be used solely for~~
25 ~~funding activities to increase the conviction rate and decrease the~~
26 ~~incidence of persons driving under the influence of alcohol or drugs.~~
27 ~~Effective July 1, 1997,)) The remainder of the fee shall be forwarded
28 to the state treasurer who shall deposit: Fifteen percent in the death
29 investigations' account to be used solely for funding the state
30 toxicology laboratory blood or breath testing programs; and eighty-five
31 percent in the state patrol highway account to be used solely for
32 funding activities to increase the conviction rate and decrease the
33 incidence of persons driving under the influence of alcohol or drugs.
34 (3) This section applies to any offense committed on or after July
35 1, 1993.~~

36 **Sec. 19.** RCW 46.61.5055 and 1999 c 324 s 5, 1999 c 274 s 6, and
37 1999 c 5 s 1 are each reenacted and amended to read as follows:

1 (1) A person who is convicted of a violation of RCW 46.61.502 or
2 46.61.504 and who has no prior offense within seven years shall be
3 punished as follows:

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

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

25 (ii) By a fine of not less than three hundred fifty dollars nor
26 more than five thousand dollars. Three hundred fifty dollars of the
27 fine may not be suspended or deferred unless the court finds the
28 offender to be 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 two days nor more than one
34 year. Two consecutive days of the imprisonment may not be suspended or
35 deferred unless the court finds that the imposition of this mandatory
36 minimum sentence would impose a substantial risk to the offender's
37 physical or mental well-being. Whenever the mandatory minimum sentence
38 is suspended or deferred, the court shall state in writing the reason
39 for granting the suspension or deferral and the facts upon which the

1 suspension or deferral is based. In lieu of the mandatory minimum term
2 of imprisonment required under this subsection (1)(b)(i), the court may
3 order not less than thirty days of electronic home monitoring. The
4 offender shall pay the cost of electronic home monitoring. The county
5 or municipality in which the penalty is being imposed shall determine
6 the cost. The court may also require the offender's electronic home
7 monitoring device to include an alcohol detection breathalyzer, and the
8 court may restrict the amount of alcohol the offender may consume
9 during the time the offender is on electronic home monitoring; and

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

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

15 (2) A person who is convicted of a violation of RCW 46.61.502 or
16 46.61.504 and who has one prior offense within seven years shall be
17 punished as follows:

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

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

37 (ii) By a fine of not less than five hundred dollars nor more than
38 five thousand dollars. Five hundred dollars of the fine may not be

1 suspended or deferred unless the court finds the offender to be
2 indigent; and

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

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

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

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

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

28 (3) A person who is convicted of a violation of RCW 46.61.502 or
29 46.61.504 and who has two or more prior offenses within seven years
30 shall be punished as 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 ninety days nor more than one
36 year and one hundred twenty days of electronic home monitoring. The
37 offender shall pay for the cost of the electronic monitoring. The
38 county or municipality where the penalty is being imposed shall
39 determine the cost. The court may also require the offender's

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

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

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

17 (b) In the case of a person whose alcohol concentration was at
18 least 0.15, or for whom by reason of the person's refusal to take a
19 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 hundred twenty days nor
22 more than one year and one hundred fifty days of electronic home
23 monitoring. The offender shall pay for the cost of the electronic
24 monitoring. The county or municipality where the penalty is being
25 imposed shall determine the cost. The court may also require the
26 offender's electronic home monitoring device include an alcohol
27 detection breathalyzer, and may restrict the amount of alcohol the
28 offender may consume during the time the offender is on electronic home
29 monitoring. One hundred twenty days of imprisonment and one hundred
30 fifty days of electronic home monitoring may not be suspended or
31 deferred unless the court finds that the imposition of this mandatory
32 minimum sentence would impose a substantial risk to the offender's
33 physical or mental well-being. Whenever the mandatory minimum sentence
34 is suspended or deferred, the court shall state in writing the reason
35 for granting the suspension or deferral and the facts upon which the
36 suspension or deferral is based; and

37 (ii) By a fine of not less than one thousand five hundred dollars
38 nor more than five thousand dollars. One thousand five hundred dollars

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

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

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

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

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

11 (5) An offender punishable under this section is subject to the
12 alcohol assessment and treatment provisions of RCW 46.61.5056.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (9) A court may waive the electronic home monitoring requirements
2 of this chapter when:

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

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

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

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

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

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

25 (11) For purposes of this section:

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

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

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

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

33 (iv) A conviction for a violation of (~~RCW 46.61.522 committed~~
34 ~~while under the influence of intoxicating liquor or any drug~~) section
35 1 of this act;

36 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
37 9A.36.050 or an equivalent local ordinance, if the conviction is the
38 result of a charge that was originally filed as a violation of RCW

1 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
2 46.61.520 or ((46.61.522)) section 1 of this act;

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

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

9 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
10 prosecution for a violation of RCW 46.61.5249, or an equivalent local
11 ordinance, if the charge under which the deferred prosecution was
12 granted was originally filed as a violation of RCW 46.61.502 or
13 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
14 ((46.61.522)) section 1 of this act; and

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

17 **Sec. 20.** RCW 46.61.513 and 1998 c 211 s 5 are each amended to read
18 as follows:

19 (1) Immediately before the court defers prosecution under RCW
20 10.05.020, dismisses a charge, or orders a sentence for any offense
21 listed in subsection (2) of this section, the court and prosecutor
22 shall verify the defendant's criminal history and driving record. The
23 order shall include specific findings as to the criminal history and
24 driving record. For purposes of this section, the criminal history
25 shall include all previous convictions and orders of deferred
26 prosecution, as reported through the judicial information system or
27 otherwise available to the court or prosecutor, current to within the
28 period specified in subsection (3) of this section before the date of
29 the order. For purposes of this section, the driving record shall
30 include all information reported to the court by the department of
31 licensing.

32 (2) The offenses to which this section applies are violations of:
33 (a) RCW 46.61.502 or an equivalent local ordinance; (b) RCW 46.61.504
34 or an equivalent local ordinance; (c) RCW 46.61.520 committed while
35 under the influence of intoxicating liquor or any drug; (d) ((RCW
36 46.61.522 committed while under the influence of intoxicating liquor or
37 any drug)) section 1 of this act; and (e) 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~~) section 1 of this act.

4 (3) The periods applicable to previous convictions and orders of
5 deferred prosecution are: (a) One working day, in the case of previous
6 actions of courts that fully participate in the state judicial
7 information system; and (b) seven calendar days, in the case of
8 previous actions of courts that do not fully participate in the
9 judicial information system. For purposes of this subsection, "fully
10 participate" means regularly providing records to and receiving records
11 from the system by electronic means on a daily basis.

12 **Sec. 21.** RCW 46.61.524 and 2001 c 64 s 7 are each amended to read
13 as follows:

14 (1) A person convicted under RCW 46.61.520(1)(a) or
15 (~~46.61.522(1)(b)~~) section 1 of this act shall, as a condition of
16 community custody imposed under RCW 9.94A.545 or community placement
17 imposed under RCW 9.94A.660, complete a diagnostic evaluation by an
18 alcohol or drug dependency agency approved by the department of social
19 and health services or a qualified probation department, as defined
20 under RCW 46.61.516 that has been approved by the department of social
21 and health services. This report shall be forwarded to the department
22 of licensing. If the person is found to have an alcohol or drug
23 problem that requires treatment, the person shall complete treatment in
24 a program approved by the department of social and health services
25 under chapter 70.96A RCW. If the person is found not to have an
26 alcohol or drug problem that requires treatment, he or she shall
27 complete a course in an information school approved by the department
28 of social and health services under chapter 70.96A RCW. The convicted
29 person shall pay all costs for any evaluation, education, or treatment
30 required by this section, unless the person is eligible for an existing
31 program offered or approved by the department of social and health
32 services. Nothing in chapter 348, Laws of 1991 requires the addition
33 of new treatment or assessment facilities nor affects the department of
34 social and health services use of existing programs and facilities
35 authorized by law.

36 (2) As provided for under RCW 46.20.285, the department shall
37 revoke the license, permit to drive, or a nonresident privilege of a
38 person convicted of vehicular homicide under RCW 46.61.520, vehicular

1 assault while driving under the influence under section 1 of this act,
2 or vehicular assault under RCW 46.61.522. The department shall
3 determine the eligibility of a person convicted of vehicular homicide
4 under RCW 46.61.520(1)(a) or vehicular assault while driving under the
5 influence under ((RCW 46.61.522(1)(b))) section 1 of this act to
6 receive a license based upon the report provided by the designated
7 alcoholism treatment facility or probation department, and shall deny
8 reinstatement until satisfactory progress in an approved program has
9 been established and the person is otherwise qualified.

10 **Sec. 22.** RCW 46.63.020 and 2001 c 325 s 4 are each amended to read
11 as follows:

12 Failure to perform any act required or the performance of any act
13 prohibited by this title or an equivalent administrative regulation or
14 local law, ordinance, regulation, or resolution relating to traffic
15 including parking, standing, stopping, and pedestrian offenses, is
16 designated as a traffic infraction and may not be classified as a
17 criminal offense, except for an offense contained in the following
18 provisions of this title or a violation of an equivalent administrative
19 regulation or local law, ordinance, regulation, or resolution:

20 (1) RCW 46.09.120(2) relating to the operation of a nonhighway
21 vehicle while under the influence of intoxicating liquor or a
22 controlled substance;

23 (2) RCW 46.09.130 relating to operation of nonhighway vehicles;

24 (3) RCW 46.10.090(2) relating to the operation of a snowmobile
25 while under the influence of intoxicating liquor or narcotics or
26 habit-forming drugs or in a manner endangering the person of another;

27 (4) RCW 46.10.130 relating to the operation of snowmobiles;

28 (5) Chapter 46.12 RCW relating to certificates of ownership and
29 registration and markings indicating that a vehicle has been destroyed
30 or declared a total loss;

31 (6) RCW 46.16.010 relating to initial registration of motor
32 vehicles;

33 (7) RCW 46.16.011 relating to permitting unauthorized persons to
34 drive;

35 (8) RCW 46.16.160 relating to vehicle trip permits;

36 (9) RCW 46.16.381(2) relating to knowingly providing false
37 information in conjunction with an application for a special placard or
38 license plate for disabled persons' parking;

1 (10) RCW 46.20.005 relating to driving without a valid driver's
2 license;

3 (11) RCW 46.20.091 relating to false statements regarding a
4 driver's license or instruction permit;

5 (12) RCW 46.20.0921 relating to the unlawful possession and use of
6 a driver's license;

7 (13) RCW 46.20.342 relating to driving with a suspended or revoked
8 license or status;

9 (14) RCW 46.20.345 relating to the operation of a motor vehicle
10 with a suspended or revoked license;

11 (15) RCW 46.20.410 relating to the violation of restrictions of an
12 occupational driver's license;

13 (16) RCW 46.20.740 relating to operation of a motor vehicle without
14 an ignition interlock device in violation of a license notation that
15 the device is required;

16 (17) RCW 46.20.750 relating to assisting another person to start a
17 vehicle equipped with an ignition interlock device;

18 (18) RCW 46.25.170 relating to commercial driver's licenses;

19 (19) Chapter 46.29 RCW relating to financial responsibility;

20 (20) RCW 46.30.040 relating to providing false evidence of
21 financial responsibility;

22 (21) RCW 46.37.435 relating to wrongful installation of
23 sunscreening material;

24 (22) RCW 46.44.180 relating to operation of mobile home pilot
25 vehicles;

26 (23) RCW 46.48.175 relating to the transportation of dangerous
27 articles;

28 (24) RCW 46.52.010 relating to duty on striking an unattended car
29 or other property;

30 (25) RCW 46.52.020 relating to duty in case of injury to or death
31 of a person or damage to an attended vehicle;

32 (26) RCW 46.52.090 relating to reports by repairmen, storagemen,
33 and appraisers;

34 (27) RCW 46.52.130 relating to confidentiality of the driving
35 record to be furnished to an insurance company, an employer, and an
36 alcohol/drug assessment or treatment agency;

37 (28) RCW 46.55.020 relating to engaging in the activities of a
38 registered tow truck operator without a registration certificate;

1 (29) RCW 46.55.035 relating to prohibited practices by tow truck
2 operators;

3 (30) RCW 46.61.015 relating to obedience to police officers,
4 flaggers, or fire fighters;

5 (31) RCW 46.61.020 relating to refusal to give information to or
6 cooperate with an officer;

7 (32) RCW 46.61.022 relating to failure to stop and give
8 identification to an officer;

9 (33) RCW 46.61.024 relating to attempting to elude pursuing police
10 vehicles;

11 (34) RCW 46.61.500 relating to reckless driving;

12 (35) RCW 46.61.502 and 46.61.504 relating to persons under the
13 influence of intoxicating liquor or drugs;

14 (36) RCW 46.61.503 relating to a person under age twenty-one
15 driving a motor vehicle after consuming alcohol;

16 (37) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

17 (38) Section 1 of this act relating to vehicular assault while
18 driving under the influence;

19 ~~(39)~~ RCW 46.61.522 relating to vehicular assault;

20 ~~((+39+))~~ (40) RCW 46.61.5249 relating to first degree negligent
21 driving;

22 ~~((+40+))~~ (41) RCW 46.61.527(4) relating to reckless endangerment of
23 roadway workers;

24 ~~((+41+))~~ (42) RCW 46.61.530 relating to racing of vehicles on
25 highways;

26 ~~((+42+))~~ (43) RCW 46.61.685 relating to leaving children in an
27 unattended vehicle with the motor running;

28 ~~((+43+))~~ (44) RCW 46.61.740 relating to theft of motor vehicle
29 fuel;

30 ~~((+44+))~~ (45) RCW 46.64.010 relating to unlawful cancellation of or
31 attempt to cancel a traffic citation;

32 ~~((+45+))~~ (46) RCW 46.64.048 relating to attempting, aiding,
33 abetting, coercing, and committing crimes;

34 ~~((+46+))~~ (47) Chapter 46.65 RCW relating to habitual traffic
35 offenders;

36 ~~((+47+))~~ (48) RCW 46.68.010 relating to false statements made to
37 obtain a refund;

1 (~~(48)~~) (49) Chapter 46.70 RCW relating to unfair motor vehicle
2 business practices, except where that chapter provides for the
3 assessment of monetary penalties of a civil nature;

4 (~~(49)~~) (50) Chapter 46.72 RCW relating to the transportation of
5 passengers in for hire vehicles;

6 (~~(50)~~) (51) RCW 46.72A.060 relating to limousine carrier
7 insurance;

8 (~~(51)~~) (52) RCW 46.72A.070 relating to operation of a limousine
9 without a vehicle certificate;

10 (~~(52)~~) (53) RCW 46.72A.080 relating to false advertising by a
11 limousine carrier;

12 (~~(53)~~) (54) Chapter 46.80 RCW relating to motor vehicle wreckers;

13 (~~(54)~~) (55) Chapter 46.82 RCW relating to driver's training
14 schools;

15 (~~(55)~~) (56) RCW 46.87.260 relating to alteration or forgery of a
16 cab card, letter of authority, or other temporary authority issued
17 under chapter 46.87 RCW;

18 (~~(56)~~) (57) RCW 46.87.290 relating to operation of an
19 unregistered or unlicensed vehicle under chapter 46.87 RCW.

20 **Sec. 23.** RCW 46.65.020 and 1991 c 293 s 7 are each amended to read
21 as follows:

22 As used in this chapter, unless a different meaning is plainly
23 required by the context, an habitual offender means any person,
24 resident or nonresident, who has accumulated convictions or findings
25 that the person committed a traffic infraction as defined in RCW
26 46.20.270, or, if a minor, has violations recorded with the department
27 of licensing, for separate and distinct offenses as described in either
28 subsection (1) or (2) below committed within a five-year period, as
29 evidenced by the records maintained in the department of licensing:
30 PROVIDED, That where more than one described offense is committed
31 within a six-hour period such multiple offenses shall, on the first
32 such occasion, be treated as one offense for the purposes of this
33 chapter:

34 (1) Three or more convictions, singularly or in combination, of the
35 following offenses:

36 (a) Vehicular homicide as defined in RCW 46.61.520;

37 (b) Vehicular assault while driving under the influence as defined
38 in section 1 of this act;

1 (c) Vehicular assault as defined in RCW 46.61.522;

2 ~~((+e))~~ (d) Driving or operating a motor vehicle while under the
3 influence of intoxicants or drugs;

4 ~~((+d))~~ (e) Driving a motor vehicle while his or her license,
5 permit, or privilege to drive has been suspended or revoked as defined
6 in RCW 46.20.342(1)(b);

7 ~~((+e))~~ (f) Failure of the driver of any vehicle involved in an
8 accident resulting in the injury or death of any person or damage to
9 any vehicle which is driven or attended by any person to immediately
10 stop such vehicle at the scene of such accident or as close thereto as
11 possible and to forthwith return to and in every event remain at, the
12 scene of such accident until he has fulfilled the requirements of RCW
13 46.52.020;

14 ~~((+f))~~ (g) Reckless driving as defined in RCW 46.61.500;

15 ~~((+g))~~ (h) Being in physical control of a motor vehicle while
16 under the influence of intoxicating liquor or any drug as defined in
17 RCW 46.61.504; or

18 ~~((+h))~~ (i) Attempting to elude a pursuing police vehicle as
19 defined in RCW 46.61.024;

20 (2) Twenty or more convictions or findings that the person
21 committed a traffic infraction for separate and distinct offenses,
22 singularly or in combination, in the operation of a motor vehicle that
23 are required to be reported to the department of licensing other than
24 the offenses of driving with an expired driver's license and not having
25 a driver's license in the operator's immediate possession. Such
26 convictions or findings shall include those for offenses enumerated in
27 subsection (1) of this section when taken with and added to those
28 offenses described herein but shall not include convictions or findings
29 for any nonmoving violation. No person may be considered an habitual
30 offender under this subsection unless at least three convictions have
31 occurred within the three hundred sixty-five days immediately preceding
32 the last conviction.

33 The offenses included in subsections (1) and (2) of this section
34 are deemed to include offenses under any valid town, city, or county
35 ordinance substantially conforming to the provisions cited in
36 subsections (1) and (2) or amendments thereto, and any federal law, or
37 any law of another state, including subdivisions thereof, substantially
38 conforming to the aforesaid state statutory provisions.

1 **Sec. 24.** RCW 46.72.100 and 1983 c 164 s 8 are each amended to read
2 as follows:

3 The director may refuse to issue a permit or certificate, or he may
4 suspend or revoke a permit or certificate if he has good reason to
5 believe that one of the following is true of the operator or the
6 applicant for a permit or certificate: (1) He has been convicted of an
7 offense of such a nature as to indicate that he is unfit to hold a
8 certificate or permit; (2) he is guilty of committing two or more
9 offenses for which mandatory revocation of driver's license is provided
10 by law; (3) he has been convicted of vehicular homicide or any type of
11 vehicular assault; (4) he is intemperate or addicted to the use of
12 narcotics.

13 Notice of the director to refuse, suspend, or revoke the permit or
14 certificate shall be given by certified mail to the holder or applicant
15 for the permit or certificate and shall designate a time and place for
16 a hearing before the director, which shall not be less than ten days
17 from the date of the notice. If the director, after the hearing,
18 decides that a permit shall be canceled or revoked, he shall notify the
19 holder or applicant to that effect by certified mail. The applicant or
20 permit holder may within thirty days from the date of the decision
21 appeal to the superior court of Thurston county for a review of the
22 decision by filing a copy of the notice with the clerk of the superior
23 court and a copy of the notice in the office of the director. The
24 court shall set the matter down for hearing with the least possible
25 delay.

26 Any for hire operator who operates a for hire vehicle without first
27 having filed a bond or insurance policy and having received a for hire
28 permit and a for hire certificate as required by this chapter is guilty
29 of a gross misdemeanor, and upon conviction shall be punished by
30 imprisonment in jail for a period not exceeding ninety days or a fine
31 of not exceeding five hundred dollars, or both fine and imprisonment.

32 **Sec. 25.** RCW 46.72A.100 and 1996 c 87 s 13 are each amended to
33 read as follows:

34 The department may suspend, revoke, or refuse to issue a license if
35 it has good reason to believe that one of the following is true of a
36 chauffeur hired to drive a limousine: (1) The person has been
37 convicted of an offense of such a nature as to indicate that he or she
38 is unfit to qualify as a chauffeur; (2) the person is guilty of

1 committing two or more offenses for which mandatory revocation of a
2 driver's license is provided by law; (3) the person has been convicted
3 of vehicular homicide or any type of vehicular assault; (4) the person
4 is intemperate or addicted to narcotics.

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