
ENGROSSED SUBSTITUTE HOUSE BILL 2302

State of Washington

62nd Legislature

2012 Regular Session

By House Judiciary (originally sponsored by Representatives Goodman, Warnick, Kenney, Kagi, Liiias, Orwall, Billig, Hasegawa, Finn, Kelley, Rodne, Moeller, Dammeier, Reykdal, Van De Wege, Maxwell, Tharinger, Sells, Jinkins, Hurst, Green, McCoy, Smith, Pearson, Appleton, Darneille, Hunt, Fitzgibbon, Miloscia, Zeiger, Ryu, Stanford, Johnson, and Seaquist; by request of Washington State Patrol)

READ FIRST TIME 01/25/12.

1 AN ACT Relating to being under the influence with a child in the
2 vehicle; amending RCW 46.61.507 and 9.94A.533; reenacting and amending
3 RCW 46.61.5055; and prescribing penalties.

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

5 **Sec. 1.** RCW 46.61.507 and 2010 c 214 s 1 are each amended to read
6 as follows:

7 (1) In every case where a person is arrested for a violation of RCW
8 46.61.502 or 46.61.504, the law enforcement officer shall make a clear
9 notation if a child under the age of sixteen was present in the
10 vehicle.

11 (2) A law enforcement officer shall promptly notify child
12 protective services whenever a child is present in a vehicle being
13 driven by his or her parent, guardian, or legal custodian and that
14 person is being arrested for a drug or alcohol-related driving offense.
15 This section does not require law enforcement to take custody of the
16 child unless there is no other responsible person, or an agency having
17 the right to physical custody of the child that can be contacted, or
18 the officer has reasonable grounds to believe the child should be taken
19 into custody pursuant to RCW 13.34.050 or 26.44.050.

1 (3) For purposes of this section, "child" means any person under
2 (~~thirteen~~) sixteen years of age.

3 **Sec. 2.** RCW 46.61.5055 and 2011 c 293 s 7 and 2011 c 96 s 35 are
4 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

30 (i) By imprisonment for not less than thirty days nor more than
31 three hundred sixty-four days and sixty days of electronic home
32 monitoring. The offender shall pay for the cost of the electronic
33 monitoring. The county or municipality where the penalty is being
34 imposed shall determine the cost. The court may also require the
35 offender's electronic home monitoring device include an alcohol
36 detection breathalyzer, and may restrict the amount of alcohol the
37 offender may consume during the time the offender is on electronic home
38 monitoring. Thirty days of imprisonment and sixty days of electronic

1 home monitoring may not be suspended or deferred unless the court finds
2 that the imposition of this mandatory minimum sentence would impose a
3 substantial risk to the offender's physical or mental well-being.
4 Whenever the mandatory minimum sentence is suspended or deferred, the
5 court shall state in writing the reason for granting the suspension or
6 deferral and the facts upon which the suspension or deferral is based;
7 and

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

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

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

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

36 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
37 person who is convicted of a violation of RCW 46.61.502 or 46.61.504

1 and who has two or three prior offenses within seven years shall be
2 punished as follows:

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

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

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

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

31 (i) By imprisonment for not less than one hundred twenty days nor
32 more than three hundred sixty-four days and one hundred fifty days of
33 electronic home monitoring. The offender shall pay for the cost of the
34 electronic monitoring. The county or municipality where the penalty is
35 being imposed shall determine the cost. The court may also require the
36 offender's electronic home monitoring device include an alcohol
37 detection breathalyzer, and may restrict the amount of alcohol the
38 offender may consume during the time the offender is on electronic home

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

13 (4) A person who is convicted of a violation of RCW 46.61.502 or
14 46.61.504 shall be punished under chapter 9.94A RCW if:

15 (a) The person has four or more prior offenses within ten years; or

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

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

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

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

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

24 (5)(a) The court shall require any person convicted of a violation
25 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply
26 for an ignition interlock driver's license from the department and to
27 have a functioning ignition interlock device installed on all motor
28 vehicles operated by the person.

29 (b) The installation of an ignition interlock device is not
30 necessary on vehicles owned, leased, or rented by a person's employer
31 and on those vehicles whose care and/or maintenance is the temporary
32 responsibility of the employer, and driven at the direction of a
33 person's employer as a requirement of employment during working hours.
34 The person must provide the department with a declaration pursuant to
35 RCW 9A.72.085 from his or her employer stating that the person's
36 employment requires the person to operate a vehicle owned by the
37 employer or other persons during working hours.

1 (c) An ignition interlock device imposed under this section shall
2 be calibrated to prevent a motor vehicle from being started when the
3 breath sample provided has an alcohol concentration of 0.025 or more.

4 (d) The court may waive the requirement that a person apply for an
5 ignition interlock driver's license if the court makes a specific
6 finding in writing that:

7 (i) The person lives out-of-state and the devices are not
8 reasonably available in the person's local area;

9 (ii) The person does not operate a vehicle; or

10 (iii) The person is not eligible to receive an ignition interlock
11 driver's license under RCW 46.20.385 because the person is not a
12 resident of Washington, is a habitual traffic offender, has already
13 applied for or is already in possession of an ignition interlock
14 driver's license, has never had a driver's license, has been certified
15 under chapter 74.20A RCW as noncompliant with a child support order, or
16 is subject to any other condition or circumstance that makes the person
17 ineligible to obtain an ignition interlock driver's license.

18 (e) If a court finds that a person is not eligible to receive an
19 ignition interlock driver's license under this section, the court is
20 not required to make any further subsequent inquiry or determination as
21 to the person's eligibility.

22 (f) If the court orders that a person refrain from consuming any
23 alcohol and requires the person to apply for an ignition interlock
24 driver's license, and the person states that he or she does not operate
25 a motor vehicle or the person is ineligible to obtain an ignition
26 interlock driver's license, the court shall order the person to submit
27 to alcohol monitoring through an alcohol detection breathalyzer device,
28 transdermal sensor device, or other technology designed to detect
29 alcohol in a person's system. Alcohol monitoring ordered under this
30 subsection must be for the period of the mandatory license suspension
31 or revocation. The person shall pay for the cost of the monitoring.
32 The county or municipality where the penalty is being imposed shall
33 determine the cost.

34 (g) The period of time for which ignition interlock use is required
35 will be as follows:

36 (i) For a person who has not previously been restricted under this
37 section, a period of one year;

1 (ii) For a person who has previously been restricted under (g)(i)
2 of this subsection, a period of five years;

3 (iii) For a person who has previously been restricted under (g)(ii)
4 of this subsection, a period of ten years.

5 (h) Beginning with incidents occurring on or after September 1,
6 2011, when calculating the period of time for the restriction under RCW
7 46.20.720(3), the department must also give the person a day-for-day
8 credit for the time period, beginning from the date of the incident,
9 during which the person kept an ignition interlock device installed on
10 all vehicles the person operates. For the purposes of this subsection
11 (5)(h), the term "all vehicles" does not include vehicles that would be
12 subject to the employer exception under RCW 46.20.720(3).

13 (6) If a person who is convicted of a violation of RCW 46.61.502 or
14 46.61.504 committed the offense while a passenger under the age of
15 sixteen was in the vehicle, the court shall:

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

21 ~~(b) In any case in which the installation and use of such a device~~
22 ~~is otherwise mandatory,)) Order the use of ((such a)) an ignition~~
23 ~~interlock or other device for an additional ((sixty days)) six months;~~

24 (b) In any case in which the person has no prior offenses within
25 seven years, and except as provided in RCW 46.61.502(6) or
26 46.61.504(6), order a penalty by a fine of not less than one thousand
27 dollars and not more than five thousand dollars. One thousand dollars
28 of the fine may not be suspended or deferred unless the court finds the
29 offender to be indigent;

30 (c) In any case in which the person has one prior offense within
31 seven years, and except as provided in RCW 46.61.502(6) or
32 46.61.504(6), order a penalty by a fine of not less than two thousand
33 dollars and not more than five thousand dollars. One thousand dollars
34 of the fine may not be suspended or deferred unless the court finds the
35 offender to be indigent;

36 (d) In any case in which the person has two or three prior offenses
37 within seven years, and except as provided in RCW 46.61.502(6) or
38 46.61.504(6), order a penalty by a fine of not less than three thousand

1 dollars and not more than ten thousand dollars. One thousand dollars
2 of the fine may not be suspended or deferred unless the court finds the
3 offender to be indigent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (11)(a) In addition to any nonsuspendable and nondeferrable jail
17 sentence required by this section, whenever the court imposes up to
18 three hundred sixty-four days in jail, the court shall also suspend but
19 shall not defer a period of confinement for a period not exceeding five
20 years. The court shall impose conditions of probation that include:

21 (i) Not driving a motor vehicle within this state without a valid
22 license to drive and proof of financial responsibility for the future;
23 (ii) not driving a motor vehicle within this state while having an
24 alcohol concentration of 0.08 or more within two hours after driving;
25 and (iii) not refusing to submit to a test of his or her breath or
26 blood to determine alcohol concentration upon request of a law
27 enforcement officer who has reasonable grounds to believe the person
28 was driving or was in actual physical control of a motor vehicle within
29 this state while under the influence of intoxicating liquor. The court
30 may impose conditions of probation that include nonrepetition,
31 installation of an ignition interlock device on the probationer's motor
32 vehicle, alcohol or drug treatment, supervised probation, or other
33 conditions that may be appropriate. The sentence may be imposed in
34 whole or in part upon violation of a condition of probation during the
35 suspension period.

36 (b) For each violation of mandatory conditions of probation under
37 (a)(i), (ii), or (iii) of this subsection, the court shall order the

1 convicted person to be confined for thirty days, which shall not be
2 suspended or deferred.

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

13 (12) A court may waive the electronic home monitoring requirements
14 of this chapter when:

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

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

18 (c) The court determines that there is reason to believe that the
19 offender would violate the conditions of the electronic home monitoring
20 penalty.

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

27 Whenever the combination of jail time and electronic home
28 monitoring or alternative sentence would exceed three hundred sixty-
29 four days, the offender shall serve the jail portion of the sentence
30 first, and the electronic home monitoring or alternative portion of the
31 sentence shall be reduced so that the combination does not exceed three
32 hundred sixty-four days.

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

37 (14) For purposes of this section and RCW 46.61.502 and 46.61.504:

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

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

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

5 (iii) A conviction for a violation of RCW 46.61.520 committed while
6 under the influence of intoxicating liquor or any drug, or a conviction
7 for a violation of RCW 46.61.520 committed in a reckless manner or with
8 the disregard for the safety of others if the conviction is the result
9 of a charge that was originally filed as a violation of RCW 46.61.520
10 committed while under the influence of intoxicating liquor or any drug;

11 (iv) A conviction for a violation of RCW 46.61.522 committed while
12 under the influence of intoxicating liquor or any drug, or a conviction
13 for a violation of RCW 46.61.522 committed in a reckless manner or with
14 the disregard for the safety of others if the conviction is the result
15 of a charge that was originally filed as a violation of RCW 46.61.522
16 committed while under the influence of intoxicating liquor or any drug;

17 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
18 9A.36.050 or an equivalent local ordinance, if the conviction is the
19 result of a charge that was originally filed as a violation of RCW
20 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
21 46.61.520 or 46.61.522;

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

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

28 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
29 prosecution for a violation of RCW 46.61.5249, or an equivalent local
30 ordinance, if the charge under which the deferred prosecution was
31 granted was originally filed as a violation of RCW 46.61.502 or
32 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
33 46.61.522;

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

1 (b) "Within seven years" means that the arrest for a prior offense
2 occurred within seven years before or after the arrest for the current
3 offense; and

4 (c) "Within ten years" means that the arrest for a prior offense
5 occurred within ten years before or after the arrest for the current
6 offense.

7 **Sec. 3.** RCW 9.94A.533 and 2011 c 293 s 9 are each amended to read
8 as follows:

9 (1) The provisions of this section apply to the standard sentence
10 ranges determined by RCW 9.94A.510 or 9.94A.517.

11 (2) For persons convicted of the anticipatory offenses of criminal
12 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
13 standard sentence range is determined by locating the sentencing grid
14 sentence range defined by the appropriate offender score and the
15 seriousness level of the completed crime, and multiplying the range by
16 seventy-five percent.

17 (3) The following additional times shall be added to the standard
18 sentence range for felony crimes committed after July 23, 1995, if the
19 offender or an accomplice was armed with a firearm as defined in RCW
20 9.41.010 and the offender is being sentenced for one of the crimes
21 listed in this subsection as eligible for any firearm enhancements
22 based on the classification of the completed felony crime. If the
23 offender is being sentenced for more than one offense, the firearm
24 enhancement or enhancements must be added to the total period of
25 confinement for all offenses, regardless of which underlying offense is
26 subject to a firearm enhancement. If the offender or an accomplice was
27 armed with a firearm as defined in RCW 9.41.010 and the offender is
28 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
29 commit one of the crimes listed in this subsection as eligible for any
30 firearm enhancements, the following additional times shall be added to
31 the standard sentence range determined under subsection (2) of this
32 section based on the felony crime of conviction as classified under RCW
33 9A.28.020:

34 (a) Five years for any felony defined under any law as a class A
35 felony or with a statutory maximum sentence of at least twenty years,
36 or both, and not covered under (f) of this subsection;

1 (b) Three years for any felony defined under any law as a class B
2 felony or with a statutory maximum sentence of ten years, or both, and
3 not covered under (f) of this subsection;

4 (c) Eighteen months for any felony defined under any law as a class
5 C felony or with a statutory maximum sentence of five years, or both,
6 and not covered under (f) of this subsection;

7 (d) If the offender is being sentenced for any firearm enhancements
8 under (a), (b), and/or (c) of this subsection and the offender has
9 previously been sentenced for any deadly weapon enhancements after July
10 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
11 (4)(a), (b), and/or (c) of this section, or both, all firearm
12 enhancements under this subsection shall be twice the amount of the
13 enhancement listed;

14 (e) Notwithstanding any other provision of law, all firearm
15 enhancements under this section are mandatory, shall be served in total
16 confinement, and shall run consecutively to all other sentencing
17 provisions, including other firearm or deadly weapon enhancements, for
18 all offenses sentenced under this chapter. However, whether or not a
19 mandatory minimum term has expired, an offender serving a sentence
20 under this subsection may be granted an extraordinary medical placement
21 when authorized under RCW 9.94A.728(3);

22 (f) The firearm enhancements in this section shall apply to all
23 felony crimes except the following: Possession of a machine gun,
24 possessing a stolen firearm, drive-by shooting, theft of a firearm,
25 unlawful possession of a firearm in the first and second degree, and
26 use of a machine gun in a felony;

27 (g) If the standard sentence range under this section exceeds the
28 statutory maximum sentence for the offense, the statutory maximum
29 sentence shall be the presumptive sentence unless the offender is a
30 persistent offender. If the addition of a firearm enhancement
31 increases the sentence so that it would exceed the statutory maximum
32 for the offense, the portion of the sentence representing the
33 enhancement may not be reduced.

34 (4) The following additional times shall be added to the standard
35 sentence range for felony crimes committed after July 23, 1995, if the
36 offender or an accomplice was armed with a deadly weapon other than a
37 firearm as defined in RCW 9.41.010 and the offender is being sentenced
38 for one of the crimes listed in this subsection as eligible for any

1 deadly weapon enhancements based on the classification of the completed
2 felony crime. If the offender is being sentenced for more than one
3 offense, the deadly weapon enhancement or enhancements must be added to
4 the total period of confinement for all offenses, regardless of which
5 underlying offense is subject to a deadly weapon enhancement. If the
6 offender or an accomplice was armed with a deadly weapon other than a
7 firearm as defined in RCW 9.41.010 and the offender is being sentenced
8 for an anticipatory offense under chapter 9A.28 RCW to commit one of
9 the crimes listed in this subsection as eligible for any deadly weapon
10 enhancements, the following additional times shall be added to the
11 standard sentence range determined under subsection (2) of this section
12 based on the felony crime of conviction as classified under RCW
13 9A.28.020:

14 (a) Two years for any felony defined under any law as a class A
15 felony or with a statutory maximum sentence of at least twenty years,
16 or both, and not covered under (f) of this subsection;

17 (b) One year for any felony defined under any law as a class B
18 felony or with a statutory maximum sentence of ten years, or both, and
19 not covered under (f) of this subsection;

20 (c) Six months for any felony defined under any law as a class C
21 felony or with a statutory maximum sentence of five years, or both, and
22 not covered under (f) of this subsection;

23 (d) If the offender is being sentenced under (a), (b), and/or (c)
24 of this subsection for any deadly weapon enhancements and the offender
25 has previously been sentenced for any deadly weapon enhancements after
26 July 23, 1995, under (a), (b), and/or (c) of this subsection or
27 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
28 weapon enhancements under this subsection shall be twice the amount of
29 the enhancement listed;

30 (e) Notwithstanding any other provision of law, all deadly weapon
31 enhancements under this section are mandatory, shall be served in total
32 confinement, and shall run consecutively to all other sentencing
33 provisions, including other firearm or deadly weapon enhancements, for
34 all offenses sentenced under this chapter. However, whether or not a
35 mandatory minimum term has expired, an offender serving a sentence
36 under this subsection may be granted an extraordinary medical placement
37 when authorized under RCW 9.94A.728(3);

1 (f) The deadly weapon enhancements in this section shall apply to
2 all felony crimes except the following: Possession of a machine gun,
3 possessing a stolen firearm, drive-by shooting, theft of a firearm,
4 unlawful possession of a firearm in the first and second degree, and
5 use of a machine gun in a felony;

6 (g) If the standard sentence range under this section exceeds the
7 statutory maximum sentence for the offense, the statutory maximum
8 sentence shall be the presumptive sentence unless the offender is a
9 persistent offender. If the addition of a deadly weapon enhancement
10 increases the sentence so that it would exceed the statutory maximum
11 for the offense, the portion of the sentence representing the
12 enhancement may not be reduced.

13 (5) The following additional times shall be added to the standard
14 sentence range if the offender or an accomplice committed the offense
15 while in a county jail or state correctional facility and the offender
16 is being sentenced for one of the crimes listed in this subsection. If
17 the offender or an accomplice committed one of the crimes listed in
18 this subsection while in a county jail or state correctional facility,
19 and the offender is being sentenced for an anticipatory offense under
20 chapter 9A.28 RCW to commit one of the crimes listed in this
21 subsection, the following additional times shall be added to the
22 standard sentence range determined under subsection (2) of this
23 section:

24 (a) Eighteen months for offenses committed under RCW 69.50.401(2)

25 (a) or (b) or 69.50.410;

26 (b) Fifteen months for offenses committed under RCW 69.50.401(2)

27 (c), (d), or (e);

28 (c) Twelve months for offenses committed under RCW 69.50.4013.

29 For the purposes of this subsection, all of the real property of a
30 state correctional facility or county jail shall be deemed to be part
31 of that facility or county jail.

32 (6) An additional twenty-four months shall be added to the standard
33 sentence range for any ranked offense involving a violation of chapter
34 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
35 9.94A.827. All enhancements under this subsection shall run
36 consecutively to all other sentencing provisions, for all offenses
37 sentenced under this chapter.

1 (7) An additional two years shall be added to the standard sentence
2 range for vehicular homicide committed while under the influence of
3 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
4 prior offense as defined in RCW 46.61.5055. All enhancements under
5 this subsection shall be mandatory, shall be served in total
6 confinement, and shall run consecutively to all other sentencing
7 provisions.

8 (8)(a) The following additional times shall be added to the
9 standard sentence range for felony crimes committed on or after July 1,
10 2006, if the offense was committed with sexual motivation, as that term
11 is defined in RCW 9.94A.030. If the offender is being sentenced for
12 more than one offense, the sexual motivation enhancement must be added
13 to the total period of total confinement for all offenses, regardless
14 of which underlying offense is subject to a sexual motivation
15 enhancement. If the offender committed the offense with sexual
16 motivation and the offender is being sentenced for an anticipatory
17 offense under chapter 9A.28 RCW, the following additional times shall
18 be added to the standard sentence range determined under subsection (2)
19 of this section based on the felony crime of conviction as classified
20 under RCW 9A.28.020:

21 (i) Two years for any felony defined under the law as a class A
22 felony or with a statutory maximum sentence of at least twenty years,
23 or both;

24 (ii) Eighteen months for any felony defined under any law as a
25 class B felony or with a statutory maximum sentence of ten years, or
26 both;

27 (iii) One year for any felony defined under any law as a class C
28 felony or with a statutory maximum sentence of five years, or both;

29 (iv) If the offender is being sentenced for any sexual motivation
30 enhancements under (i), (ii), and/or (iii) of this subsection and the
31 offender has previously been sentenced for any sexual motivation
32 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
33 this subsection, all sexual motivation enhancements under this
34 subsection shall be twice the amount of the enhancement listed;

35 (b) Notwithstanding any other provision of law, all sexual
36 motivation enhancements under this subsection are mandatory, shall be
37 served in total confinement, and shall run consecutively to all other
38 sentencing provisions, including other sexual motivation enhancements,

1 for all offenses sentenced under this chapter. However, whether or not
2 a mandatory minimum term has expired, an offender serving a sentence
3 under this subsection may be granted an extraordinary medical placement
4 when authorized under RCW 9.94A.728(3);

5 (c) The sexual motivation enhancements in this subsection apply to
6 all felony crimes;

7 (d) If the standard sentence range under this subsection exceeds
8 the statutory maximum sentence for the offense, the statutory maximum
9 sentence shall be the presumptive sentence unless the offender is a
10 persistent offender. If the addition of a sexual motivation
11 enhancement increases the sentence so that it would exceed the
12 statutory maximum for the offense, the portion of the sentence
13 representing the enhancement may not be reduced;

14 (e) The portion of the total confinement sentence which the
15 offender must serve under this subsection shall be calculated before
16 any earned early release time is credited to the offender;

17 (f) Nothing in this subsection prevents a sentencing court from
18 imposing a sentence outside the standard sentence range pursuant to RCW
19 9.94A.535.

20 (9) An additional one-year enhancement shall be added to the
21 standard sentence range for the felony crimes of RCW 9A.44.073,
22 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
23 or after July 22, 2007, if the offender engaged, agreed, or offered to
24 engage the victim in the sexual conduct in return for a fee. If the
25 offender is being sentenced for more than one offense, the one-year
26 enhancement must be added to the total period of total confinement for
27 all offenses, regardless of which underlying offense is subject to the
28 enhancement. If the offender is being sentenced for an anticipatory
29 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
30 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
31 solicited another, or conspired to engage, agree, or offer to engage
32 the victim in the sexual conduct in return for a fee, an additional
33 one-year enhancement shall be added to the standard sentence range
34 determined under subsection (2) of this section. For purposes of this
35 subsection, "sexual conduct" means sexual intercourse or sexual
36 contact, both as defined in chapter 9A.44 RCW.

37 (10)(a) For a person age eighteen or older convicted of any
38 criminal street gang-related felony offense for which the person

1 compensated, threatened, or solicited a minor in order to involve the
2 minor in the commission of the felony offense, the standard sentence
3 range is determined by locating the sentencing grid sentence range
4 defined by the appropriate offender score and the seriousness level of
5 the completed crime, and multiplying the range by one hundred twenty-
6 five percent. If the standard sentence range under this subsection
7 exceeds the statutory maximum sentence for the offense, the statutory
8 maximum sentence is the presumptive sentence unless the offender is a
9 persistent offender.

10 (b) This subsection does not apply to any criminal street gang-
11 related felony offense for which involving a minor in the commission of
12 the felony offense is an element of the offense.

13 (c) The increased penalty specified in (a) of this subsection is
14 unavailable in the event that the prosecution gives notice that it will
15 seek an exceptional sentence based on an aggravating factor under RCW
16 9.94A.535.

17 (11) An additional twelve months and one day shall be added to the
18 standard sentence range for a conviction of attempting to elude a
19 police vehicle as defined by RCW 46.61.024, if the conviction included
20 a finding by special allegation of endangering one or more persons
21 under RCW 9.94A.834.

22 (12) An additional twelve months shall be added to the standard
23 sentence range for an offense that is also a violation of RCW
24 9.94A.831.

25 (13) An additional twelve months shall be added to the standard
26 sentence range for vehicular homicide committed while under the
27 influence of intoxicating liquor or any drug as defined by RCW
28 46.61.520 or for vehicular assault committed while under the influence
29 of intoxicating liquor or any drug as defined by RCW 46.61.522, or for
30 any felony driving under the influence (RCW 46.61.502(6)) or felony
31 physical control under the influence (RCW 46.61.504(6)) for each child
32 passenger under the age of sixteen who is an occupant in the
33 defendant's vehicle. These enhancements shall be mandatory, shall be
34 served in total confinement, and shall run consecutively to all other
35 sentencing provisions. If the addition of a minor child enhancement
36 increases the sentence so that it would exceed the statutory maximum

1 for the offense, the portion of the sentence representing the
2 enhancement may not be reduced.

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