NO. 31595-9-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

ENRIQUE HERNANDEZ,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR YAKIMA COUNTY

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT

When calculating Enrique Hernandez's offender score for a felony driving while under the influence offense, the trial court declined to follow the plain language of the statute and this Court's decision in *State v. Morales*, 168 Wn. App. 489, 278 P.3d 668 (2012). The matter should be remanded for resentencing.

Resentencing is also required because the trial court exceeded its statutory authority by imposing a combined term of incarceration and community custody that exceeds the statutory maximum.

B. ASSIGNMENTS OF ERROR

1. The offender score was not properly calculated.

2. The trial court exceeded its statutory authority in imposing its sentence.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was the offender score miscalculated pursuant to RCW 9.94A.525(2)(e) and (11) and under the body of case law from this Court where qualifying prior offenses support an offender score of five on the DUI count, but the court calculated his offender score as nine plus?

2. The Sentencing Reform Act (SRA) is the sole source of a trial court's sentencing authority for felony offenses. Under RCW 9.94A.701(9) the trial court must reduce the term of community custody where the combined term of community custody and confinement exceed the statutory maximum for an offense. Where the trial court imposed a 57-month sentence for a Class C felony with a 60-month statutory maximum sentence, but also imposed a 12-month term of community custody, must this Court order the trial court to correct the erroneous sentence?

3. As stated, the combined term of community custody and confinement cannot exceed the statutory maximum. The SRA does not contain an exception to this rule for the period for which an ignition interlock device is required. Did the court exceed its authority by imposing a 10-year requirement that Mr. Hernandez drive only with an ignition interlock device?

D. STATEMENT OF THE CASE

Enrique Hernandez was charged with driving under the influence of alcohol or intoxicants (DUI), which was elevated to a felony offense based on Mr. Hernandez's prior felony DUI offense. CP 4. He was also charged with assault in the third degree, for assaulting a

law enforcement officer during investigation of the DUI, and three other charges. CP 4-5.

Prior to trial, Mr. Hernandez asked the court for a declaration of his offender score. CP 6-43. Under RCW 9.94A.525(2)(e) and (11) and *State v. Morales*, 168 Wn. App. 489, 278 P.3d 668 (2012), Mr. Hernandez argued only prior offenses enumerated in RCW 9.94A.525(e) count towards his offender score for the DUI count. He calculated his offender score as a five. CP 8-9. The State opposed the calculation, arguing Mr. Hernandez's offender score on the DUI count was a nine plus—he maxed out. CP 44-50. After a hearing before Judge Susan Hahn, the court determined Mr. Hernandez's offender score on the DUI count was a nine. 3/9/13 RP 21-23.[1]

Mr. Hernandez pled guilty to the DUI and assault charges in exchange for the State dismissing the remaining counts. CP 57-65. He explicitly preserved for appeal the calculation of his offender score. CP 59, 64, 72; 4/12/13 RP 5-8. He was sentenced with an offender score

[1] The separately-paginated volumes of the verbatim report of proceedings are referred to by the date of the hearing transcribed, e.g. "3/9/13 RP."

of nine plus on the DUI count and eight on the assault in the third degree. CP 67; *see* 4/12/13 RP 14.[2] He appeals. CP 75.

E. ARGUMENT

1. The sentence should be remanded because the court miscalculated the offender score.

a. RCW 9.94A.525 dictates the sentencing court's authority in calculating the offender score.

This Court reviews the trial court's calculation of the offender score de novo. *State v. Mutch*, 171 Wn.2d 646, 653, 254 P.3d 803 (2011). The meaning of the Sentencing Reform Act statute is also a question of law reviewed de novo. *State v. Morales*, 168 Wn. App. 489, 492 & n.7, 278 P.3d 668 (2012). Mr. Hernandez objected to the calculation of his offender score, and preserved the issue for appeal when entering his plea. CP 59, 64, 72; 4/12/13 RP 5-8.

In Washington, a sentencing court's calculation of a standard sentence range is determined by the "seriousness" level of the present offense, as well as the court's calculation of the "offender score." RCW 9.94A.530(1). The offender score is determined by the defendant's criminal history, which starts with a list of his prior

[2] A copy of the judgment and sentence is attached as Appendix A for the Court's convenience; it lists Mr. Hernandez's criminal history at CP 67.

convictions. *See* RCW 9.94A.030(11); RCW 9.94A.525 (2011).[3] Which prior convictions are included depends upon the washout provisions of RCW 9.94A.525(2) and the specific provisions in RCW 9.94A.525(3) through (22) that dictate how to calculate (or count) the score from those included prior convictions. RCW 9.94A.525; *State v. Moeurn*, 170 Wn.2d 169, 175, 240 P.3d 1158 (2010); *see Morales*, 168 Wn. App. at 492. When a person is sentenced for more than one current offense, the sentence range for each current offense is determined by using all other current convictions as if they were prior convictions for the purpose of the offender score, unless the court finds they encompass the same criminal conduct. RCW 9.94A.525(1), RCW 9.94A.589(1)(a).

b. The court miscalculated the offender score for the DUI count.

The washout provisions of RCW 9.94A.525(2)(e) along with the counting provisions of RCW 9.94A.525(11) govern which prior offenses should be included in Mr. Hernandez's offender score for the DUI count. As stated previously, RCW 9.94A.525(2) sets forth the

[3] Amendments to this statute, which became effective on September 18, 2013, were not in effect at the time of Mr. Hernandez's offense in November 2012. *See* Laws of 2013, 2d Spec. Sess., ch. 35. Throughout, this brief relies on the 2011 version of RCW 9.94A.525, a copy of which is attached as Appendix B.

rules for which prior offenses are included and which washout. The subsections of RCW 9.94A.525(2) apply to different crimes or classes of crimes. For example, class A and prior felony sex convictions are governed by RCW 9.94A.525(2)(a), which states that all such prior convictions are included in the offender score. Subsections (c) through (e) apply to class C felonies and serious traffic offenses. The range of prior offenses that could be included in Mr. Hernandez's offender score are limited to class C felonies and serious traffic offenses. *See* CP 58 (guilty plea statement); CP 67 (judgment and sentence).

i. The statute, legislative history, case law and principles of statutory interpretation dictate that the provisions of RCW 9.94A.525(2)(e) in conjunction with RCW 9.94A.525(11) determine which prior offenses count in Mr. Hernandez's offender score for the DUI count.

Subsection (2)(e) is a specific provision directed at which offenses are to be included when sentencing an individual for felony DUI. RCW 9.94A.525(2)(e); *Morales*, 168 Wn. App. at 499, 500. A reading of subsection (2) makes clear that subsection (2)(e) is the only provision relevant to determining which prior offenses are included on a DUI sentence. Subsection (2) states in relevant part:

(2) . . .

> (c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.
>
> (d) Except as provided in (e) of this subsection, serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction.
>
> (e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions of felony driving while under the influence of intoxicating liquor or any drug, felony physical control of a vehicle while under the influence of intoxicating liquor or any drug, and serious traffic offenses shall be included in the offender score if: (i) The prior convictions were committed within five years since the last date of release from confinement (including full-time residential treatment) or entry of judgment and sentence; or (ii) the prior convictions would be considered "prior offenses within ten years" as defined in RCW 46.61.5055.

The provisions relating to class C felonies and serious traffic offenses, subsections (c) and (d), state at the outset that they apply "except" in

those cases which subsection (e) applies. RCW 9.94A.525(2)(c), (d). Subsection (2)(e) applies to the case at bar, a felony DUI conviction. RCW 9.94A.525(2)(e).

This reading of the statute is confirmed by this Court's case law. In *Morales*, Division One held that the washout provisions of subsection (2)(d) are not applicable to a DUI sentence derived under (2)(e). 168 Wn. App. at 499-500. "Because scoring for this case is controlled by subsection (2)(e), subsection (2)(d) is not relevant to scoring for the current crime." *Id.* Thus, where subsection (2)(e) applies, in other words in sentences for DUI convictions, subsections (2)(c) and (d) are not relevant. Division Two of this Court recently adopted this holding in *State v. Jacob*, No. 42914-4-II, __ Wn. App. __, 2013 WL 4520879, *3-4 (Aug. 27, 2013).

This reading of the statute also comports with the legislative intent for felony DUI sentencing. The legislature sought to elevate misdemeanor DUI offenses to a felony offense where the individual had previously been convicted of driving under the influence of alcohol or other intoxicants. *See* RCW 46.61.5055(4); Senate Bill Report on H.B. 3317, at 3, 59th Leg., Reg. Sess. (Wash. 2006) (summary of testimony in favor of bill indicates, "This legislation is directed at the

chronic drunk driver" and "deter[ing] a habitual drunk driver.").[4] The legislature sought to elevate punishment for repeat offenders within the same class of offense—driving under the influence. Senate Bill Report, at 3. It was not concerned with unrelated class C felony offenses such as theft, burglary, assault or harassment. *See* RCW 46.61.5055; Final Bill Report on H.B. 3317, at 2, 59th Leg., Reg. Sess. (Wash. 2006) (reporting that DUI offender with four prior misdemeanor DUIs would receive presumptive sentence range of 22-29 months, or an offender score of 4 as per RCW 9.94A.510, thus not including unrelated felonies);[5] House Bill Report on H.B. 3317, at 3, 59th Leg., Reg. Sess. (Wash. 2006) (same);[6] Senate Bill Report, at 2-3 (same; also reporting only "prior offenses" under DUI laws are counted and washout periods are clarified as applied to DUIs); *see also* RCW 9.94A.010 (3) (sentences are to "[b]e commensurate with the punishment imposed on others committing similar offenses").

If there is any ambiguity as to whether RCW 9.94A.525(2)(c) and (d) should apply to sentences for DUI convictions, the rule of lenity requires this Court to resolve that ambiguity in favor of the defendant.

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[4] A copy of the Senate Bill Report is attached as Appendix C.
[5] A copy of the Final Bill Report is attached as Appendix D.
[6] A copy of the House Bill Report is attached as Appendix E.

State v. Mandanas, 168 Wn.2d 84, 88, 228 P.3d 13 (2010) ("The rule of lenity requires us to interpret an ambiguous criminal statute in favor of the defendant absent legislative intent to the contrary.").

For all of the above reasons, only those prior convictions that are included under RCW 9.94A.525(2)(e) count towards Mr. Hernandez's offender score for the DUI count. According to Mr. Hernandez's prior offense history, only the felony DUI convictions, misdemeanor DUI convictions (as serious traffic offenses), and felony physical control convictions are eligible to be included in the offender score. CP 58, 67; RCW 9.94A.525(2)(e); RCW 9.94A.030(44) (defining serious traffic offense). Thus, the court improperly included convictions for possession of stolen property, attempt to elude, malicious mischief, forgery and robbery. *See* CP 67. The court also improperly included Mr. Hernandez's other current offense for assault in the third degree because other current offenses must be treated the same as a prior conviction for purposes of calculating the offender score. RCW 9.94A.525(1); RCW 9.94A.589; CP 67; 3/9/13 RP 4-5, 21-23; *State v. Graciano*, 176 Wn.2d 531, 536, 295 P.3d 219 (2013). Prior to applying the washout provisions of RCW 9.94A.525(2)(e), discussed below, Mr. Hernandez's maximum offenders score is six

(one point each for felony DUI (2009), felony physical control (2003 and 2006), and DUI (2001 and 2007); plus one point for being on community supervision at the time of the instant offense). CP 9, 58, 67; 3/9/13 RP 3-4. But, as set forth below, the 2001 conviction for DUI washes out because it was not committed within 10 years of the instant charge.

ii. The trial court miscalculated which prior offenses washout under RCW 9.94A.525(2)(e).

Subsection (2)(e) provides that where the current conviction is for DUI, certain "prior convictions of felony driving while under the influence of intoxicating liquor or any drug, felony physical control of a vehicle while under the influence of intoxicating liquor or any drug, and serious traffic offenses shall be included in the offender score." RCW 9.94A.525(2)(e); *see* RCW 9.94A.030(44) (defining "serious traffic offense"). Such prior convictions may only be included in the offender score if "(i) the prior convictions were committed within five years since the last date of release from confinement (including full-time residential treatment) or entry of judgment and sentence; or (ii) the prior convictions would be considered 'prior offenses within ten years' as defined in RCW 46.61.5055." RCW 9.94A.525(2)(e).

In *State v. Draxinger*, Division Two held that the offender score should be calculated using either (2)(e)(i) or (2)(e)(ii). 148 Wn. App. 533, 537, 200 P.3d 251 (2008), *review denied,* 166 Wn.2d 1013, 210 P.3d 1018 (2009). Subsection (ii) applies only if the defendant has committed qualifying DUI-related offenses within 10 years. *Id.* A felony DUI charge is a qualifying prior offense that elevates DUI to a felony crime. Subsection (i) only applies when (ii) does not—that is, when the defendant has fewer than four prior offenses or no felony DUI within 10 years as defined in RCW 46.61.5055. *Id.* at 537-38.

Here, Mr. Hernandez was arrested on November 18, 2012 for the instant DUI charge. CP 1-4; RCW 46.61.5055(14)(c).[7] Because Mr. Hernandez meets the criteria of RCW 9.94A.525(e)(ii), subsection (e)(i) is inapplicable. Thus, any qualifying offenses (those set forth in subsection E.1.b.i, *supra*) that occurred prior to November 18, 2002, washout. Mr. Hernandez's 2001 DUI charge cannot be included in his offender score.

As a result, instead of an offender score of nine plus, Mr. Hernandez's offender score as proved by the State is at most a five (felony DUI, 2007 DUI, 2005 physical control, 2002 physical control

[7] A copy of RCW 46.61.5055 is included herein as Appendix F.

and one point community supervision). *See* CP 58, 67. With an offender score of five, the presumptive sentence range is 33 to 43 months. RCW 9.94A.510 (sentencing grid); RCW 9.94A.515 (seriousness level of V for DUI).

Even if the Court determines subsection (2)(e)(i) applies here, the trial court over-counted Mr. Hernandez's prior offenses. Under subsection (e)(i) only those prior "serious traffic offenses" under RCW 9.94A.030(44) that "were committed within five years since the last date of release from confinement (including full-time residential treatment) or entry of judgment and sentence" shall be included. RCW 9.94A.525(2)(e); *Jacob*, 2013 WL 4520879, at *4. The *Morales* and *Jacob* courts disagreed as to how this provision should be interpreted. Under *Jacob*'s reading, Mr. Hernandez's offender score would remain a five.

In *Jacob*, the Court held that the legislature's use of the word "since" should be interpreted by its plain meaning to washout any specified prior offenses that occurred more than five years *after* another prior conviction or release from confinement on any crime. *Jacob*, 2013 WL 4520879, at *5. Because this reading of subsection (2)(e)(i) adheres most closely to the language of the statute, this Court should

find the same. The DUI conviction from 2001 would not be included because it was committed more than five years "since" his most recent prior conviction, a 1994 juvenile robbery offense. *Jacob*, 2013 WL 4520879, at *5-6. Mr. Hernandez's offender score accordingly remains a five, yielding a presumptive sentence range of 33 to 43 months. RCW 9.94A.510 (sentencing grid); RCW 9.94A.515 (seriousness level of V for DUI).

On the other hand, the *Morales* Court held that the five year period applied both before and after the offense under consideration. The court reasoned, subsection (e)(i) contains different language from the other washout provisions of subsection (2). 168 Wn. App. at 499. The Legislature's use of different words in the same statute requires the presumption "that a different meaning was intended to attach to each word." *Id.* (quoting *Simpson Inv. Co. c. Dep't of Revenue*, 141 Wn.2d 139, 160, 3 P.3d 741 (2000) (internal quotation omitted)). Thus, unlike subsection (2)(d)'s washout provisions, subsection (2)(e)(i)'s provisions do not mandate the counting of all convictions unless Mr. Hernandez remained "crime free" for a five year period. *Id.* at 499-500. Moreover, the differing language also compels that the prior serious traffic offenses be measured against a single "last date of

release from confinement . . . or judgment and sentence." *See id.* at 498-99. Such a reading is also in harmony with subsection (2)(e)(ii) which fixes the arrest date for the current offense as the single date upon which the ten year prior offense bar is measured. RCW 9.94A.525(2)(e)(ii); *Morales*, 168 Wn. App. at 497 (rejecting reading of statute which "sets up a conflict between subsections (2)(e)(i) and subsection (2)(e)(ii)" because the Court "will not read a conflict into a statute where there is none").

Under this reading, there is no five-year gap between any of Mr. Hernandez's serious traffic offenses, felony DUIs and felony physical control convictions. Accordingly, if the *Morales* court's reading of subsection (2)(e)(i) applies, Mr. Hernandez's offender score would be six (one point each for 2009 felony DUI, 2007 DUI, 2005 physical control, 2002 physical control, 2001 DUI and one point for community supervision). Under this reading, his standard sentence range would be 41 to 54 months. RCW 9.94A.510 (sentencing grid); RCW 9.94A.515 (seriousness level of V for DUI).[8]

[8] The *Jacob* court disagreed with a second aspect of *Morales* and held that the washout provision of subsection (2)(e)(i) looks to *any* crime, not just "the" crimes set forth in subsection (2)(e)—serious traffic offenses, DUIs, etc. *Jacob*, 2013 WL 4520879, at *5-6. Although it would have no effect on his offender score in this case, Mr. Hernandez respectfully disagrees with this aspect

c. The remedy is resentencing .

The remedy for a miscalculated offender score is to remand for resentencing. *State v. Wilson*, 170 Wn.2d 682, 691, 244 P.3d 950 (2010). The court's errors in miscalculating the offender score decrease the presumptive range sentence significantly. The sentence should be remanded.

2. The sentence should be remanded because the term of confinement plus the term of community custody exceed the statutory maximum for assault in the third degree.

A sentencing court only possesses the power to impose sentences provided by law." *In re Pers. Restraint of Carle*, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980). The statutory maximum for an offense sets the ceiling of punishment that may be imposed. RCW 9A.20.021; *In re Pers. Restraint of Brooks*, 166 Wn.2d 664, 668, 211 P.3d 1023 (2009). This Court reviews de novo whether a sentence is legally erroneous. *Brooks*, 166 Wn.2d at 667.

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of *Jacob*. As this Court held in *Morales*, the "classes of prior convictions that qualify for scoring are set forth in the first part" of subsection (2)(e). 168 Wn. App. at 495-96; *see id.* at 493 ("the prior convictions" that shall be included in the calculation of the offender score are limited to those set forth in the preliminary statement of (2)(e)). *Morales* provided additional compelling reasons for so interpreting subsection (2)(e)(i) at 168 Wn. App. 498-99.

The controlling statutes instruct the trial court that a term of community custody may not exceed the statutory maximum when combined with the prison term imposed. RCW 9A.20.021; RCW 9.94A.701 (9). RCW 9.94A.701(9) provides:

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

In *State v. Boyd*, our Supreme Court held that RCW 9.94A.701(9) requires the sentencing court to impose an aggregate term of confinement and community custody within the statutory maximum. 174 Wn.2d 470, 472-73, 275 P.3d 321 (2012). The defendant in *Boyd* was sentenced after the 2009 amendments to the Sentencing Reform Act went into effect. *Id.* at 472-73. His sentence exceeded the 60-month statutory maximum by imposing a 54-month term of confinement and 12-month term of community custody. *Id.* at 472. The sentence included a "*Brooks* notation," which stated "that the total term of confinement and community custody actually served could not exceed the 60-month statutory maximum. *Id.* The Court reasoned that the "'*Brooks* notation' procedure no longer complies with [amended] statutory requirements." *Id.* Because Mr. Boyd was sentenced after

RCW 9.94A.701(9) became effective, "the trial court, not the Department of Corrections, was required to reduce Boyd's term of community custody to avoid a sentence in excess of the statutory maximum." *Id.* at 473. Accordingly, the Court "remand[ed] to the trial court to either amend the community custody term or resentence Boyd . . . consistent with RCW 9.94A.701(9)." *Id.*; *accord State v. Land*, 172 Wn. App. 593, 603, 295 P.3d 782 (2013) (applying *Boyd* to reach same result).

The same result is compelled here. Mr. Hernandez was sentenced in April 2013 on the Class C felony of assault in the third degree. CP 67; RCW 9A.36.031. The statutory maximum for this offense is 60 months. RCW 9A.20.021(1)(c); RCW 9.94A.030(49); *accord* CP 67. He was sentenced to 57 months confinement. CP 68. However, the court also imposed a 12-month term of community custody. CP 69. Because the total of the terms of confinement and community custody exceed the 60-month statutory maximum, his sentence violates RCW 9.94A.701(9) and *Boyd*. Like in *Boyd*, the sentence should be remanded to the trial court to strike the term of community custody or amend Mr. Hernandez's sentence to comply with RCW 9.94A.701(9).

3. The sentence should be remanded because the ten-year ignition interlock device requirement exceeds the statutory maximum.

As discussed, generally a term of confinement plus community custody cannot exceed the statutory maximum for an offense. *See* Section E.2, *supra*; RCW 9.94A.505(5). The legislature has provided a limited exception to this requirement for restitution. RCW 9.94A.505(5) (carving out exceptions only for RCW 9.94A.750(4); RCW 9.94A.753(4)). For purposes of restitution, the legislature specifically extended the criminal court's supervisory power to ten years, with provisions for extending supervision in ten-year increments. RCW 9.94A.750; RCW 9.94A.753.

The SRA provides no such exception to the statutory maximum for ignition interlock devices. *See* RCW 9.94A.505(5); *cf.* RCW 76.20.720(1) (limiting length of interlock ignition requirement to length of court's jurisdiction). In the same section of the SRA, the statute provides that the ignition interlock device requirements from chapter 46.20 RCW shall apply to felony DUI offenders sentenced under the SRA. RCW 9.94A505(2). Again, however, the legislature authorized no exception to the statutory maximum for ignition interlock devices. *See* RCW 9.94A.505(2); RCW 9.94A.603(2) Accordingly, the plain

interpretation of these provisions is that the ignition interlock requirements shall be applied to felony DUI sentences up until the limit of the statutory maximum. If the legislature had intended to permit courts to exceed the statutory maximum for this condition of community custody, it would have set forth an explicit exception as it did for restitution. *State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005) (when the legislature uses different words in related statutory provisions, it intends different meanings by each word choice); *see State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (courts may not add words to an unambiguous statute when the legislature has chosen not to include that language); *State v. Wright*, 84 Wn.2d 645, 652, 529 P.2d 453 (1974) (where doubt arises between application of the general rule and application of an exception, interpretation favors application of the general statutory provision).

Here, the court imposed a 60-month term of incarceration for the DUI count. CP 68. The term of confinement fulfilled the statutory maximum sentence for the offense. RCW 46.61.502(6); RCW 9A.20.021. Accordingly no community custody could be imposed. RCW 9.94A.505(5); RCW 9.94A.701(9); *Boyd*, 174 Wn.2d at 473. Nonetheless, the court imposed a ten-year ignition interlock

requirement. CP 69. The requirement exceeds the court's authority because it renders the aggregated sentence well in excess of the statutory maximum. Moreover, because community custody was ordered only on the assault count, the imposition of an ignition interlock requirement also exceeds the court's authority because the SRA only authorizes those requirements be imposed on felony alcohol offenses. RCW 9.94A.603.

Thus, this Court should remand with instructions to strike the ignition interlock device requirement. The Court should reach this ground regardless of the outcome of Mr. Hernandez's other arguments because the trial court's authority to impose an ignition interlock requirement in excess of the statutory maximum will arise on resentencing. *E.g.*, *State v. Brightman*, 155 Wn.2d 506, 518, 122 P.3d 150 (2005) (considering issue likely to recur on remand); *State v. Pierce*, 169 Wn. App. 533, 538, 280 P.3d 1158 (2012) (same); *State v. King*, 75 Wn. App. 899, 904, 878 P.2d 466 (1994) (same).

F. CONCLUSION

Because the trial court miscalculated Mr. Hernandez's offender score and imposed a combined term of incarceration and community

custody that exceeded the statutory maximum, this Court should remand for resentencing.

DATED this 3rd day of October, 2013.

Respectfully submitted,

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Washington Appellate Project
Attorney for Appellant

APPENDIX A

RECEIVED

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KIM EATON
EX OFFICIO CLERK OF
SUPERIOR COURT
YAKIMA [illegible]

SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

STATE OF WASHINGTON Plaintiff, vs. **ENRIQUE HERNANDEZ** Defendant. SID NO.: WA17038647 Motor Vehicle Involved: Yes D.L.#: HERNAE*216BK; DOC: 783642; DOB:1/12/1979; SEX: Male; RACE: Hispanic	**NO. 12-1-01769-2** **FELONY JUDGMENT AND SENTENCE (FJS)** ☒ **Prison** ☒ **Community Custody Ordered** ☒ **Clerk's Action Required: 4.D.8 (Payroll Deduction); 5.2 (NLVR); 5.5 (NTIPF); 2.2 MV Special Finding/License Revocation** ☒ **Clerk's Action Required: Dismissal of Counts 2, 3, and 5 (ORDSM)**

I. HEARING

1.1 Hearing: A sentencing hearing was held April 3, 2013. Present were the defendant, ALEX S. NEWHOUSE, attorney for the defendant, and ALVIN L. GUZMAN JR., Deputy Prosecuting Attorney.

1.2 Allocution: The defendant was given the right of allocution and asked if any legal cause existed why judgment should not be entered. There being no reason why judgment should not be pronounced, the Court makes the following findings and judgment.

1.3 Dismissal: The State moves for dismissal of Counts 2, 3, and 5 of this action for the reason that the defendant has entered a plea of guilty or is being sentenced on Counts 1 and 4 and prosecution of the indicated Counts 2, 3, and 5 is not necessary or desired.

II. FINDINGS

Based on testimony heard, statements by the defendant and/or victims, argument of counsel, any pre-sentence report, and case record to date, the court finds:

2.1 Current Offense(s): On April 3, 2013, the defendant was found guilty by a plea to:

Count 1 **FELONY DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR AND/OR DRUGS**
RCW 46.61.502(6)
Date of Crime: November 18, 2012
Law Enforcement Incident No.: WSP #12-016993

ORIGINAL

JAMES P. HAGARTY
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Count 4 **THIRD DEGREE ASSAULT**
RCW 9A.36.031(1)(g)
Date of Crime: November 18, 2012
Law Enforcement Incident No.: WSP #12-016993

2.2 Special Findings: The Court makes the following special findings, based either upon a special verdict or upon the Court's own review of the evidence pursuant to a plea of guilty:

☒ Counts 1 and 4 do not encompass the same criminal conduct and **do not count as one crime** in determining offender score, pursuant to RCW 9.94A.589.
☒ The crime in Count 1 is a felony in the commission of which a **motor vehicle** was used or a Driving While Under the Influence of Intoxicating Liquor and/or Drugs. The clerk of the Court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
☒ The defendant's breath/blood test result was .23.

2.3 Criminal History: Prior criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	Adult or Juvenile	Type of Crime*
Felony DUI 09-1-00421-3	10/13/2009	Yakima, WA	02/22/2009	Adult	NV
Poss Stolen Property 2 06-1-00693-9	11/21/2006	Yakima, WA	04/18/2006	Adult	NV
Attempt to Elude 03-1-01696-4	10/06/2003	Yakima, WA	08/12/2003*	Adult	NV
Malicious Mischief 2 03-1-01696-4	10/06/2003	Yakima, WA	08/12/2003*	Adult	NV
Forgery 98-1-00609-4	07/15/1998	Yakima, WA	02/19/1998	Adult	NV
DUI CA46681	11/15/2007	Yakima, WA	10/09/2007	Adult	GM
Physical Control C14286	10/14/2006	Toppenish Muni, WA	03/06/2005	Adult	GM
Physical Control 384737	07/09/2003	Yakima District, WA	08/04/2002	Adult	GM
DUI E65122	04/04/2001	Yakima Muni, WA	03/03/2001	Adult	GM
Second Degree Robbery 94-8-01515-1	12/08/1994	Yakima, WA	09/23/1994	Juvi.	V

☒ The Court finds the above-listed concurrent prior convictions (indicated by *) are not the same criminal conduct under RCW9.94A.525(5)(a)(i), and shall count separately.

2.4 Other Current Convictions under other cause number(s) used to determine offender score:

Crime	Cause Number	Court (County and State)
None		

2.5 Sentencing Data: The following is the defendant's standard range for each crime pursuant to RCW 9.94A.510:

Count	Offender Score	Seriousness Level	Standard Range	Enhance-ments*	Enhanced Range	Maximum Term
1	9+	V	60 mos.			5 years
4	8	III	43-57 mos.			5 years

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☒ The defendant committed a current offense while on community placement, community custody, or community supervision, which added one point to the defendant's offender score. RCW 9.94A.525(19).

2.6 Exceptional Sentence: Substantial and compelling reasons do not exist which justify an exceptional sentence.

2.7 Financial Ability: The Court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant is an adult and is not disabled and therefore has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

III. JUDGMENT

3.1 Guilty: IT IS ADJUDGED that the defendant is guilty of the counts and charges listed in paragraph 2.1.

3.2 Dismissal of Counts: For the reasons given above, Counts 2, 3, and 5 are dismissed with prejudice.

IV. SENTENCE AND ORDER

IT IS ORDERED that the defendant serve the sentence and abide by the conditions set forth below.

A. CONFINEMENT

4.A.1 Confinement: The defendant is sentenced to the following term of confinement:

60 Months on Count 1
57 Months on Count 4 mec

☒ **Credit for Time Served in the Yakima County Jail**: The defendant shall be given credit for TBD days served **on this charge only.** The defendant shall be given credit for good behavior as administered and computed by the Yakima County Department of Corrections.
☐ **Credit for Time in Other Jail:** The defendant shall receive _____ days credit for time served on this case ☐ in jail or prison _____; ☐ in transport from _____; ☐ in other _____

4.A.2 Concurrent or Consecutive:
☒ **Concurrent:** The confinement time of Counts 1 and 4 are concurrent for a total term of 60 months.
☒ **Consecutive With Other Sentences:** Unless otherwise specified here, this sentence shall be consecutive with prior sentences.

4.A.3 Means of Confinement: The defendant shall serve this sentence as follows:
☒ **Total Confinement**: The defendant shall serve the balance of confinement in a prison operated by the Washington State Department of Corrections because the term of confinement is over one year.

4.A.4 Time of Confinement: If not already in custody, the defendant shall report to the above facility ☐ immediately ☐ on or before _____ by _____ a.m./p.m. to begin serving this sentence.

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B. SUPERVISION BY THE DEPARTMENT OF CORRECTIONS

4.B.1 Community Custody: The defendant shall serve community custody for a period of 12 months on Count 4, pursuant to RCW 9.94A.701 to commence upon the date of this order and shall comply with the conditions and crime related prohibitions as set forth below. During the time the defendant is in total or partial confinement pursuant to this sentence or a violation of the sentence, the period of community custody shall toll. The defendant shall report, in person, within 24 hours of this order or release from incarceration, whichever is later, to the Washington State Department of Corrections, 210 North Second Street, Yakima, Washington.

☐ **4.B.2 No Community Custody or Probation:** If checked and initialed by the Court, the defendant shall not be subject to community custody or probation.

C. SENTENCE CONDITIONS

4.C.1 DNA Testing: The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. If you are out of custody at the time of sentencing, you will immediately report to the front desk of the Yakima County Jail for the taking of a DNA sample. RCW 43.43.754.

4.C.2 Conditions of Community Custody or Probation: While the defendant is on community custody, community placement, or probation, the defendant shall comply with each of the conditions below.

☒ Report to and be available for contact with the assigned community corrections officer as directed.
☒ Cooperate fully with the supervising Community Corrections Officer.
☒ Perform such affirmative acts necessary for the Department of Corrections to monitor compliance with the court's orders.
☒ Work at Department of Corrections-approved education, employment and/or community service.
☒ Do not unlawfully possess or consume any controlled substances except pursuant to a lawfully issued prescription.
☒ Pay supervision fees as determined by the Department of Corrections.
☒ Residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community custody.
☒ Allow home visits by the Department of Corrections to monitor compliance with supervision. Home visits must include access for the purposes of visual inspection of all areas of the residence in which the defendant lives or has exclusive or joint control or access.
☒ Not own, use, or possess, including constructively, any firearm or ammunition.
☒ Maintain law-abiding behavior and commit no new crimes.
☒ If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify the Department of Corrections, and the defendant's treatment information must be shared with the Department of Corrections for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.
☐ Obey all no contact, protection, and/or anti-harassment orders now or hereafter in effect.
☒ Not drive a motor vehicle without a valid driver's license and financial responsibility.
☒ For 10 years after restoration of the drivers license, permit, or nonresident driving privilege, defendant shall only drive a motor vehicle which is equipped with an approved, functioning ignition interlock device, which shall be calibrated at .025 percent.

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☒ Submit to regular polygraph examinations about drug and alcohol usage upon the request of the supervising Community Corrections Officer.
☒ Report for urinalysis as ordered by the Department of Corrections.
☒ Do not possess or consume any alcohol or intoxicating beverages, and submit to a breath alcohol analysis upon the request of the supervising Community Corrections Officer.
☒ Not drive a motor vehicle without a valid driver's license and financial responsibility. Violation will subject defendant to confinement for a minimum of 30 days.
☒ Not drive with a blood or breath alcohol concentration of .08 or more within 2 hours after driving. Violation will subject defendant to confinement for a minimum of 30 days.
☒ Not refuse to submit to a breath or blood alcohol test upon request of a law enforcement officer. Violation will subject defendant to confinement for a minimum of 30 days.
☒ Complete the DUI Victim Impact Panel ☐ within 60 days of release from jail or prison ☒ as directed by the supervising Community Corrections Officer.
☒ Complete Defensive Driving School ☐ within 60 days of release from jail or prison ☒ as directed by the supervising Community Corrections Officer.
☐ Other: _____

4.C.3 Ignition Interlock Device Notice: The defendant must apply for an ignition interlock driver's license from the department of licensing under RCW 46.20.385 and the defendant must have a functioning interlock device installed on all motor vehicles that the defendant operates. The ignition interlock device imposed under this section shall be calibrated to prevent a motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more. The defendant will be required to have the ignition interlock device for a period of 10 years. (RCW 46.61.5055(5))

4.C.4 Treatment During Incarceration: The defendant shall undergo alcohol or chemical dependency treatment services during incarceration. The defendant shall be liable for the cost of treatment unless the court finds the offender indigent and no third-party insurance coverage is available. (RCW 9.94A.603)

D. FINANCIAL OBLIGATIONS

4.D.1 Financial: The defendant shall pay financial obligations and abide by the conditions as set forth below. The defendant shall be under the jurisdiction and supervision of this Court for purposes of payment of financial obligations ordered until they are paid. The defendant shall report to the Yakima County Clerk, Yakima County Courthouse, Room 323, 128 North Second Street, Yakima, WA, within 24 hours of this order or release from incarceration, whichever is later. The defendant must notify the Yakima County Clerk's Office of changes in address or employment. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule. RCW 9.94A.760(7)(b).

4.D.2 Jurisdiction: All legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The clerk of the court is authorized to collect unpaid financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her financial obligations. RCW 9.94A.753(4) and RCW 9.94A.760(4).

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4.D.3 Restitution, Costs, Assessments, and Fine: Defendant shall pay the following to the Yakima County Superior Court Clerk, Room 323, Yakima County Courthouse, Yakima, WA 98901:

RTN	$	**0.00**	Restitution distributed to: _____, subject to modification
PCV	$	**500.00**	Crime Penalty Assessment – felony or gross misd. (RCW 7.68.035)
FRC	$	**200.00**	Criminal filing fee
PUB	$	**600.00**	Court appointed attorney recoupment (RCW 9.94A.760)
DNA	$	**100.00**	DNA collection fee (any felony committed after 7/1/02) (RCW 43.43.7541)
FCM/MTH	$	**1,120.50**	DUI Fine (includes BAC Assessment of $125.00, and TPS of $43.00)
RTN	$	**205.80**	Emergency Response Cost to Washington State Patrol (RCW 38.52.430)
	$	**2,726.30**	**TOTAL**

4.D.4 Costs of Incarceration: In addition to the above costs, the court finds that the defendant has the means to pay for the costs of incarceration, in prison at a rate of $50.00 per day of incarceration or in the Yakima County Jail at the actual rate of incarceration but not to exceed $100.00 per day of incarceration (the rate in 2013 is $65.00 per day), and orders the defendant to pay such costs at the statutory rate as assessed by the Clerk. Such costs are payable only after restitution costs, assessments and fines listed above are paid. RCW 9.94A.760(2). costs are capped at $100 – DM

4.D.5 Costs of Medical Care: In addition to the above costs, the court finds that the defendant has the means to pay for any costs of medical care incurred by Yakima County on behalf of the defendant, and orders the defendant to pay such medical costs as assessed by the Clerk. Such costs are payable only after restitution costs, assessments and fines listed above are paid. RCW 70.48.130.

4.D.6 ☐ Forfeiture of Funds: The financial obligations ordered above, in part or in full, shall be paid from defendant's funds held by _____ who is ordered to pay such funds to the Clerk of the above Court. Any balance shall be paid by the defendant.

4.D.7 Payments: Unless provided above, the Yakima County Clerk shall, after investigation, set a minimum monthly payment for the defendant to pay towards the financial obligations. The Clerk may modify the monthly payment amount. Payments shall first apply to any restitution. Costs and assessments shall be paid in 180 days after restitution is paid in full/release. All other fees shall be paid in 270 days after restitution is paid in full/release. The defendant shall pay financial obligations to the Clerk of the Court, Room 323, Yakima County Courthouse, Yakima, Washington.

4.D.8 Payroll Deduction: Without further notice, the Yakima County Clerk may issue a Notice of Payroll Deduction at any time until all financial obligations are paid. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

4.D.9 Interest, Judgment, and Collection: The financial obligations listed herein shall bear interest from the date hereof until paid in full at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total financial obligations. RCW 10.73.160. The financial obligations listed above may be enforced in the same manner as a civil judgment. The defendant shall pay the costs of services to collect unpaid legal financial obligations.

4.D.10 Petition For Remission: The defendant, if not in willful default on financial obligations due hereunder, may at any time petition the court for remission of all or part of the financial obligations due, except restitution or interest on restitution, or to modify the method of payment under RCW 10.01.160 through RCW 10.01.180 and RCW 10.73. Non-restitution interest may be waived only after the defendant has either (a) paid the principal amount in full or (b) made at least fifteen monthly payments within an eighteen-month period, as set by the Clerk, and further payment of interest will cause a significant hardship. RCW 10.82.090.

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V. NOTICES

The defendant, by signing below, acknowledges each of the statements in this section.

5.1 Collateral Attack: The defendant may not file a petition or motion for collateral attack on a judgment and sentence in a criminal case more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction. For purposes of this section, "collateral attack" means any form of post-conviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw a guilty plea, a motion for a new trial, and a motion to arrest judgment under RCW 10.73.090 and RCW 10.73.100.

5.2 Loss of Voting Rights: The defendant understands and acknowledges that:

1. The defendant's right to vote is lost because of this felony conviction.
2. If the defendant is registered to vote, his or her registration will be canceled.
3. The defendant's right to vote is provisionally restored as long as the defendant is not under the authority of the department of corrections.
4. The defendant must reregister before voting.
5. The provisional right to vote may be revoked if the defendant fails to comply with all the terms of his or her legal financial obligations or an agreement for the payment of legal financial obligations.
6. The defendant's right to vote may be permanently restored by one of the following for each felony conviction:
    a. A certificate of discharge issued by the Yakima County Superior Court, as provided in RCW 9.94A.637; or
    b. A court order issued by the Yakima County Superior Court restoring the defendant's right to vote, as provided in RCW 9.92.066; or
    c. A final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or
    d. A certificate of restoration issued by the governor, as provided in RCW 9.96.020.
7. Voting before the right to vote is restored is a class C felony under RCW 29A.84.660.

5.3 Sentence Condition Violation: Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement for any violation related to a felony charge. RCW 9.94A.633. Any violation of this Judgment and Sentence is punishable by up to the total number of confinement days suspended for any violation related to a non-felony charge.

5.4 Successful Completion: Upon successful completion of the requirements of the sentence, the defendant shall be eligible for a certificate of discharge. RCW 9.94A.637.

5.5 Firearms: The defendant understands that he or she must immediately surrender any concealed pistol license and may not own, use, or possess any firearm unless the right to do so is restored by a court of record. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 Restitution Hearing: If this box is checked ☐ and initialed here _____ then the defendant gives up or waives the right to be present at any restitution hearing.

* Defendant's appeal of offender score calculation is preserved RDM

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VI. SIGNATURES

DATED: April 3, 2013

JUDGE

Presented by:

ALVIN L. GUZMAN JR.
Deputy Prosecuting Attorney
Washington State Bar No. 36298

Approved as to form:

ALEX S. NEWHOUSE
Attorney for Defendant
Washington State Bar No. 40052

Acknowledging the notices in Section V and receiving a copy:

DEFENDANT

INTERPRETER'S DECLARATION: I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands, and I have translated the notices in section V for the defendant from English into that language. The defendant acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Interpreter	Print Name	Date and Place

VII. WARRANT OF CONFINEMENT

THE STATE OF WASHINGTON

TO: The Yakima County Sheriff
TO: The Yakima County Department of Corrections
TO: The Washington State Department of Corrections

The defendant has been convicted in the Superior Court of the State of Washington of the crime of:

COUNT 1 - FELONY DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR AND/OR DRUGS
COUNT 4 - THIRD DEGREE ASSAULT

and the court has ordered that the defendant be punished as set out in the attached Judgment and Sentence.

YOU ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

By the Direction of the Honorable

DATED: April 3, 2013.

DAVID ELOFSON
JUDGE

Seal of the Superior Court STATE OF WASHINGTON Of Yakima County

JUDGE

KIMI M. EATON, Clerk

By: _____ Deputy Clerk

JAMES P. HAGARTY
Yakima County Prosecuting Attorney
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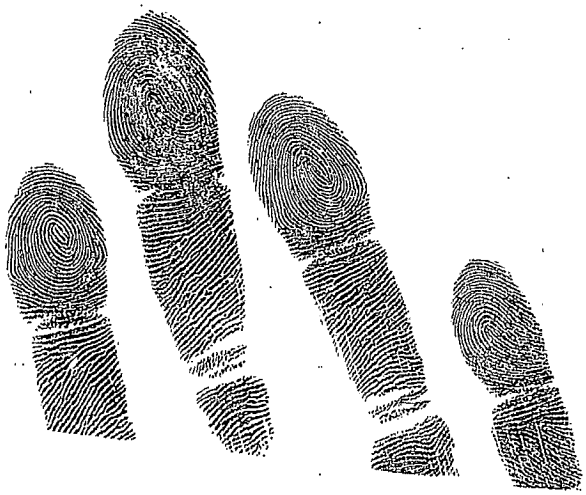
(509) 574-1210 Fax (509) 574-1211

Defendant: ENRIQUE HERNANDEZ SID: WA17038647



FINGERPRINT CERTIFICATE OF ATTESTATION

STATE OF WASHINGTON)
) ss.
County of Yakima)

I, Kim M. Eaton, Yakima County Clerk and ex-officio Clerk of the Superior Court, hereby attest that the fingerprints appearing on this certificate are the fingerprints of the above-named defendant, and were affixed in open court on April 3, 2013.

DATED: April 3, 2013

KIM M. EATON, Clerk

Seal of the Superior Court STATE OF WASHINGTON Of Yakima County

By: _____ Deputy Clerk

Address of Defendant:

_____

_____

JAMES P. HAGARTY
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APPENDIX B

RCW 9.94A.525 (2011)
Offender score.

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

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

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

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

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

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

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

(e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions of felony driving while under the influence of intoxicating liquor or any drug, felony physical control of a vehicle while under the influence of intoxicating liquor or

any drug, and serious traffic offenses shall be included in the offender score if: (i) The prior convictions were committed within five years since the last date of release from confinement (including full-time residential treatment) or entry of judgment and sentence; or (ii) the prior convictions would be considered "prior offenses within ten years" as defined in RCW 46.61.5055.

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

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

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

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

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

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

(ii) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served

concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) If the present conviction is for failure to register as a sex offender under RCW *9A.44.130 or 9A.44.132, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction, excluding prior convictions for failure to register as a sex offender under RCW *9A.44.130 or9A.44.132 , which shall count as one point.

(19) If the present conviction is for an offense committed while the offender was

under community custody, add one point. For purposes of this subsection, community custody includes community placement or postrelease supervision, as defined in chapter 9.94B RCW.

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

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

(a) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for the following offenses: A violation of a no-contact order that is a felony offense, a violation of a protection order that is a felony offense, a felony domestic violence harassment offense, a felony domestic violence stalking offense, a domestic violence Burglary 1 offense, a domestic violence Kidnapping 1 offense, a domestic violence Kidnapping 2 offense, a domestic violence unlawful imprisonment offense, a domestic violence Robbery 1 offense, a domestic violence Robbery 2 offense, a domestic violence Assault 1 offense, a domestic violence Assault 2 offense, a domestic violence Assault 3 offense, a domestic violence Arson 1 offense, or a domestic violence Arson 2 offense;

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

(c) Count one point for each adult prior conviction for a repetitive domestic violence offense as defined in RCW 9.94A.030, where domestic violence as defined in RCW 9.94A.030, was plead and proven after August 1, 2011.

(22) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the

sentencing reform act requires including or counting those convictions. Prior convictions that were not included in criminal history or in the offender score shall be included upon any resentencing to ensure imposition of an accurate sentence.

[2011 c 166 § 3; 2010 c 274 § 403; 2008 c 231 § 3. Prior: 2007 c 199 § 8; 2007 c 116 § 1; prior: 2006 c 128 § 6; 2006 c 73 § 7; prior: 2002 c 290 § 3; 2002 c 107 § 3; 2001 c 264 § 5; 2000 c 28 § 15; prior: 1999 c 352 § 10; 1999 c 331 § 1; 1998 c 211 § 4; 1997 c 338 § 5; prior: 1995 c 316 § 1; 1995 c 101 § 1; prior: 1992 c 145 § 10; 1992 c 75 § 4; 1990 c 3 § 706; 1989 c 271 § 103; prior: 1988 c 157 § 3; 1988 c 153 § 12; 1987 c 456 § 4; 1986 c 257 § 25; 1984 c 209 § 19; 1983 c 115 § 7. Formerly RCW 9.94A.360.]

Notes:

***Reviser's note:** 2010 c 267 removed from RCW 9A.44.130 provisions relating to the crime of "failure to register" as a sex offender or kidnapping offender, and placed similar provisions in RCW 9A.44.132.

Intent -- 2010 c 274: See note following RCW 10.31.100.

Intent -- 2008 c 231 §§ 2-4: See note following RCW 9.94A.500.

Application -- 2008 c 231 §§ 2 and 3: See note following RCW 9.94A.500.

Severability -- 2008 c 231: See note following RCW 9.94A.500.

Findings -- Intent -- Short title -- 2007 c 199: See notes following RCW 9A.56.065.

Effective date -- 2007 c 116: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 116 § 2.]

Effective date -- 2006 c 73: See note following RCW 46.61.502.

Effective date -- 2002 c 290 §§ 2 and 3: See note following RCW 9.94A.515.

Intent -- 2002 c 290: See note following RCW 9.94A.517.

Finding -- Application -- 2002 c 107: See notes following RCW 9.94A.030.

Effective date -- 2001 c 264: See note following RCW 9A.76.110.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Effective date -- 1999 c 331: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public

institutions, and takes effect immediately [May 14, 1999]." [1999 c 331 § 5.]

Effective date -- 1998 c 211: See note following RCW 46.61.5055.

Finding -- Evaluation -- Report -- 1997 c 338: See note following RCW 13.40.0357.

Severability -- Effective dates -- 1997 c 338: See notes following RCW 5.60.060.

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

Application -- 1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

Severability -- 1989 c 271: See note following RCW 9.94A.510.

Application -- 1988 c 157: See note following RCW 9.94A.030.

Effective date -- Application of increased sanctions -- 1988 c 153: See notes following RCW 9.94A.030.

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

APPENDIX C

SENATE BILL REPORT
HB 3317

As Reported By Senate Committee On:
Judiciary, March 6, 2006

Title: An act relating to making it a felony to drive or be in physical control of a vehicle while under the influence of intoxicating liquor or any drug.

Brief Description: Changing provisions relating to driving under the influence of intoxicating liquor or any drug.

Sponsors: Representatives Ahern, Lantz, Lovick, Darneille, Chase, Williams, Hunter, Clibborn, Kilmer, Hudgins, Ericks, Simpson, Conway, Takko and Morrell.

Brief History: Passed House: 2/28/06, 97-0.
Committee Activity: Judiciary: 3/6/06 [DPA-WM]

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, Hargrove, McCaslin and Rasmussen.

Staff: Lidia Mori (786-7755)

Background: Drunk driving (DUI) is a gross misdemeanor. The maximum term of confinement for a gross misdemeanor is one year in jail. The DUI law contains a complex system of mandatory minimum penalties that escalate based on the number of prior offenses and the concentration of alcohol (BAC) in the offender's blood or breath. A "prior offense" counts to increase an offender's sentence under the DUI laws if the arrest for that offense occurred within seven years of the arrest for the current offense. "Prior offenses" include convictions for: (a) DUI; (b) vehicular homicide and vehicular assault if either was committed while under the influence; (c) negligent driving after having consumed alcohol ("wet neg"), reckless driving, and reckless endangerment if the original charge was DUI; and (d) any equivalent local DUI ordinance or out-of-state law. In addition, a deferred prosecution for DUI or "wet neg" counts as a prior offense even if the charges are dropped after successful completion of the deferred prosecution treatment program.

In addition to serving mandatory jail time, a DUI offender is subject to other sanctions that include alcohol assessment, the mandatory use of an ignition interlock system on any vehicle the offender drives, and probation. An adult who is convicted of a felony is sentenced under the provisions of the Sentencing Reform Act (SRA). The SRA has a sentencing grid in statute that provides a standard sentence range based on the seriousness level of the current offense and the offender's prior criminal history score. Unless the sentencing judge imposes an exceptional sentence upward or downward, the sentencing judge will sentence the offender to a period of confinement within that standard range. However, in no case may a sentence be

longer than the maximum allowed by statute for a particular class of felony. For class C felonies, this maximum is five years in prison.

Felonies are "ranked" in the SRA from Level I (low) to Level XVI (high). An offender's criminal history score ranges from 0 to 9+ and is calculated based on numerous factors, including the number of prior felony convictions and the relationship between those prior convictions and the current offense. A few prior non-felony crimes can count toward an offender's score in sentencing for a current felony. "Serious traffic" offenses, which include DUI, are non-felony crimes that count when the current offense is a felony traffic offense. Prior felony traffic offenses, which include vehicular assault and vehicular homicide, count double when the current offense is also a felony traffic offense.

The SRA has "wash out" periods that determine how long a prior conviction continues to count toward an offender's score. Class C felonies and serious traffic offenses wash out if the offender has spent five years without committing an offense since the date of his or her release from confinement.The SRA also has sentencing alternatives for some types of offenders, such as the first-time offender waiver program, drug offender sentencing alternative (DOSA), and work ethic camp. At the time of sentencing, the court also imposes a term of community custody for certain offenders, including those offenders who have been convicted of an offense categorized as a "Crime Against Persons." Conditions of community custody and levels of supervision are based on risk. The court has discretion when setting the range of community custody, but generally, the range for a person convicted of a "Crime Against Persons" will be between nine to 18 months. Under the SRA, an offender may earn an early release of up to 50 percent off a sentence for less serious offenses. For offenses categorized as "Crimes Against Persons" and other serious offenses, an offender may receive earned early release time up to one-third off.

The Juvenile Justice Act (Act) governs the disposition (or sentencing) of juvenile offenders. The Act contains a disposition grid with presumptive sanctions based on the seriousness of the offense and prior criminal history. Offenses are "categorized" between Category E (least serious) through Category A+ (most serious). A DUI is categorized as a D offense. A juvenile adjudicated of DUI who has no prior criminal history will typically receive local sanctions, meaning the court may impose one or all of the following: 0-30 days in confinement in a local juvenile detention facility; 0-12 months of community supervision; 0-150 hours of community restitution; and/or $0-$500 fine. More serious offenders are subject to confinement in the state juvenile facility. The Juvenile Justice Act provides disposition alternatives that give courts discretion to suspend the juvenile's disposition and impose conditions. Some of those alternatives include the suspended disposition alternative, the chemical dependency disposition alternative, and the mental health disposition alternative.

Summary of Amended Bill: A DUI conviction is a class C felony if the offender: (a) has four or more prior offenses within seven years; or (b) has ever been convicted of vehicular homicide while under the influence of alcohol or drugs or vehicular assault while under the influence of alcohol or drugs. Felony DUI is a Level V offense. This means a DUI offender with four prior DUIs will receive a presumptive sentence range of 22 - 29 months. Felony DUI is categorized as a "Crime Against Persons." A felony DUI offender is eligible for earned early release not to exceed one-third of his or her sentence and community custody provisions apply. An offender is not eligible for the first time offender waiver program, DOSA, or work

ethic camp. The court must order the offender to undergo treatment during incarceration. The offender shall be liable for the costs of treatment unless the court finds the offender indigent and no third-party insurance is available. The license suspension and ignition interlock provisions under the misdemeanor DUI laws apply.

The provisions under the SRA related to "wash out" periods and vacation of records are amended to include the seven year period in which "prior offenses" under the DUI laws are counted.

Under the Juvenile Justice Act, felony DUI is made a Category B+ offense. This means a juvenile with four prior DUI adjudications who is adjudicated of another DUI will receive a presumptive disposition range of 15 - 36 weeks in a state juvenile facility.

Amended Bill Compared to Original Bill: Language in the bill is corrected to reflect that if the offender is a juvenile, he or she will be punished according to RCW 13.40. The "wash out" periods under the sentencing reform act and the current DUI laws are clarified as they apply to felony DUI convictions.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Washington is only one of three states that does not have a felony DUI law. There were 222 deaths from people driving under the influence of alcohol in 2004. The purpose of government is protection of its citizens and with this bill, we are protecting citizens against drunk driving. This legislation is directed at the chronic drunk driver. We will not need to build a new prison but we do need to build capacity. While these offenders are in prison and in our control, we need to provide treatment. Experts estimate that they need 11 to 12 months of treatment. The only way to deter a habitual drunk driver is to take him or her off the road and provide treatment. Word will get around to the DUI offenders in bars and other drinking establishments that they are looking at a longer incarceration time if they drink and drive. This is a huge issue to county sheriffs. These offenders are a low risk when sober and they won't require a maximum security prison. Drunk drivers are a threat to police officers on the road as well as to the general public. For a juvenile to get a DUI felony, he or she still has to have had four prior DUI adjudications.

Testimony Against: None.

Who Testified: PRO: Representative Ahern, prime sponsor; Representative Lantz; Senator Brandland; Jim Reierson, Deputy Prosecutor; Karen Minahan, Mothers Against Drunk Drivers; Don Pierce, Washington Association of Sheriffs and Police Chiefs; Tom McBride, Washington Association of Prosecuting Attorneys; Anita Kronuall, citizen.

APPENDIX D

FINAL BILL REPORT
HB 3317

C 73 L 06
Synopsis as Enacted

Brief Description: Changing provisions relating to driving under the influence of intoxicating liquor or any drug.

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

Senate Committee on Judiciary

Background:

DUI Law

Drunk driving (DUI) is a gross misdemeanor. The maximum confinement sentence for a gross misdemeanor is one year in jail. The DUI law contains a complex system of mandatory minimum penalties that escalate based on the number of prior offenses and the concentration of alcohol in the offender's blood or breath (BAC).

The penalties range from one day in jail for a first time offender with a BAC under 0.15, to 120 days in jail and 150 days of electronic home monitoring for an offender who has a BAC over 0.15 and has two or more prior offenses within seven years. In addition to mandatory jail time, the court must impose minimum fines ranging from $350 to $1,500 and license suspension ranging from 90 days (for a first time offender with a low BAC) to four years (for a multiple offender with a high BAC). A DUI offender is also subject to alcohol assessment, mandatory use of ignition interlocks, and probation.

A "prior offense" counts to increase an offender's sentence under the DUI laws if the arrest for that offense occurred within seven years of the arrest for the current offense. "Prior offenses" include convictions for: (1) DUI; (2) vehicular homicide and vehicular assault if committed while under the influence; (3) negligent driving after having consumed alcohol ("wet neg"), reckless driving, and reckless endangerment if the original charge for any of those offenses was DUI; and (4) any equivalent local DUI ordinance or out-of-state law. In addition, a deferred prosecution for DUI or "wet neg" counts as a prior offense even if the charges are dropped after successful completion of the deferred prosecution treatment program.

Felony Sentencing Under the Sentencing Reform Act

An adult who is convicted of a felony is sentenced under the provisions of the Sentencing Reform Act (SRA). The SRA has a sentencing grid in statute that provides a standard sentence range based on the seriousness level of the current offense and the offender's prior criminal history score. Unless the sentencing judge imposes an exceptional sentence upward or downward, the sentencing judge will sentence the offender to a period of confinement within that standard range. However, in no case may a sentence be longer than the maximum

allowed by statute for a particular class of felony. For class C felonies, this maximum is five years in prison.

Felonies are "ranked" in the SRA from Level I (low) to Level XVI (high). An offender's criminal history score ranges from 0 to 9+ and is calculated based on numerous factors, including the number of prior felony convictions and the relationship between those prior convictions and the current offense. Some prior non-felony crimes can count toward an offender's score in sentencing for a current felony. "Serious traffic" offenses, which include DUI, are non-felony crimes that count when the current offense is a felony traffic offense. Prior felony traffic offenses, which include vehicular assault and vehicular homicide, count double when the current offense is also a felony traffic offense.

The SRA has "washout" periods that determine how long a prior conviction continues to count toward an offender's score. Class C felonies and serious traffic offenses wash out if the offender has spent five years without committing an offense since the date of his or her release from confinement.

At the time of sentencing, the court also imposes a term of community custody for offenders who have been convicted of an offense categorized as a "Crime Against Persons." Conditions of community custody and levels of supervision are based on risk. The court has discretion when setting the range of community custody, but generally, the range for a person convicted of a "Crime Against Persons" will be between nine to 18 months.

In addition, for offenses categorized as "Crimes Against Persons," an offender is eligible for up to one-third off as earned early release.

Juvenile Adjudications

The Juvenile Justice Act (Act) governs the disposition (or sentencing) of juvenile offenders. The Act contains a disposition grid with presumptive sanctions based on the seriousness of the offense and prior criminal history. Offenses are "categorized" (very much like ranking in the SRA) between Category E (least serious) through Category A+ (most serious). A DUI is categorized as a D offense. A juvenile adjudicated of DUI who has no prior criminal history will typically receive local sanctions. More serious offenders are subject to confinement in a state juvenile facility.

Summary:

A DUI conviction is a class C felony if the offender: (1) has four or more prior offenses within 10 years; or (2) has ever been convicted of vehicular homicide while under the influence of alcohol or drugs or vehicular assault while under the influence of alcohol or drugs.

Felony DUI is a Level V offense. This means a DUI offender with four prior misdemeanor DUIs will receive a presumptive sentence range of 22 - 29 months.

Felony DUI is categorized as a "Crime Against Persons." This means the offender is eligible for earned early release not to exceed one-third of his or her sentence, and the community custody provisions apply.

An offender is not eligible for the first time offender waiver program, DOSA, or work ethic camp. The court must order the offender to undergo treatment during incarceration. The offender is liable for the costs of treatment unless the court finds the offender indigent and no third-party insurance is available. The license suspension and ignition interlock provisions under the misdemeanor DUI laws apply.

Under the Juvenile Justice Act, felony DUI is made a Category B+ offense. This means a juvenile adjudicated of felony DUI will receive a presumptive disposition range of 15 - 36 weeks in a state juvenile facility.

Votes on Final Passage:

House	97	0	
Senate	45	0	(Senate amended)
House	98	0	(House concurred)

Effective: July 1, 2007

APPENDIX E

HOUSE BILL REPORT
HB 3317

As Passed Legislature

Title: Revises provisions relating to driving under the influence of intoxicating liquor or any drug.

Brief Description: Changing provisions relating to driving under the influence of intoxicating liquor or any drug.

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

Brief History:

Floor Activity:

Passed House: 2/28/06, 97-0.
Senate Amended.
Passed Senate: 3/7/06, 45-0.
House Concurred.
Passed House: 3/8/06, 98-0.
Passed Legislature.

Brief Summary of Bill

- Makes drunk driving a felony, ranked as a seriousness level V under the Sentencing Reform Act, if the offender: (a) has four or more prior offenses within 10 years; or (b) has ever been convicted of vehicular assault while under the influence or vehicular homicide while under the influence.

HOUSE COMMITTEE ON

Majority/Minority Report: None.

Staff: Trudes Tango (786-7384).

Background:

DUI LAW

Drunk driving (DUI) is a gross misdemeanor. The maximum confinement sentence for a gross misdemeanor is one year in jail. The DUI law contains a complex system of mandatory minimum penalties that escalate based on the number of prior offenses and the concentration of alcohol (BAC) in the offender's blood or breath. The minimum penalties are as follows:

First offense:

- *BAC under 0.15 or no BAC for reasons other than refusal*- one day in jail or 15 days of electronic monitoring; $350 fine; 90 days license loss.
- *BAC of 0.15 or higher or person refused BAC* - two days in jail or 30 days of electronic monitoring; $500 fine; one year license loss or two years if refused BAC.

One prior offense within seven years:

- *BAC under 0.15 or no BAC for reasons other than refusal* - 30 days in jail and 60 days of electronic monitoring; $500 fine; two years license loss.
- *BAC of 0.15 or more or person refused BAC*- 45 days in jail and 90 days of electronic monitoring; $750 fine; 900 days license loss or three years if refused BAC.

Two or more prior offenses within seven years:

- *BAC under 0.15 or no BAC for reasons other than refusal* - 90 days in jail and 120 days of electronic monitoring; $1,000 fine; three years license loss.
- *BAC of 0.15 or more or person refused BAC* - 120 days in jail and 150 days of electronic monitoring; $1,500 fine; four years license loss.

A "prior offense" counts to increase an offender's sentence under the DUI laws if the arrest for that offense occurred within seven years of the arrest for the current offense. "Prior offenses" include convictions for: (a) DUI; (b) vehicular homicide and vehicular assault if either was committed while under the influence; (c) negligent driving after having consumed alcohol ("wet neg"), reckless driving, and reckless endangerment if the original charge was DUI; and (d) any equivalent local DUI ordinance or out-of-state law. In addition, a deferred prosecution for DUI or "wet neg" counts as a prior offense even if the charges are dropped after successful completion of the deferred prosecution treatment program.

In addition to serving mandatory jail time, a DUI offender is subject to other sanctions that include alcohol assessment, the mandatory use of an ignition interlock system on any vehicle the offender drives, and probation.

FELONY SENTENCING UNDER THE SENTENCING REFORM ACT

An adult who is convicted of a felony is sentenced under the provisions of the Sentencing Reform Act (SRA). The SRA has a sentencing grid in statute that provides a standard sentence range based on the seriousness level of the current offense and the offender's prior criminal history score. Unless the sentencing judge imposes an exceptional sentence upward or downward, the sentencing judge will sentence the offender to a period of confinement within that standard range. However, in no case may a sentence be longer than the maximum allowed by statute for a particular class of felony. For class C felonies, this maximum is five years in prison.

Felonies are "ranked" in the SRA from Level I (low) to Level XVI (high). An offender's criminal history score ranges from 0 to 9+ and is calculated based on numerous factors, including the number of prior felony convictions and the relationship between those prior convictions and the current offense. A few prior non-felony crimes can count toward an offender's score in sentencing for a current felony. "Serious traffic" offenses, which include DUI, are non-felony crimes that count when the current offense is a felony traffic offense.

Prior felony traffic offenses, which include vehicular assault and vehicular homicide, count double when the current offense is also a felony traffic offense.

The SRA has "washout" periods that determine how long a prior conviction continues to count toward an offender's score. Class C felonies and serious traffic offenses wash out if the offender has spent five years without committing an offense since the date of his or her release from confinement.

At the time of sentencing, the court also imposes a term of community custody for offenders who have been convicted of an offense categorized as a "Crime Against Persons." Conditions of community custody and levels of supervision are based on risk. The court has discretion when setting the range of community custody, but generally, the range for a person convicted of a "Crime Against Persons" will be between nine to 18 months.

Under the SRA, less serious offenders may receive up to 50 percent off their sentence as earned early release. For offenses categorized as "Crimes Against Persons," an offender is eligible for up to one-third off as earned early release.

JUVENILE ADJUDICATIONS

The Juvenile Justice Act (Act) governs the disposition (or sentencing) of juvenile offenders. The Act contains a disposition grid with presumptive sanctions based on the seriousness of the offense and prior criminal history. Offenses are "categorized" (very much like ranking in the SRA) between Category E (least serious) through Category A+ (most serious). A DUI is categorized as a D offense. A juvenile adjudicated of DUI who has no prior criminal history will typically receive local sanctions. More serious offenders are subject to confinement in the state juvenile facility.

Summary of Bill:

A DUI conviction is a class C felony if the offender: (a) has four or more prior offenses within 10 years; or (b) has ever been convicted of vehicular homicide while under the influence of alcohol or drugs or vehicular assault while under the influence of alcohol or drugs.

Felony DUI is a Level V offense. This means a DUI offender with four prior misdemeanor DUIs will receive a presumptive sentence range of 22 - 29 months.

Felony DUI is categorized as a "Crime Against Persons." This means the offender is eligible for earned early release not to exceed one-third of his or her sentence, and the community custody provisions apply.

An offender is not eligible for the first time offender waiver program, DOSA, or work ethic camp. The court must order the offender to undergo treatment during incarceration. The offender shall be liable for the costs of treatment unless the court finds the offender indigent and no third-party insurance is available. The license suspension and ignition interlock provisions under the misdemeanor DUI laws apply.

Under the Juvenile Justice Act, felony DUI is made a Category B+ offense. This means a juvenile with zero or one prior adjudication will receive a presumptive disposition range of 15 - 36 weeks in a state juvenile facility.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect July 1, 2007.

Testimony For: None.

Testimony Against: None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.

APPENDIX F

RCW 46.61.5055
Alcohol and drug violators — Penalty schedule.

(1) Except as provided in RCW 46.61.502(6) or46.61.504 (6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

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

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

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

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

(i) By imprisonment for not less than two days nor more than three hundred sixty-four days. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home

monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

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

(i) By imprisonment for not less than thirty days nor more than three hundred sixty-four days and sixty days of electronic home monitoring. In lieu of the mandatory minimum term of sixty days electronic home monitoring, the court may order at least an additional four days in jail. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

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

(i) By imprisonment for not less than forty-five days nor more than three hundred sixty-four days and ninety days of electronic home monitoring. In lieu of the mandatory

minimum term of ninety days electronic home monitoring, the court may order at least an additional six days in jail. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

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

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

(i) By imprisonment for not less than ninety days nor more than three hundred sixty-four days and one hundred twenty days of electronic home monitoring. In lieu of the mandatory minimum term of one hundred twenty days of electronic home monitoring, the court may order at least an additional eight days in jail. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds

the offender to be indigent; or

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

(i) By imprisonment for not less than one hundred twenty days nor more than three hundred sixty-four days and one hundred fifty days of electronic home monitoring. In lieu of the mandatory minimum term of one hundred fifty days of electronic home monitoring, the court may order at least an additional ten days in jail. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

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

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

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

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

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

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

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

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

(b) If the court orders that a person refrain from consuming any alcohol, the court may order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person's system. The person shall pay for the cost of the monitoring, unless the court specifies that the cost of monitoring will be paid with funds that are available from an alternative source identified by the court. The county or municipality where the penalty is being imposed shall determine the cost.

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

(a) Order the use of an ignition interlock or other device for an additional six months;

(b) In any case in which the person has no prior offenses within seven years, and except as provided in RCW 46.61.502(6) or46.61.504 (6), order a penalty by a fine of not less than one thousand dollars and not more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent;

(c) In any case in which the person has one prior offense within seven years, and except as provided in RCW 46.61.502(6) or46.61.504 (6), order a penalty by a fine of not less than two thousand dollars and not more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent;

(d) In any case in which the person has two or three prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order a penalty by a fine of not less than three thousand dollars and not more than ten thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) For each violation of mandatory conditions of probation under (a)(i), (ii), or (iii) of this subsection, the court shall order the convicted person to be confined for thirty days,

which shall not be suspended or deferred.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[2012 c 183 § 12; 2012 c 42 § 2; 2012 c 28 § 1. Prior: 2011 c 293 § 7; 2011 c 96 § 35; 2010 c 269 § 4; 2008 c 282 § 14; 2007 c 474 § 1; 2006 c 73 § 3; 2004 c 95 § 13; 2003 c 103 § 1. Prior: 1999 c 324 § 5; 1999 c 274 § 6; 1999 c 5 § 1; prior: 1998 c 215 § 1; 1998 c 214 §1; 1998 c 211 § 1; 1998 c 210 § 4; 1998 c 207 § 1; 1998 c 206 § 1; prior: 1997 c 229 § 11; 1997 c 66 § 14; 1996 c 307 § 3; 1995 1st sp.s. c 17 § 2; 1995 c 332 § 5.]

Notes:

Reviser's note: This section was amended by 2012 c 28 § 1, 2012 c 42 § 2, and by 2012 c 183 § 12, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date -- 2012 c 183: See note following RCW 2.28.175.

Effective date -- 2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Findings -- Intent -- 2011 c 96: See note following RCW 9A.20.021.

Effective date -- 2010 c 269: See note following RCW 46.20.385.

Effective date -- 2008 c 282: See note following RCW 46.20.308.

Effective date -- 2007 c 474: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 474 § 2.]

Effective date -- 2006 c 73: See note following RCW 46.61.502.

Severability -- 1999 c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 5 § 2.]

Effective date -- 1999 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 16, 1999]." [1999 c 5 § 3.]

Effective date -- 1998 c 214: "This act takes effect January 1, 1999." [1998 c 214 § 6.]

Effective date -- 1998 c 211: "This act takes effect January 1, 1999." [1998 c 211 §

7.]

Short title -- Finding -- Intent -- Effective date--1998 c 210: See notes following RCW 46.20.720.

Effective date -- 1998 c 207: "This act takes effect January 1, 1999." [1998 c 207 § 12.]

Effective date -- 1997 c 229: See note following RCW 10.05.090.

Effective date -- 1995 1st sp.s. c 17: See note following RCW 46.20.355.

Severability -- Effective dates -- 1995 c 332: See notes following RCW 46.20.308.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. ENRIQUE HERNANDEZ, Appellant.	)))))))))	NO. 31595-9-III

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 4TH DAY OF OCTOBER, 2013, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] JAMES HAGARTY, DPA YAKIMA CO PROSECUTOR'S OFFICE 128 N 2ND STREET, ROOM 211 YAKIMA, WA 98901-2639	(X) ( ) ( )	U.S. MAIL HAND DELIVERY E-MAIL VIA COA PORTAL BY AGREEMENT
[X] DAVID TREFRY [TrefryLaw@WeGoWireless.com] ATTORNEY AT LAW PO BOX 4846 SPOKANE, WA 99220-0846	( ) ( ) (X)	U.S. MAIL HAND DELIVERY E-MAIL BY AGREEMENT VIA COA PORTAL
[X] ENRIQUE HERNANDEZ 783642 COYOTE RIDGE CORRECTIONS CENTER PO BOX 769 CONNELL, WA 99326-0769	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 4TH DAY OF OCTOBER, 2013.

X_____

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