
ENGROSSED SENATE BILL 5054

State of Washington

67th Legislature

2021 Regular Session

By Senators Padden, Frockt, Conway, McCune, and Short

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1 AN ACT Relating to impaired driving; amending RCW 9.94A.190,
2 9.94A.501, 9.94A.505, 9.94A.525, 9.94A.633, 9.94A.6332, 9.94A.660,
3 9.94A.701, 46.61.502, 46.61.5055, and 46.61.504; reenacting and
4 amending RCW 9.94A.030; adding a new section to chapter 9.94A RCW;
5 prescribing penalties; and providing an effective date.

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

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

9 (1) An offender is eligible for the special drug offender
10 sentencing alternative for driving under the influence if the
11 offender:

12 (a) Does not have a prior conviction under RCW 46.61.520,
13 46.61.522, 46.61.502(6), or 46.61.504(6); and either

14 (b) Is convicted of felony driving while under the influence of
15 intoxicating liquor, marijuana, or any drug under RCW
16 46.61.502(6)(a); or

17 (c) Is convicted of felony physical control of a vehicle while
18 under the influence of intoxicating liquor or any drug under RCW
19 46.61.504(6)(a).

20 (2) A motion for a special drug offender sentencing alternative
21 for driving under the influence may be made by the court, the

1 offender, or the state if the midpoint of the standard sentence range
2 is 26 months or less. If an offender has a higher midpoint, a motion
3 for a special drug offender sentencing alternative for driving under
4 the influence can only be made by joint agreement of the state and
5 offender.

6 (3) If the sentencing court determines that the offender is
7 eligible for an alternative sentence under this section and that the
8 alternative sentence is appropriate, the court shall waive imposition
9 of a sentence within the standard sentence range and:

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

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

17 (4) (a) To assist the court in making its determination, the court
18 may order the department to complete either a risk assessment report
19 or a substance use disorder screening report as provided in RCW
20 9.94A.500, or both.

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

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

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

29 (iii) Whether the offender and the community will benefit from
30 the use of the alternative.

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

33 (a) If necessary, an indeterminate term of confinement of no more
34 than 30 days in a facility operated, licensed, or utilized under
35 contract, by the county in order to facilitate direct transfer to a
36 residential substance use disorder treatment facility;

37 (b) Treatment in a residential substance use disorder treatment
38 program licensed or certified by the department of health for a
39 period set by the court up to six months with treatment completion
40 and continued care delivered in accordance with rules established by

1 the department of health. In establishing rules pursuant to this
2 subsection, the department of health must consider criteria
3 established by the American society of addiction medicine;

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

7 (d) Twelve months of community custody.

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

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

13 (c) The department shall, within available resources, make
14 substance use disorder assessment and treatment services available to
15 the offender.

16 (d) An offender sentenced to community custody under subsection
17 (3) (a) of this section as part of the prison-based alternative or
18 under subsection (3) (b) of this section as part of the residential
19 treatment-based alternative may be required to pay \$30 per month
20 while on community custody to offset the cost of monitoring for
21 alcohol or controlled substances.

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

26 (b) Upon receipt of the plan, the court shall schedule a progress
27 hearing during the period of treatment and schedule a treatment
28 termination hearing for three months before the expiration of the
29 term of community custody.

30 (c) Before the progress hearing and treatment termination
31 hearing, the treatment provider and the department shall submit
32 written reports to the court and parties regarding the offender's
33 compliance with treatment and monitoring requirements and
34 recommendations regarding termination from treatment.

35 (8) At a progress hearing or treatment termination hearing, the
36 court may:

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

1 (b) Continue the hearing to a date before the expiration date of
2 community custody, with or without modifying the conditions of
3 partial confinement or community custody; or

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

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

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

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

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

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

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

1 **Sec. 2.** RCW 9.94A.030 and 2021 c 237 s 1 and 2021 c 215 s 97 are
2 each reenacted and amended to read as follows:

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

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

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

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

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

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

26 (6) "Community protection zone" means the area within eight
27 hundred eighty feet of the facilities and grounds of a public or
28 private school.

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

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

33 (9) "Conviction" means an adjudication of guilt pursuant to Title
34 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,
35 and acceptance of a plea of guilty.

36 (10) "Crime-related prohibition" means an order of a court
37 prohibiting conduct that directly relates to the circumstances of the
38 crime for which the offender has been convicted, and shall not be
39 construed to mean orders directing an offender affirmatively to
40 participate in rehabilitative programs or to otherwise perform

1 affirmative conduct. However, affirmative acts necessary to monitor
2 compliance with the order of a court may be required by the
3 department.

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

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

12 (b) A conviction may be removed from a defendant's criminal
13 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,
14 9.95.240, or a similar out-of-state statute, or if the conviction has
15 been vacated pursuant to a governor's pardon. However, when a
16 defendant is charged with a recidivist offense, "criminal history"
17 includes a vacated prior conviction for the sole purpose of
18 establishing that such vacated prior conviction constitutes an
19 element of the present recidivist offense as provided in RCW
20 9.94A.640(4)(b) and 9.96.060(7)(c).

21 (c) The determination of a defendant's criminal history is
22 distinct from the determination of an offender score. A prior
23 conviction that was not included in an offender score calculated
24 pursuant to a former version of the sentencing reform act remains
25 part of the defendant's criminal history.

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

36 (13) "Criminal street gang associate or member" means any person
37 who actively participates in any criminal street gang and who
38 intentionally promotes, furthers, or assists in any criminal act by
39 the criminal street gang.

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

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

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

10 (c) To exact revenge or retribution for the gang or any member of
11 the gang;

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

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

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

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

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

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

35 (18) "Determinate sentence" means a sentence that states with
36 exactitude the number of actual years, months, or days of total
37 confinement, of partial confinement, of community custody, the number
38 of actual hours or days of community restitution work, or dollars or
39 terms of a legal financial obligation. The fact that an offender
40 through earned release can reduce the actual period of confinement

1 shall not affect the classification of the sentence as a determinate
2 sentence.

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

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

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

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

29 (22) "Drug offense" means:

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

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

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

39 (23) "Earned release" means earned release from confinement as
40 provided in RCW 9.94A.728.

1 (24) "Electronic monitoring" means tracking the location of an
2 individual through the use of technology that is capable of
3 determining or identifying the monitored individual's presence or
4 absence at a particular location including, but not limited to:

5 (a) Radio frequency signaling technology, which detects if the
6 monitored individual is or is not at an approved location and
7 notifies the monitoring agency of the time that the monitored
8 individual either leaves the approved location or tampers with or
9 removes the monitoring device; or

10 (b) Active or passive global positioning system technology, which
11 detects the location of the monitored individual and notifies the
12 monitoring agency of the monitored individual's location and which
13 may also include electronic monitoring with victim notification
14 technology that is capable of notifying a victim or protected party,
15 either directly or through a monitoring agency, if the monitored
16 individual enters within the restricted distance of a victim or
17 protected party, or within the restricted distance of a designated
18 location.

19 (25) "Escape" means:

20 (a) Sexually violent predator escape (RCW 9A.76.115), escape in
21 the first degree (RCW 9A.76.110), escape in the second degree (RCW
22 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
23 willful failure to return from work release (RCW 72.65.070), or
24 willful failure to be available for supervision by the department
25 while in community custody (RCW 72.09.310); or

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

29 (26) "Felony traffic offense" means:

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

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

1 (27) "Fine" means a specific sum of money ordered by the
2 sentencing court to be paid by the offender to the court over a
3 specific period of time.

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

7 (29) "Home detention" is a subset of electronic monitoring and
8 means a program of partial confinement available to offenders wherein
9 the offender is confined in a private residence twenty-four hours a
10 day, unless an absence from the residence is approved, authorized, or
11 otherwise permitted in the order by the court or other supervising
12 agency that ordered home detention, and the offender is subject to
13 electronic monitoring.

14 (30) "Homelessness" or "homeless" means a condition where an
15 individual lacks a fixed, regular, and adequate nighttime residence
16 and who has a primary nighttime residence that is:

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

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

21 (c) A private residence where the individual stays as a transient
22 invitee.

23 (31) "Legal financial obligation" means a sum of money that is
24 ordered by a superior court of the state of Washington for legal
25 financial obligations which may include restitution to the victim,
26 statutorily imposed crime victims' compensation fees as assessed
27 pursuant to RCW 7.68.035, court costs, county or interlocal drug
28 funds, court-appointed attorneys' fees, and costs of defense, fines,
29 and any other financial obligation that is assessed to the offender
30 as a result of a felony conviction. Upon conviction for vehicular
31 assault while under the influence of intoxicating liquor or any drug,
32 RCW 46.61.522(1)(b), or vehicular homicide while under the influence
33 of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal
34 financial obligations may also include payment to a public agency of
35 the expense of an emergency response to the incident resulting in the
36 conviction, subject to RCW 38.52.430.

37 (32) "Most serious offense" means any of the following felonies
38 or a felony attempt to commit any of the following felonies:

1 (a) Any felony defined under any law as a class A felony or
2 criminal solicitation of or criminal conspiracy to commit a class A
3 felony;

4 (b) Assault in the second degree;

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

6 (d) Child molestation in the second degree;

7 (e) Controlled substance homicide;

8 (f) Extortion in the first degree;

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

10 (h) Indecent liberties;

11 (i) Kidnapping in the second degree;

12 (j) Leading organized crime;

13 (k) Manslaughter in the first degree;

14 (l) Manslaughter in the second degree;

15 (m) Promoting prostitution in the first degree;

16 (n) Rape in the third degree;

17 (o) Sexual exploitation;

18 (p) Vehicular assault, when caused by the operation or driving of
19 a vehicle by a person while under the influence of intoxicating
20 liquor or any drug or by the operation or driving of a vehicle in a
21 reckless manner;

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

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

28 (s) Any other felony with a deadly weapon verdict under RCW
29 9.94A.825;

30 (t) Any felony offense in effect at any time prior to December 2,
31 1993, that is comparable to a most serious offense under this
32 subsection, or any federal or out-of-state conviction for an offense
33 that under the laws of this state would be a felony classified as a
34 most serious offense under this subsection;

35 (u) (i) A prior conviction for indecent liberties under RCW
36 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
37 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
38 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW
39 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
40 until July 1, 1988;

1 (ii) A prior conviction for indecent liberties under RCW
2 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
3 if: (A) The crime was committed against a child under the age of
4 fourteen; or (B) the relationship between the victim and perpetrator
5 is included in the definition of indecent liberties under RCW
6 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
7 1997, or RCW 9A.44.100(1)(d) or (e) as it existed from July 25,
8 1993, through July 27, 1997;

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

15 (33) "Nonviolent offense" means an offense which is not a violent
16 offense.

17 (34) "Offender" means a person who has committed a felony
18 established by state law and is eighteen years of age or older or is
19 less than eighteen years of age but whose case is under superior
20 court jurisdiction under RCW 13.04.030 or has been transferred by the
21 appropriate juvenile court to a criminal court pursuant to RCW
22 13.40.110. In addition, for the purpose of community custody
23 requirements under this chapter, "offender" also means a misdemeanor
24 or gross misdemeanor probationer ordered by a superior court to
25 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and
26 supervised by the department pursuant to RCW 9.94A.501 and
27 9.94A.5011. Throughout this chapter, the terms "offender" and
28 "defendant" are used interchangeably.

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

39 (36) "Pattern of criminal street gang activity" means:

1 (a) The commission, attempt, conspiracy, or solicitation of, or
2 any prior juvenile adjudication of or adult conviction of, two or
3 more of the following criminal street gang-related offenses:
4 (i) Any "serious violent" felony offense as defined in this
5 section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a
6 Child 1 (RCW 9A.36.120);
7 (ii) Any "violent" offense as defined by this section, excluding
8 Assault of a Child 2 (RCW 9A.36.130);
9 (iii) Deliver or Possession with Intent to Deliver a Controlled
10 Substance (chapter 69.50 RCW);
11 (iv) Any violation of the firearms and dangerous weapon act
12 (chapter 9.41 RCW);
13 (v) Theft of a Firearm (RCW 9A.56.300);
14 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);
15 (vii) Hate Crime (RCW 9A.36.080);
16 (viii) Harassment where a subsequent violation or deadly threat
17 is made (RCW 9A.46.020(2)(b));
18 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
19 (x) Any felony conviction by a person eighteen years of age or
20 older with a special finding of involving a juvenile in a felony
21 offense under RCW 9.94A.833;
22 (xi) Residential Burglary (RCW 9A.52.025);
23 (xii) Burglary 2 (RCW 9A.52.030);
24 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
25 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
26 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
27 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
28 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
29 9A.56.070);
30 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
31 9A.56.075);
32 (xix) Extortion 1 (RCW 9A.56.120);
33 (xx) Extortion 2 (RCW 9A.56.130);
34 (xxi) Intimidating a Witness (RCW 9A.72.110);
35 (xxii) Tampering with a Witness (RCW 9A.72.120);
36 (xxiii) Reckless Endangerment (RCW 9A.36.050);
37 (xxiv) Coercion (RCW 9A.36.070);
38 (xxv) Harassment (RCW 9A.46.020); or
39 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

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

3 (c) That the most recent committed offense listed in (a) of this
4 subsection occurred within three years of a prior offense listed in
5 (a) of this subsection; and

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

9 (37) "Persistent offender" is an offender who:

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

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

20 (b) (i) Has been convicted of: (A) Rape in the first degree, rape
21 of a child in the first degree, child molestation in the first
22 degree, rape in the second degree, rape of a child in the second
23 degree, or indecent liberties by forcible compulsion; (B) any of the
24 following offenses with a finding of sexual motivation: Murder in the
25 first degree, murder in the second degree, homicide by abuse,
26 kidnapping in the first degree, kidnapping in the second degree,
27 assault in the first degree, assault in the second degree, assault of
28 a child in the first degree, assault of a child in the second degree,
29 or burglary in the first degree; or (C) an attempt to commit any
30 crime listed in this subsection (37) (b) (i); and

31 (ii) Has, before the commission of the offense under (b) (i) of
32 this subsection, been convicted as an offender on at least one
33 occasion, whether in this state or elsewhere, of an offense listed in
34 (b) (i) of this subsection or any federal or out-of-state offense or
35 offense under prior Washington law that is comparable to the offenses
36 listed in (b) (i) of this subsection. A conviction for rape of a child
37 in the first degree constitutes a conviction under (b) (i) of this
38 subsection only when the offender was sixteen years of age or older
39 when the offender committed the offense. A conviction for rape of a
40 child in the second degree constitutes a conviction under (b) (i) of

1 this subsection only when the offender was eighteen years of age or
2 older when the offender committed the offense.

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

27 (39) "Private school" means a school regulated under chapter
28 28A.195 or 28A.205 RCW.

29 (40) "Public school" has the same meaning as in RCW 28A.150.010.

30 (41) "Recidivist offense" means a felony offense where a prior
31 conviction of the same offense or other specified offense is an
32 element of the crime including, but not limited to:

33 (a) Assault in the fourth degree where domestic violence is
34 pleaded and proven, RCW 9A.36.041(3);

35 (b) Cyberstalking, RCW 9.61.260(3)(a);

36 (c) Harassment, RCW 9A.46.020(2)(b)(i);

37 (d) Indecent exposure, RCW 9A.88.010(2)(c);

38 (e) Stalking, RCW 9A.46.110(5)(b)(i) and (iii);

39 (f) Telephone harassment, RCW 9.61.230(2)(a); and

1 (g) Violation of a no-contact or protection order, RCW 7.105.450
2 or former RCW 26.50.110(5).

3 (42) "Repetitive domestic violence offense" means any:

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

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

8 (iii) Domestic violence violation of a protection order under
9 chapter 26.09, 26.26A, or 26.26B RCW or former chapter 26.50 RCW, or
10 violation of a domestic violence protection order under chapter 7.105
11 RCW, that is not a felony offense;

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

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

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

20 (43) "Restitution" means a specific sum of money ordered by the
21 sentencing court to be paid by the offender to the court over a
22 specified period of time as payment of damages. The sum may include
23 both public and private costs.

24 (44) "Risk assessment" means the application of the risk
25 instrument recommended to the department by the Washington state
26 institute for public policy as having the highest degree of
27 predictive accuracy for assessing an offender's risk of reoffense.

28 (45) "Serious traffic offense" means:

29 (a) Nonfelony driving while under the influence of intoxicating
30 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
31 while under the influence of intoxicating liquor or any drug (RCW
32 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
33 attended vehicle (RCW 46.52.020(5)); or

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

37 (46) "Serious violent offense" is a subcategory of violent
38 offense and means:

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

40 (ii) Homicide by abuse;

1 (iii) Murder in the second degree;
2 (iv) Manslaughter in the first degree;
3 (v) Assault in the first degree;
4 (vi) Kidnapping in the first degree;
5 (vii) Rape in the first degree;
6 (viii) Assault of a child in the first degree; or
7 (ix) An attempt, criminal solicitation, or criminal conspiracy to
8 commit one of these felonies; or

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

12 (47) "Sex offense" means:

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

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

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

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

21 (v) A felony violation of RCW 9A.44.132(1) (failure to register
22 as a sex offender) if the person has been convicted of violating RCW
23 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
24 prior to June 10, 2010, on at least one prior occasion;

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

28 (c) A felony with a finding of sexual motivation under RCW
29 9.94A.835 or 13.40.135; or

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

33 (48) "Sexual motivation" means that one of the purposes for which
34 the defendant committed the crime was for the purpose of his or her
35 sexual gratification.

36 (49) "Standard sentence range" means the sentencing court's
37 discretionary range in imposing a nonappealable sentence.

38 (50) "Statutory maximum sentence" means the maximum length of
39 time for which an offender may be confined as punishment for a crime
40 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute

1 defining the crime, or other statute defining the maximum penalty for
2 a crime.

3 (51) "Stranger" means that the victim did not know the offender
4 twenty-four hours before the offense.

5 (52) "Total confinement" means confinement inside the physical
6 boundaries of a facility or institution operated or utilized under
7 contract by the state or any other unit of government for twenty-four
8 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

9 (53) "Transition training" means written and verbal instructions
10 and assistance provided by the department to the offender during the
11 two weeks prior to the offender's successful completion of the work
12 ethic camp program. The transition training shall include
13 instructions in the offender's requirements and obligations during
14 the offender's period of community custody.

15 (54) "Victim" means any person who has sustained emotional,
16 psychological, physical, or financial injury to person or property as
17 a direct result of the crime charged.

18 (55) "Victim of domestic violence" means an intimate partner or
19 household member who has been subjected to the infliction of physical
20 harm or sexual and psychological abuse by an intimate partner or
21 household member as part of a pattern of assaultive, coercive, and
22 controlling behaviors directed at achieving compliance from or
23 control over that intimate partner or household member. Domestic
24 violence includes, but is not limited to, the offenses listed in RCW
25 10.99.020 and 26.50.010 committed by an intimate partner or household
26 member against a victim who is an intimate partner or household
27 member.

28 (56) "Victim of sex trafficking, prostitution, or commercial
29 sexual abuse of a minor" means a person who has been forced or
30 coerced to perform a commercial sex act including, but not limited
31 to, being a victim of offenses defined in RCW 9A.40.100, 9A.88.070,
32 9.68A.101, and the trafficking victims protection act of 2000, 22
33 U.S.C. Sec. 7101 et seq.; or a person who was induced to perform a
34 commercial sex act when they were less than 18 years of age including
35 but not limited to the offenses defined in chapter 9.68A RCW.

36 (57) "Victim of sexual assault" means any person who is a victim
37 of a sexual assault offense, nonconsensual sexual conduct, or
38 nonconsensual sexual penetration and as a result suffers physical,
39 emotional, financial, or psychological impacts. Sexual assault

1 offenses include, but are not limited to, the offenses defined in
2 chapter 9A.44 RCW.

3 (58) "Violent offense" means:

4 (a) Any of the following felonies:

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

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

9 (iii) Manslaughter in the first degree;

10 (iv) Manslaughter in the second degree;

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

12 (vi) Kidnapping in the second degree;

13 (vii) Arson in the second degree;

14 (viii) Assault in the second degree;

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

16 (x) Extortion in the first degree;

17 (xi) Robbery in the second degree;

18 (xii) Drive-by shooting;

19 (xiii) Vehicular assault, when caused by the operation or driving
20 of a vehicle by a person while under the influence of intoxicating
21 liquor or any drug or by the operation or driving of a vehicle in a
22 reckless manner; and

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

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

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

33 (59) "Work crew" means a program of partial confinement
34 consisting of civic improvement tasks for the benefit of the
35 community that complies with RCW 9.94A.725.

36 (60) "Work ethic camp" means an alternative incarceration program
37 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
38 the cost of corrections by requiring offenders to complete a
39 comprehensive array of real-world job and vocational experiences,
40 character-building work ethics training, life management skills

1 development, substance abuse rehabilitation, counseling, literacy
2 training, and basic adult education.

3 (61) "Work release" means a program of partial confinement
4 available to offenders who are employed or engaged as a student in a
5 regular course of study at school.

6 (62) "Drug offender sentencing alternative for driving under the
7 influence" is a sentencing option available to persons convicted of
8 felony driving while under the influence of intoxicating liquor or
9 any drug under RCW 46.61.502(6), or felony physical control of a
10 vehicle while under the influence of intoxicating liquor or any drug
11 under RCW 46.61.504(6) who are eligible under section 1 of this act.

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

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

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

36 (3) A person who is sentenced for a felony to a term of not more
37 than one year, and who is committed or returned to incarceration in a
38 state facility on another felony conviction, either under the
39 indeterminate sentencing laws, chapter 9.95 RCW, or under this

1 chapter shall serve all terms of confinement, including a sentence of
2 not more than one year, in a facility or institution operated, or
3 utilized under contract, by the state, consistent with the provisions
4 of RCW 9.94A.589.

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

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

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

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

18 (a) Offenders convicted of:

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

20 (ii) Custodial sexual misconduct second degree;

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

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

23 (b) Offenders who have:

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

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

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

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

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

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

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

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

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

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

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

23 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660,
24 9.94A.670, 9.94A.711, ~~((or))~~ 9.94A.695, or section 1 of this act;

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

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

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

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

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

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

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

9 **Sec. 5.** RCW 9.94A.505 and 2021 c 242 s 3 are each amended to
10 read as follows:

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

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

15 (i) Unless another term of confinement applies, a sentence within
16 the standard sentence range established in RCW 9.94A.510 or
17 9.94A.517;

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

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

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

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

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

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

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

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

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

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

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

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

36 (~~(xiii)~~) (xiv) RCW 9.94A.603, relating to felony driving while
37 under the influence of intoxicating liquor or any drug and felony
38 physical control of a vehicle while under the influence of
39 intoxicating liquor or any drug;

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

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

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

18 (4) If a sentence imposed includes payment of a legal financial
19 obligation, it shall be imposed as provided in RCW 9.94A.750,
20 9.94A.753, 9.94A.760, and 43.43.7541.

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

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

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

33 (a) A violent offense;

34 (b) Any sex offense;

35 (c) Any drug offense;

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

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

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

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

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

2 (8) The court shall order restitution as provided in RCW
3 9.94A.750 and 9.94A.753.

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

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

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

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

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

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

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

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

35 (c) Except as provided in (e) of this subsection, class C prior
36 felony convictions other than sex offenses shall not be included in
37 the offender score if, since the last date of release from
38 confinement (including full-time residential treatment) pursuant to a
39 felony conviction, if any, or entry of judgment and sentence, the

1 offender had spent five consecutive years in the community without
2 committing any crime that subsequently results in a conviction.

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

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

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

28 (g) This subsection applies to both adult and juvenile prior
29 convictions.

30 (3) Out-of-state convictions for offenses shall be classified
31 according to the comparable offense definitions and sentences
32 provided by Washington law. Federal convictions for offenses shall be
33 classified according to the comparable offense definitions and
34 sentences provided by Washington law. If there is no clearly
35 comparable offense under Washington law or the offense is one that is
36 usually considered subject to exclusive federal jurisdiction, the
37 offense shall be scored as a class C felony equivalent if it was a
38 felony under the relevant federal statute.

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

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

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

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

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

34 (6) If the present conviction is one of the anticipatory offenses
35 of criminal attempt, solicitation, or conspiracy, count each prior
36 conviction as if the present conviction were for a completed offense.
37 When these convictions are used as criminal history, score them the
38 same as a completed crime.

39 (7) If the present conviction is for a nonviolent offense and not
40 covered by subsection (11), (12), or (13) of this section, count one

1 point for each adult prior felony conviction and one point for each
2 juvenile prior violent felony conviction and 1/2 point for each
3 juvenile prior nonviolent felony conviction.

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

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

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

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

31 (12) If the present conviction is for homicide by watercraft or
32 assault by watercraft count two points for each adult or juvenile
33 prior conviction for homicide by watercraft or assault by watercraft;
34 for each felony offense count one point for each adult and 1/2 point
35 for each juvenile prior conviction; count one point for each adult
36 and 1/2 point for each juvenile prior conviction for driving under
37 the influence of intoxicating liquor or any drug, actual physical
38 control of a motor vehicle while under the influence of intoxicating
39 liquor or any drug, or operation of a vessel while under the
40 influence of intoxicating liquor or any drug.

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

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

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

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

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

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

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

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

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

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

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

35 (c) Count one point for each second and subsequent juvenile
36 conviction where domestic violence as defined in RCW 9.94A.030 was
37 pleaded and proven after August 1, 2011, for the offenses listed in
38 (a) of this subsection; and

39 (d) Count one point for each adult prior conviction for a
40 repetitive domestic violence offense as defined in RCW 9.94A.030,

1 where domestic violence as defined in RCW 9.94A.030, was pleaded and
2 proven after August 1, 2011.

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

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

17 (1) (a) An offender who violates any condition or requirement of a
18 sentence may be sanctioned by the court with up to sixty days'
19 confinement for each violation or by the department with up to thirty
20 days' confinement as provided in RCW 9.94A.737.

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

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

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

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

37 (c) If the offender was sentenced under the drug offender
38 sentencing alternative for driving under the influence set out in

1 section 1 of this act, the offender may be sanctioned in accordance
2 with that section.

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

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

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

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

16 ~~((g))~~ (h) If a sex offender was sentenced pursuant to RCW
17 9.94A.507, the offender may be transferred to a more restrictive
18 confinement status to serve up to the remaining portion of the
19 sentence, less credit for any period actually spent in community
20 custody or in detention awaiting disposition of an alleged violation.

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

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

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

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

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

38 The procedure for imposing sanctions for violations of sentence
39 conditions or requirements is as follows:

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

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

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

11 (~~(3)~~) (4) If the offender was sentenced under the parenting
12 sentencing alternative, any sanctions shall be imposed by the
13 department or by the court pursuant to RCW 9.94A.655.

14 (~~(4)~~) (5) If the offender was sentenced under the mental health
15 sentencing alternative, any sanctions shall be imposed by the
16 department or the court pursuant to RCW 9.94A.695.

17 (~~(5)~~) (6) If a sex offender was sentenced pursuant to RCW
18 9.94A.507, any sanctions shall be imposed by the board pursuant to
19 RCW 9.95.435.

20 (~~(6)~~) (7) If the offender was released pursuant to RCW
21 9.94A.730, any sanctions shall be imposed by the board pursuant to
22 RCW 9.95.435.

23 (~~(7)~~) (8) If the offender was sentenced pursuant to RCW
24 10.95.030(3) or 10.95.035, any sanctions shall be imposed by the
25 board pursuant to RCW 9.95.435.

26 (~~(8)~~) (9) In any other case, if the offender is being
27 supervised by the department, any sanctions shall be imposed by the
28 department pursuant to RCW 9.94A.737. If a probationer is being
29 supervised by the department pursuant to RCW 9.92.060, 9.95.204, or
30 9.95.210, upon receipt of a violation hearing report from the
31 department, the court retains any authority that those statutes
32 provide to respond to a probationer's violation of conditions.

33 (~~(9)~~) (10) If the offender is not being supervised by the
34 department, any sanctions shall be imposed by the court pursuant to
35 RCW 9.94A.6333.

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

38 (1) An offender is eligible for the special drug offender
39 sentencing alternative if:

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

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

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

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

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

18 (ii) Any other violent offense within ten years before conviction
19 of the current offense;

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

26 (f) The offender has not been found by the United States attorney
27 general to be subject to a deportation detainer or order and does not
28 become subject to a deportation order during the period of the
29 sentence; and

30 (g) The offender has not received a drug offender sentencing
31 alternative under this section, or a drug offender sentencing
32 alternative for driving under the influence under section 1 of this
33 act, more than once in the prior ten years before the current
34 offense.

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

37 (3) If the sentencing court determines that the offender is
38 eligible for an alternative sentence under this section and that the
39 alternative sentence is appropriate, the court shall waive imposition
40 of a sentence within the standard sentence range and impose a

1 sentence consisting of either a prison-based alternative under RCW
2 9.94A.662 or a residential substance use disorder treatment-based
3 alternative under RCW 9.94A.664. The residential substance use
4 disorder treatment-based alternative is only available if the
5 midpoint of the standard sentence range is twenty-six months or less.

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

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

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

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

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

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

30 ~~((d))~~ (d) Whether the offender and the community will benefit
31 from the use of the alternative.

32 (6) When a court imposes a sentence of community custody under
33 this section:

34 (a) The court may impose conditions as provided in RCW 9.94A.703
35 and may impose other affirmative conditions as the court considers
36 appropriate. In addition, an offender may be required to pay thirty
37 dollars per month while on community custody to offset the cost of
38 monitoring for alcohol or controlled substances, or in cases of
39 domestic violence for monitoring with global positioning system
40 technology for compliance with a no-contact order.

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

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

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

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

16 (d) An offender ordered to serve a term of total confinement
17 under (c) of this subsection shall receive credit for time previously
18 served in total or partial confinement and inpatient treatment under
19 this section, and shall receive fifty percent credit for time
20 previously served in community custody under this section.

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

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

29 (10) The Washington state institute for public policy shall
30 submit a report to the governor and the appropriate committees of the
31 legislature by November 1, 2022, analyzing the effectiveness of the
32 drug offender sentencing alternative in reducing recidivism among
33 various offender populations. An additional report is due November 1,
34 2028, and every five years thereafter. The Washington state institute
35 for public policy may coordinate with the department and the caseload
36 forecast council in tracking data and preparing the report.

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

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

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

6 (b) A serious violent offense.

7 (2) A court shall, in addition to the other terms of the
8 sentence, sentence an offender to community custody for eighteen
9 months when the court sentences the person to the custody of the
10 department for a violent offense that is not considered a serious
11 violent offense.

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

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

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

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

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

24 (4) If an offender is sentenced under the drug offender
25 sentencing alternative, the court shall impose community custody as
26 provided in:

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

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

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

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

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

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

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

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

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

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

15 **Sec. 11.** RCW 46.61.502 and 2017 c 335 s 1 are each amended to
16 read as follows:

17 (1) A person is guilty of driving while under the influence of
18 intoxicating liquor, marijuana, or any drug if the person drives a
19 vehicle within this state:

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

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

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

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

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

34 (3)(a) It is an affirmative defense to a violation of subsection
35 (1)(a) of this section, which the defendant must prove by a
36 preponderance of the evidence, that the defendant consumed a
37 sufficient quantity of alcohol after the time of driving and before
38 the administration of an analysis of the person's breath or blood to
39 cause the defendant's alcohol concentration to be 0.08 or more within

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

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

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

23 (b) Analyses of blood samples obtained more than two hours after
24 the alleged driving may be used as evidence that within two hours of
25 the alleged driving, a person had a THC concentration of 5.00 or more
26 in violation of subsection (1)(b) of this section, and in any case in
27 which the analysis shows a THC concentration above 0.00 may be used
28 as evidence that a person was under the influence of or affected by
29 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

- 1 (iii) An out-of-state offense comparable to the offense specified
2 in (b) (i) or (ii) of this subsection; or
3 (iv) A violation of this subsection (6) or RCW 46.61.504(6).

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

6 (1) **No prior offenses in seven years.** Except as provided in RCW
7 46.61.502(6) or 46.61.504(6), a person who is convicted of a
8 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
9 within seven years shall be punished as follows:

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

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

30 (ii) By a fine of not less than three hundred fifty dollars nor
31 more than five thousand dollars. Three hundred fifty dollars of the
32 fine may not be suspended unless the court finds the offender to be
33 indigent; or

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

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

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

19 (2) **One prior offense in seven years.** Except as provided in RCW
20 46.61.502(6) or 46.61.504(6), a person who is convicted of a
21 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense
22 within seven years shall be punished as follows:

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

28 (i) By imprisonment for not less than thirty days nor more than
29 three hundred sixty-four days and sixty days of electronic home
30 monitoring. Thirty days of imprisonment and sixty days of electronic
31 home monitoring may not be suspended or converted unless the court
32 finds that the imposition of this mandatory minimum sentence would
33 impose a substantial risk to the offender's physical or mental well-
34 being. If the offender shows that the imposition of this mandatory
35 minimum sentence would impose a substantial risk to the offender's
36 physical or mental well-being, in lieu of the mandatory term of
37 imprisonment and electronic home monitoring under this subsection
38 (2)(a)(i), the court may order a minimum of either one hundred eighty
39 days of electronic home monitoring or a one hundred twenty-day period
40 of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300

1 through 36.28A.390. Whenever the mandatory minimum sentence is
2 suspended or converted, the court shall state in writing the reason
3 for granting the suspension or conversion and the facts upon which
4 the suspension or conversion is based. The court may consider the
5 offender's pretrial 24/7 sobriety program monitoring as fulfilling a
6 portion of posttrial sentencing. The court shall order an expanded
7 substance use disorder assessment and treatment, if deemed
8 appropriate by the assessment. The offender shall pay for the cost of
9 the electronic monitoring. The county or municipality where the
10 penalty is being imposed shall determine the cost. The court may also
11 require the offender's electronic home monitoring device include an
12 alcohol detection breathalyzer or other separate alcohol monitoring
13 device, and may restrict the amount of alcohol the offender may
14 consume during the time the offender is on electronic home
15 monitoring; and

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

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

24 (i) By imprisonment for not less than forty-five days nor more
25 than three hundred sixty-four days and ninety days of electronic home
26 monitoring. Forty-five days of imprisonment and ninety days of
27 electronic home monitoring may not be suspended or converted unless
28 the court finds that the imposition of this mandatory minimum
29 sentence would impose a substantial risk to the offender's physical
30 or mental well-being. If the offender shows that the imposition of
31 this mandatory minimum sentence would impose a substantial risk to
32 the offender's physical or mental well-being, in lieu of the
33 mandatory minimum term of imprisonment and electronic home monitoring
34 under this subsection (2)(b)(i), the court may order a minimum of
35 either six months of electronic home monitoring or a one hundred
36 twenty-day period of 24/7 sobriety program monitoring pursuant to RCW
37 36.28A.300 through 36.28A.390. Whenever the mandatory minimum
38 sentence is suspended or converted, the court shall state in writing
39 the reason for granting the suspension or conversion and the facts
40 upon which the suspension or conversion is based. The court may

1 consider the offender's pretrial 24/7 sobriety program monitoring as
2 fulfilling a portion of posttrial sentencing. The court shall order
3 an expanded substance use disorder assessment and treatment, if
4 deemed appropriate by the assessment. The offender shall pay for the
5 cost of the electronic monitoring. The county or municipality where
6 the penalty is being imposed shall determine the cost. The court may
7 also require the offender's electronic home monitoring device include
8 an alcohol detection breathalyzer or other separate alcohol
9 monitoring device, and may restrict the amount of alcohol the
10 offender may consume during the time the offender is on electronic
11 home monitoring; and

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

16 (3) **Two prior offenses in seven years.** Except as provided in RCW
17 46.61.502(6) or 46.61.504(6), a person who is convicted of a
18 violation of RCW 46.61.502 or 46.61.504 and who has two prior
19 offenses within seven years shall be punished as follows:

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

25 (i) By imprisonment for not less than ninety days nor more than
26 three hundred sixty-four days, if available in that county or city, a
27 six-month period of 24/7 sobriety program monitoring pursuant to RCW
28 36.28A.300 through 36.28A.390, and one hundred twenty days of
29 electronic home monitoring. Ninety days of imprisonment and one
30 hundred twenty days of electronic home monitoring may not be
31 suspended or converted unless the court finds that the imposition of
32 this mandatory minimum sentence would impose a substantial risk to
33 the offender's physical or mental well-being. If the offender shows
34 that the imposition of this mandatory minimum sentence would impose a
35 substantial risk to the offender's physical or mental well-being, in
36 lieu of the mandatory minimum term of ninety days of imprisonment and
37 one hundred twenty days of electronic home monitoring, the court may
38 order three hundred sixty days of electronic home monitoring or a
39 three hundred sixty-day period of 24/7 sobriety monitoring pursuant
40 to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory minimum

1 sentence is suspended or converted, the court shall state in writing
2 the reason for granting the suspension or conversion and the facts
3 upon which the suspension or conversion is based. The court shall
4 order an expanded substance use disorder assessment and treatment, if
5 deemed appropriate by the assessment. The offender shall pay for the
6 cost of the electronic monitoring. The county or municipality where
7 the penalty is being imposed shall determine the cost. The court may
8 also require the offender's electronic home monitoring device include
9 an alcohol detection breathalyzer or other separate alcohol
10 monitoring device, and may restrict the amount of alcohol the
11 offender may consume during the time the offender is on electronic
12 home monitoring; and

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

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

21 (i) By imprisonment for not less than one hundred twenty days nor
22 more than three hundred sixty-four days, if available in that county
23 or city, a six-month period of 24/7 sobriety program monitoring
24 pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty
25 days of electronic home monitoring. One hundred twenty days of
26 imprisonment and one hundred fifty days of electronic home monitoring
27 may not be suspended or converted unless the court finds that the
28 imposition of this mandatory minimum sentence would impose a
29 substantial risk to the offender's physical or mental well-being. If
30 the offender shows that the imposition of this mandatory minimum
31 sentence would impose a substantial risk to the offender's physical
32 or mental well-being, in lieu of the mandatory minimum term of one
33 hundred twenty days of imprisonment and one hundred fifty days of
34 electronic home monitoring, the court may order three hundred sixty
35 days of electronic home monitoring or a three hundred sixty-day
36 period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through
37 36.28A.390. Whenever the mandatory minimum sentence is suspended or
38 converted, the court shall state in writing the reason for granting
39 the suspension or conversion and the facts upon which the suspension
40 or conversion is based. The offender shall pay for the cost of the

1 electronic monitoring. The court shall order an expanded substance
2 use disorder assessment and treatment, if deemed appropriate by the
3 assessment. The county or municipality where the penalty is being
4 imposed shall determine the cost. The court may also require the
5 offender's electronic home monitoring device include an alcohol
6 detection breathalyzer or other separate alcohol monitoring device,
7 and may restrict the amount of alcohol the offender may consume
8 during the time the offender is on electronic home monitoring; and

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

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

16 (a) The person has three or more prior offenses within ((ten)) 15
17 years; or

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

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

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

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

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

26 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall
27 require any person convicted of a violation of RCW 46.61.502 or
28 46.61.504 or an equivalent local ordinance to comply with the rules
29 and requirements of the department regarding the installation and use
30 of a functioning ignition interlock device installed on all motor
31 vehicles operated by the person.

32 (b) **Monitoring devices.** If the court orders that a person refrain
33 from consuming any alcohol, the court may order the person to submit
34 to alcohol monitoring through an alcohol detection breathalyzer
35 device, transdermal sensor device, or other technology designed to
36 detect alcohol in a person's system. The person shall pay for the
37 cost of the monitoring, unless the court specifies that the cost of
38 monitoring will be paid with funds that are available from an
39 alternative source identified by the court. The county or

1 municipality where the penalty is being imposed shall determine the
2 cost.

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

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

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

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

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

20 (a) Order the use of an ignition interlock or other device for an
21 additional twelve months for each passenger under the age of sixteen
22 when the person is subject to the penalties under subsection (1)(a),
23 (2)(a), or (3)(a) of this section; and order the use of an ignition
24 interlock device for an additional eighteen months for each passenger
25 under the age of sixteen when the person is subject to the penalties
26 under subsection (1)(b), (2)(b), (3)(b), or (4) of this section;

27 (b) In any case in which the person has no prior offenses within
28 seven years, and except as provided in RCW 46.61.502(6) or
29 46.61.504(6), order an additional twenty-four hours of imprisonment
30 to be served consecutively for each passenger under the age of
31 sixteen, and a fine of not less than one thousand dollars and not
32 more than five thousand dollars for each passenger under the age of
33 sixteen. One thousand dollars of the fine for each passenger under
34 the age of sixteen may not be suspended unless the court finds the
35 offender to be indigent;

36 (c) In any case in which the person has one prior offense within
37 seven years, and except as provided in RCW 46.61.502(6) or
38 46.61.504(6), order an additional five days of imprisonment to be
39 served consecutively for each passenger under the age of sixteen, and
40 a fine of not less than two thousand dollars and not more than five

1 thousand dollars for each passenger under the age of sixteen. One
2 thousand dollars of the fine for each passenger under the age of
3 sixteen may not be suspended unless the court finds the offender to
4 be indigent;

5 (d) In any case in which the person has two prior offenses within
6 seven years, and except as provided in RCW 46.61.502(6) or
7 46.61.504(6), order an additional ten days of imprisonment to be
8 served consecutively for each passenger under the age of sixteen, and
9 a fine of not less than three thousand dollars and not more than ten
10 thousand dollars for each passenger under the age of sixteen. One
11 thousand dollars of the fine for each passenger under the age of
12 sixteen may not be suspended unless the court finds the offender to
13 be indigent.

14 (7) **Other items courts must consider while setting penalties.** In
15 exercising its discretion in setting penalties within the limits
16 allowed by this section, the court shall particularly consider the
17 following:

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

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

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

26 (d) Whether a child passenger under the age of sixteen was an
27 occupant in the driver's vehicle.

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

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

35 (i) **Penalty for alcohol concentration less than 0.15.** If the
36 person's alcohol concentration was less than 0.15, or if for reasons
37 other than the person's refusal to take a test offered under RCW
38 46.20.308 there is no test result indicating the person's alcohol
39 concentration:

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

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

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

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

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

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

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

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

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

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

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

39 (b) (i) The department shall grant credit on a day-for-day basis
40 for a suspension, revocation, or denial imposed under this subsection

1 (9) for any portion of a suspension, revocation, or denial already
2 served under RCW 46.20.3101 arising out of the same incident.

3 (ii) If a person has already served a suspension, revocation, or
4 denial under RCW 46.20.3101 for a period equal to or greater than the
5 period imposed under this subsection (9), the department shall
6 provide notice of full credit, shall provide for no further
7 suspension or revocation under this subsection provided the person
8 has completed the requirements under RCW 46.20.311 and paid the
9 probationary license fee under RCW 46.20.355 by the date specified in
10 the notice under RCW 46.20.245, and shall impose no additional
11 reissue fees for this credit.

12 (c) Upon receipt of a notice from the court under RCW 36.28A.390
13 that a participant has been removed from a 24/7 sobriety program, the
14 department must resume any suspension, revocation, or denial that had
15 been terminated early under this subsection due to participation in
16 the program, granting credit on a day-for-day basis for any portion
17 of a suspension, revocation, or denial already served under RCW
18 46.20.3101 or this section arising out of the same incident.

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

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

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

37 (11) **Conditions of probation.** (a) In addition to any
38 nonsuspendable and nondeferrable jail sentence required by this
39 section, whenever the court imposes up to three hundred sixty-four
40 days in jail, the court shall also suspend but shall not defer a

1 period of confinement for a period not exceeding five years. The
2 court shall impose conditions of probation that include: (i) Not
3 driving a motor vehicle within this state without a valid license to
4 drive; (ii) not driving a motor vehicle within this state without
5 proof of liability insurance or other financial responsibility for
6 the future pursuant to RCW 46.30.020; (iii) not driving or being in
7 physical control of a motor vehicle within this state while having an
8 alcohol concentration of 0.08 or more or a THC concentration of 5.00
9 nanograms per milliliter of whole blood or higher, within two hours
10 after driving; (iv) not refusing to submit to a test of his or her
11 breath or blood to determine alcohol or drug concentration upon
12 request of a law enforcement officer who has reasonable grounds to
13 believe the person was driving or was in actual physical control of a
14 motor vehicle within this state while under the influence of
15 intoxicating liquor or drug; and (v) not driving a motor vehicle in
16 this state without a functioning ignition interlock device as
17 required by the department under RCW 46.20.720. The court may impose
18 conditions of probation that include nonrepetition, installation of
19 an ignition interlock device on the probationer's motor vehicle,
20 substance use disorder treatment, supervised probation, or other
21 conditions that may be appropriate. The sentence may be imposed in
22 whole or in part upon violation of a condition of probation during
23 the suspension period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (x) A conviction for a violation of RCW 46.61.520 committed while
18 under the influence of intoxicating liquor or any drug, or a
19 conviction for a violation of RCW 46.61.520 committed in a reckless
20 manner or with the disregard for the safety of others if the
21 conviction is the result of a charge that was originally filed as a
22 violation of RCW 46.61.520 committed while under the influence of
23 intoxicating liquor or any drug;

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

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

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

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

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

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

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

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

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

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

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

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

36 **Sec. 13.** RCW 46.61.504 and 2017 c 335 s 2 are each amended to
37 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 NEW SECTION. **Sec. 14.** Sections 1 through 11 of this act take
37 effect July 1, 2022.

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