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HOUSE BILL 3156

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Goodman, Lantz, Rodne, Williams, McIntire, Green,  
and Kelley

Read first time 01/23/08. Referred to Committee on Judiciary.

1            AN ACT Relating to licensing provisions concerning driving under  
2 the influence of intoxicating liquor or drugs; amending RCW 46.20.342,  
3 46.20.380, 46.20.391, 46.20.400, 46.20.410, 46.20.720, 46.20.740, and  
4 46.61.5055; reenacting and amending RCW 46.20.308 and 46.63.020; adding  
5 a new section to chapter 46.04 RCW; adding a new section to chapter  
6 46.68 RCW; adding new sections to chapter 46.20 RCW; and providing an  
7 effective date.

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

9            NEW SECTION.    **Sec. 1.** A new section is added to chapter 46.04 RCW  
10 to read as follows:

11            "Ignition interlock driver's license" means a permit issued to a  
12 person by the department that allows the person to operate a  
13 noncommercial motor vehicle with an ignition interlock device while the  
14 person's regular driver's license is suspended, revoked, or denied.

15            **Sec. 2.** RCW 46.20.308 and 2005 c 314 s 307 and 2005 c 269 s 1 are  
16 each reenacted and amended to read as follows:

17            (1) Any person who operates a motor vehicle within this state is  
18 deemed to have given consent, subject to the provisions of RCW

1 46.61.506, to a test or tests of his or her breath or blood for the  
2 purpose of determining the alcohol concentration or presence of any  
3 drug in his or her breath or blood if arrested for any offense where,  
4 at the time of the arrest, the arresting officer has reasonable grounds  
5 to believe the person had been driving or was in actual physical  
6 control of a motor vehicle while under the influence of intoxicating  
7 liquor or any drug or was in violation of RCW 46.61.503. Neither  
8 consent nor this section precludes a police officer from obtaining a  
9 search warrant for a person's breath or blood.

10 (2) The test or tests of breath shall be administered at the  
11 direction of a law enforcement officer having reasonable grounds to  
12 believe the person to have been driving or in actual physical control  
13 of a motor vehicle within this state while under the influence of  
14 intoxicating liquor or any drug or the person to have been driving or  
15 in actual physical control of a motor vehicle while having alcohol in  
16 a concentration in violation of RCW 46.61.503 in his or her system and  
17 being under the age of twenty-one. However, in those instances where  
18 the person is incapable due to physical injury, physical incapacity, or  
19 other physical limitation, of providing a breath sample or where the  
20 person is being treated in a hospital, clinic, doctor's office,  
21 emergency medical vehicle, ambulance, or other similar facility or  
22 where the officer has reasonable grounds to believe that the person is  
23 under the influence of a drug, a blood test shall be administered by a  
24 qualified person as provided in RCW 46.61.506(5). The officer shall  
25 inform the person of his or her right to refuse the breath or blood  
26 test, and of his or her right to have additional tests administered by  
27 any qualified person of his or her choosing as provided in RCW  
28 46.61.506. The officer shall warn the driver, in substantially the  
29 following language, that:

30 (a) If the driver refuses to take the test, the driver's license,  
31 permit, or privilege to drive will be revoked or denied for at least  
32 one year; and

33 (b) If the driver refuses to take the test, the driver's refusal to  
34 take the test may be used in a criminal trial; and

35 (c) If the driver submits to the test and the test is administered,  
36 the driver's license, permit, or privilege to drive will be suspended,  
37 revoked, or denied for at least ninety days if the driver is age  
38 twenty-one or over and the test indicates the alcohol concentration of

1 the driver's breath or blood is 0.08 or more, or if the driver is under  
2 age twenty-one and the test indicates the alcohol concentration of the  
3 driver's breath or blood is 0.02 or more, or if the driver is under age  
4 twenty-one and the driver is in violation of RCW 46.61.502 or  
5 46.61.504; and

6 (d) If the driver's license, permit, or privilege to drive is  
7 suspended, revoked, or denied the driver may be eligible to immediately  
8 apply for an ignition interlock driver's license.

9 (3) Except as provided in this section, the test administered shall  
10 be of the breath only. If an individual is unconscious or is under  
11 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
12 or vehicular assault as provided in RCW 46.61.522, or if an individual  
13 is under arrest for the crime of driving while under the influence of  
14 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest  
15 results from an accident in which there has been serious bodily injury  
16 to another person, a breath or blood test may be administered without  
17 the consent of the individual so arrested.

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

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

29 (6) If, after arrest and after the other applicable conditions and  
30 requirements of this section have been satisfied, a test or tests of  
31 the person's blood or breath is administered and the test results  
32 indicate that the alcohol concentration of the person's breath or blood  
33 is 0.08 or more if the person is age twenty-one or over, or 0.02 or  
34 more if the person is under the age of twenty-one, or the person  
35 refuses to submit to a test, the arresting officer or other law  
36 enforcement officer at whose direction any test has been given, or the  
37 department, where applicable, if the arrest results in a test of the  
38 person's blood, shall:

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

5 (b) Serve notice in writing on the person on behalf of the  
6 department of his or her right to a hearing, specifying the steps he or  
7 she must take to obtain a hearing as provided by subsection (8) of this  
8 section and that the person waives the right to a hearing if he or she  
9 receives an ignition interlock driver's license;

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

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

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

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

30 (ii) That after receipt of the warnings required by subsection (2)  
31 of this section the person refused to submit to a test of his or her  
32 blood or breath, or a test was administered and the results indicated  
33 that the alcohol concentration of the person's breath or blood was 0.08  
34 or more if the person is age twenty-one or over, or was 0.02 or more if  
35 the person is under the age of twenty-one; and

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

37 (7) The department of licensing, upon the receipt of a sworn report  
38 or report under a declaration authorized by RCW 9A.72.085 under

1 subsection (6)(e) of this section, shall suspend, revoke, or deny the  
2 person's license, permit, or privilege to drive or any nonresident  
3 operating privilege, as provided in RCW 46.20.3101, such suspension,  
4 revocation, or denial to be effective beginning sixty days from the  
5 date of arrest or from the date notice has been given in the event  
6 notice is given by the department following a blood test, or when  
7 sustained at a hearing pursuant to subsection (8) of this section,  
8 whichever occurs first.

9 (8) A person receiving notification under subsection (6)(b) of this  
10 section may, within (~~thirty~~) twenty days after the notice has been  
11 given, request in writing a formal hearing before the department. The  
12 person shall pay a fee of two hundred dollars as part of the request.  
13 If the request is mailed, it must be postmarked within (~~thirty~~)  
14 twenty days after receipt of the notification. Upon timely receipt of  
15 such a request for a formal hearing, including receipt of the required  
16 two hundred dollar fee, the department shall afford the person an  
17 opportunity for a hearing. The department may waive the required two  
18 hundred dollar fee if the person is an indigent as defined in RCW  
19 10.101.010. Except as otherwise provided in this section, the hearing  
20 is subject to and shall be scheduled and conducted in accordance with  
21 RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the  
22 county of the arrest, except that all or part of the hearing may, at  
23 the discretion of the department, be conducted by telephone or other  
24 electronic means. The hearing shall be held within sixty days  
25 following the arrest or following the date notice has been given in the  
26 event notice is given by the department following a blood test, unless  
27 otherwise agreed to by the department and the person, in which case the  
28 action by the department shall be stayed, and any valid temporary  
29 license marked under subsection (6)(c) of this section extended, if the  
30 person is otherwise eligible for licensing. For the purposes of this  
31 section, the scope of the hearing shall cover the issues of whether a  
32 law enforcement officer had reasonable grounds to believe the person  
33 had been driving or was in actual physical control of a motor vehicle  
34 within this state while under the influence of intoxicating liquor or  
35 any drug or had been driving or was in actual physical control of a  
36 motor vehicle within this state while having alcohol in his or her  
37 system in a concentration of 0.02 or more if the person was under the  
38 age of twenty-one, whether the person was placed under arrest, and (a)

1 whether the person refused to submit to the test or tests upon request  
2 of the officer after having been informed that such refusal would  
3 result in the revocation of the person's license, permit, or privilege  
4 to drive, or (b) if a test or tests were administered, whether the  
5 applicable requirements of this section were satisfied before the  
6 administration of the test or tests, whether the person submitted to  
7 the test or tests, or whether a test was administered without express  
8 consent as permitted under this section, and whether the test or tests  
9 indicated that the alcohol concentration of the person's breath or  
10 blood was 0.08 or more if the person was age twenty-one or over at the  
11 time of the arrest, or 0.02 or more if the person was under the age of  
12 twenty-one at the time of the arrest. The sworn report or report under  
13 a declaration authorized by RCW 9A.72.085 submitted by a law  
14 enforcement officer is prima facie evidence that the officer had  
15 reasonable grounds to believe the person had been driving or was in  
16 actual physical control of a motor vehicle within this state while  
17 under the influence of intoxicating liquor or drugs, or both, or the  
18 person had been driving or was in actual physical control of a motor  
19 vehicle within this state while having alcohol in his or her system in  
20 a concentration of 0.02 or more and was under the age of twenty-one and  
21 that the officer complied with the requirements of this section.

22 A hearing officer shall conduct the hearing, may issue subpoenas  
23 for the attendance of witnesses and the production of documents, and  
24 shall administer oaths to witnesses. The hearing officer shall not  
25 issue a subpoena for the attendance of a witness at the request of the  
26 person unless the request is accompanied by the fee required by RCW  
27 5.56.010 for a witness in district court. The sworn report or report  
28 under a declaration authorized by RCW 9A.72.085 of the law enforcement  
29 officer and any other evidence accompanying the report shall be  
30 admissible without further evidentiary foundation and the  
31 certifications authorized by the criminal rules for courts of limited  
32 jurisdiction shall be admissible without further evidentiary  
33 foundation. The person may be represented by counsel, may question  
34 witnesses, may present evidence, and may testify. The department shall  
35 order that the suspension, revocation, or denial either be rescinded or  
36 sustained.

37 (9) If the suspension, revocation, or denial is sustained after  
38 such a hearing, the person whose license, privilege, or permit is

1 suspended, revoked, or denied has the right to file a petition in the  
2 superior court of the county of arrest to review the final order of  
3 revocation by the department in the same manner as an appeal from a  
4 decision of a court of limited jurisdiction. Notice of appeal must be  
5 filed within thirty days after the date the final order is served or  
6 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ  
7 1.1, or other statutes or rules referencing de novo review, the appeal  
8 shall be limited to a review of the record of the administrative  
9 hearing. The appellant must pay the costs associated with obtaining  
10 the record of the hearing before the hearing officer. The filing of  
11 the appeal does not stay the effective date of the suspension,  
12 revocation, or denial. A petition filed under this subsection must  
13 include the petitioner's grounds for requesting review. Upon granting  
14 petitioner's request for review, the court shall review the  
15 department's final order of suspension, revocation, or denial as  
16 expeditiously as possible. The review must be limited to a  
17 determination of whether the department has committed any errors of  
18 law. The superior court shall accept those factual determinations  
19 supported by substantial evidence in the record: (a) That were  
20 expressly made by the department; or (b) that may reasonably be  
21 inferred from the final order of the department. The superior court  
22 may reverse, affirm, or modify the decision of the department or remand  
23 the case back to the department for further proceedings. The decision  
24 of the superior court must be in writing and filed in the clerk's  
25 office with the other papers in the case. The court shall state the  
26 reasons for the decision. If judicial relief is sought for a stay or  
27 other temporary remedy from the department's action, the court shall  
28 not grant such relief unless the court finds that the appellant is  
29 likely to prevail in the appeal and that without a stay the appellant  
30 will suffer irreparable injury. If the court stays the suspension,  
31 revocation, or denial it may impose conditions on such stay.

32 (10)(a) If a person whose driver's license, permit, or privilege to  
33 drive has been or will be suspended, revoked, or denied under  
34 subsection (7) of this section, other than as a result of a breath or  
35 blood test refusal, and who has not committed an offense for which he  
36 or she was granted a deferred prosecution under chapter 10.05 RCW,  
37 petitions a court for a deferred prosecution on criminal charges  
38 arising out of the arrest for which action has been or will be taken

1 under subsection (7) of this section, or notifies the department of  
2 licensing of the intent to seek such a deferred prosecution, then the  
3 license suspension or revocation shall be stayed pending entry of the  
4 deferred prosecution. The stay shall not be longer than one hundred  
5 fifty days after the date charges are filed, or two years after the  
6 date of the arrest, whichever time period is shorter. If the court  
7 stays the suspension, revocation, or denial, it may impose conditions  
8 on such stay. If the person is otherwise eligible for licensing, the  
9 department shall issue a temporary license, or extend any valid  
10 temporary license marked under subsection (6) of this section, for the  
11 period of the stay. If a deferred prosecution treatment plan is not  
12 recommended in the report made under RCW 10.05.050, or if treatment is  
13 rejected by the court, or if the person declines to accept an offered  
14 treatment plan, or if the person violates any condition imposed by the  
15 court, then the court shall immediately direct the department to cancel  
16 the stay and any temporary marked license or extension of a temporary  
17 license issued under this subsection.

18 (b) A suspension, revocation, or denial imposed under this section,  
19 other than as a result of a breath or blood test refusal, shall be  
20 stayed if the person is accepted for deferred prosecution as provided  
21 in chapter 10.05 RCW for the incident upon which the suspension,  
22 revocation, or denial is based. If the deferred prosecution is  
23 terminated, the stay shall be lifted and the suspension, revocation, or  
24 denial reinstated. If the deferred prosecution is completed, the stay  
25 shall be lifted and the suspension, revocation, or denial canceled.

26 (c) The provisions of (b) of this subsection relating to a stay of  
27 a suspension, revocation, or denial and the cancellation of any  
28 suspension, revocation, or denial do not apply to the suspension,  
29 revocation, denial, or disqualification of a person's commercial  
30 driver's license or privilege to operate a commercial motor vehicle.

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



1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 46.68 RCW  
2 to read as follows:

3        The ignition interlock device revolving fund is created in the  
4 custody of the state treasurer to assist in covering the monetary costs  
5 of installing, removing, and leasing an ignition interlock device for  
6 indigent people who are required under section 9 of this act and RCW  
7 46.61.5055 to install an ignition interlock device in all vehicles  
8 owned or operated by the person. The director, or his or her designee,  
9 is authorized to expend money from the ignition interlock device  
10 revolving fund. The account is subject to allotment procedures under  
11 chapter 43.88 RCW, but an appropriation is not required for  
12 expenditures.

13        **Sec. 4.**    RCW 46.20.342 and 2004 c 95 s 5 are each amended to read  
14 as follows:

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

20        (a) A person found to be a habitual offender under chapter 46.65  
21 RCW, who violates this section while an order of revocation issued  
22 under chapter 46.65 RCW prohibiting such operation is in effect, is  
23 guilty of driving while license suspended or revoked in the first  
24 degree, a gross misdemeanor. Upon the first such conviction, the  
25 person shall be punished by imprisonment for not less than ten days.  
26 Upon the second conviction, the person shall be punished by  
27 imprisonment for not less than ninety days. Upon the third or  
28 subsequent conviction, the person shall be punished by imprisonment for  
29 not less than one hundred eighty days. If the person is also convicted  
30 of the offense defined in RCW 46.61.502 or 46.61.504, when both  
31 convictions arise from the same event, the minimum sentence of  
32 confinement shall be not less than ninety days. The minimum sentence  
33 of confinement required shall not be suspended or deferred. A  
34 conviction under this subsection does not prevent a person from  
35 petitioning for reinstatement as provided by RCW 46.65.080.

36        (b) A person who violates this section while an order of suspension  
37 or revocation prohibiting such operation is in effect and while the

1 person is not eligible to reinstate his or her driver's license or  
2 driving privilege, other than for a suspension for the reasons  
3 described in (c) of this subsection, is guilty of driving while license  
4 suspended or revoked in the second degree, a gross misdemeanor. This  
5 subsection applies when a person's driver's license or driving  
6 privilege has been suspended or revoked by reason of:

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

9 (ii) A previous conviction under this section;

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

15 (iv) A conviction of RCW 46.20.410, relating to the violation of  
16 restrictions of an occupational (~~(or)~~) driver's license, a temporary  
17 restricted driver's license, or an ignition interlock driver's license;

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

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

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

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

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

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

28 (xi) A conviction of RCW 46.61.522, relating to vehicular assault;

29 (xii) A conviction of RCW 46.61.527(4), relating to reckless  
30 endangerment of roadway workers;

31 (xiii) A conviction of RCW 46.61.530, relating to racing of  
32 vehicles on highways;

33 (xiv) A conviction of RCW 46.61.685, relating to leaving children  
34 in an unattended vehicle with motor running;

35 (xv) A conviction of RCW 46.61.740, relating to theft of motor  
36 vehicle fuel;

37 (xvi) A conviction of RCW 46.64.048, relating to attempting,  
38 aiding, abetting, coercing, and committing crimes;

1 (xvii) An administrative action taken by the department under  
2 chapter 46.20 RCW; or

3 (xviii) A conviction of a local law, ordinance, regulation, or  
4 resolution of a political subdivision of this state, the federal  
5 government, or any other state, of an offense substantially similar to  
6 a violation included in this subsection.

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

29 (2) Upon receiving a record of conviction of any person or upon  
30 receiving an order by any juvenile court or any duly authorized court  
31 officer of the conviction of any juvenile under this section, the  
32 department shall:

33 (a) For a conviction of driving while suspended or revoked in the  
34 first degree, as provided by subsection (1)(a) of this section, extend  
35 the period of administrative revocation imposed under chapter 46.65 RCW  
36 for an additional period of one year from and after the date the person  
37 would otherwise have been entitled to apply for a new license or have  
38 his or her driving privilege restored; or

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

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

13 **Sec. 5.** RCW 46.20.380 and 2004 c 95 s 6 are each amended to read  
14 as follows:

15 No person may file an application for an occupational ~~((or))~~  
16 driver's license, a temporary restricted driver's license, or an  
17 ignition interlock driver's license as provided in RCW 46.20.391 and  
18 section 9 of this act unless he or she first pays to the director or  
19 other person authorized to accept applications and fees for driver's  
20 licenses a fee of one hundred dollars. The applicant shall receive  
21 upon payment an official receipt for the payment of such fee. All such  
22 fees shall be forwarded to the director who shall transmit such fees to  
23 the state treasurer in the same manner as other driver's license fees.

24 **Sec. 6.** RCW 46.20.391 and 2004 c 95 s 7 are each amended to read  
25 as follows:

26 (1)~~((a))~~ Any person licensed under this chapter who is convicted  
27 of an offense relating to motor vehicles for which suspension or  
28 revocation of the driver's license is mandatory, other than vehicular  
29 homicide ~~((or))~~, vehicular assault, ~~((or who has had his or her license~~  
30 ~~suspended, revoked, or denied under RCW 46.20.3101))~~ driving while  
31 under the influence of intoxicating liquor or any drug, or being in  
32 actual physical control of a motor vehicle while under the influence of  
33 intoxicating liquor or any drug, may submit to the department an  
34 application for a temporary restricted driver's license. The  
35 department, upon receipt of the prescribed fee and upon determining  
36 that the petitioner is eligible to receive the license, may issue a

1 temporary restricted driver's license and may set definite restrictions  
2 as provided in RCW 46.20.394. ~~((No person may petition for, and the  
3 department shall not issue, a temporary restricted driver's license  
4 that is effective during the first thirty days of any suspension or  
5 revocation imposed for a violation of RCW 46.61.502 or 46.61.504 or,  
6 for a suspension, revocation, or denial imposed under RCW 46.20.3101,  
7 during the required minimum portion of the periods of suspension,  
8 revocation, or denial established under (c) of this subsection.~~

9 ~~(b) An applicant under this subsection whose driver's license is  
10 suspended or revoked for an alcohol-related offense shall provide proof  
11 to the satisfaction of the department that a functioning ignition  
12 interlock device has been installed on a vehicle owned or operated by  
13 the person.~~

14 ~~(i) The department shall require the person to maintain such a  
15 device on a vehicle owned or operated by the person and shall restrict  
16 the person to operating only vehicles equipped with such a device, for  
17 the remainder of the period of suspension, revocation, or denial.~~

18 ~~(ii) Subject to any periodic renewal requirements established by  
19 the department pursuant to this section and subject to any applicable  
20 compliance requirements under this chapter or other law, a temporary  
21 restricted driver's license granted after a suspension or revocation  
22 under RCW 46.61.5055 or 46.20.3101 extends through the remaining  
23 portion of any concurrent or consecutive suspension or revocation that  
24 may be imposed as the result of administrative action and criminal  
25 conviction arising out of the same incident.~~

26 ~~(iii) The time period during which the person is licensed under  
27 this section shall apply on a day for day basis toward satisfying the  
28 period of time the ignition interlock device restriction is required  
29 under RCW 46.20.720 (1) and (2) (a), (b), and (c).~~

30 ~~(c) The department shall provide by rule the minimum portions of  
31 the periods of suspension, revocation, or denial set forth in RCW  
32 46.20.3101 after which a person may apply for a temporary restricted  
33 driver's license under this section. In establishing the minimum  
34 portions of the periods of suspension, revocation, or denial, the  
35 department shall consider the requirements of federal law regarding  
36 state eligibility for grants or other funding, and shall establish such  
37 periods so as to ensure that the state will maintain its eligibility,~~

1 ~~or establish eligibility, to obtain incentive grants or any other~~  
2 ~~federal funding.))~~

3 (2)(a) A person licensed under this chapter whose driver's license  
4 is suspended administratively due to failure to appear or pay a traffic  
5 ticket under RCW 46.20.289; a violation of the financial responsibility  
6 laws under chapter 46.29 RCW; or for multiple violations within a  
7 specified period of time under RCW 46.20.291, may apply to the  
8 department for an occupational driver's license.

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

12 (c) An occupational driver's license issued to an applicant  
13 described in (a) of this subsection shall be valid for the period of  
14 the suspension or revocation.

15 (3) An applicant for an occupational or temporary restricted  
16 driver's license who qualifies under subsection (1) or (2) of this  
17 section is eligible to receive such license only if:

18 (a) Within seven years immediately preceding the date of the  
19 offense that gave rise to the present conviction or incident, the  
20 applicant has not committed vehicular homicide under RCW 46.61.520 or  
21 vehicular assault under RCW 46.61.522; and

22 (b) The applicant demonstrates that it is necessary for him or her  
23 to operate a motor vehicle because he or she:

24 (i) Is engaged in an occupation or trade that makes it essential  
25 that he or she operate a motor vehicle;

26 (ii) Is undergoing continuing health care or providing continuing  
27 care to another who is dependent upon the applicant;

28 (iii) Is enrolled in an educational institution and pursuing a  
29 course of study leading to a diploma, degree, or other certification of  
30 successful educational completion;

31 (iv) Is undergoing substance abuse treatment or is participating in  
32 meetings of a twelve-step group such as Alcoholics Anonymous that  
33 requires the petitioner to drive to or from the treatment or meetings;

34 (v) Is fulfilling court-ordered community service responsibilities;

35 (vi) Is in a program that assists persons who are enrolled in a  
36 WorkFirst program pursuant to chapter 74.08A RCW to become gainfully  
37 employed and the program requires a driver's license;

1 (vii) Is in an apprenticeship, on-the-job training, or welfare-to-  
2 work program; or

3 (viii) Presents evidence that he or she has applied for a position  
4 in an apprenticeship or on-the-job training program for which a  
5 driver's license is required to begin the program, provided that a  
6 license granted under this provision shall be in effect for no longer  
7 than fourteen days; and

8 (c) The applicant files satisfactory proof of financial  
9 responsibility under chapter 46.29 RCW; and

10 (d) Upon receipt of evidence that a holder of an occupational  
11 driver's license granted under this subsection is no longer enrolled in  
12 an apprenticeship or on-the-job training program, the director shall  
13 give written notice by first-class mail to the driver that the  
14 occupational driver's license shall be canceled. The effective date of  
15 cancellation shall be fifteen days from the date of mailing the notice.  
16 If at any time before the cancellation goes into effect the driver  
17 submits evidence of continued enrollment in the program, the  
18 cancellation shall be stayed. If the cancellation becomes effective,  
19 the driver may obtain, at no additional charge, a new occupational  
20 driver's license upon submittal of evidence of enrollment in another  
21 program that meets the criteria set forth in this subsection; and

22 (e) The department shall not issue an occupational driver's license  
23 under (b)(iv) of this subsection if the applicant is able to receive  
24 transit services sufficient to allow for the applicant's participation  
25 in the programs referenced under (b)(iv) of this subsection.

26 (4) A person aggrieved by the decision of the department on the  
27 application for an occupational or temporary restricted driver's  
28 license may request a hearing as provided by rule of the department.

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

1       **Sec. 7.** RCW 46.20.400 and 2004 c 95 s 9 are each amended to read  
2 as follows:

3       If an occupational ((~~or~~)) driver's license, a temporary restricted  
4 driver's license, or an ignition interlock driver's license is issued  
5 and is not revoked during the period for which issued the licensee may  
6 obtain a new driver's license at the end of such period, but no new  
7 driver's license may be issued to such person until he or she  
8 surrenders his or her occupational ((~~or~~)) driver's license, temporary  
9 restricted driver's license, or ignition interlock driver's license and  
10 his or her copy of the order, and the director is satisfied that the  
11 person complies with all other provisions of law relative to the  
12 issuance of a driver's license.

13       **Sec. 8.** RCW 46.20.410 and 2004 c 95 s 10 are each amended to read  
14 as follows:

15       Any person convicted for violation of any restriction of an  
16 occupational ((~~or~~)) driver's license, a temporary restricted driver's  
17 license, or an ignition interlock driver's license shall in addition to  
18 the immediate revocation of such license and any other penalties  
19 provided by law be fined not less than fifty nor more than two hundred  
20 dollars or imprisoned for not more than six months or both such fine  
21 and imprisonment.

22       NEW SECTION. **Sec. 9.** A new section is added to chapter 46.20 RCW  
23 to read as follows:

24       (1)(a) Beginning January 1, 2009, any person licensed under this  
25 chapter who is convicted of any offense involving the use, consumption,  
26 or possession of alcohol while operating a motor vehicle in violation  
27 of RCW 46.61.502 or 46.61.504, other than vehicular homicide or  
28 vehicular assault, or who has had or will have his or her license  
29 suspended, revoked, or denied under RCW 46.20.3101, may submit to the  
30 department an application for an ignition interlock driver's license.  
31 The department, upon receipt of the prescribed fee and upon determining  
32 that the petitioner is eligible to receive the license, may issue an  
33 ignition interlock driver's license.

34       (b) A person may apply for an ignition interlock driver's license  
35 anytime, including immediately after receiving the notices under RCW



1 46.20.308 or after his or her license is suspended, revoked, or denied.  
2 A person receiving an ignition interlock driver's license waives his or  
3 her right to a hearing or appeal under RCW 46.20.308.

4 (c) An applicant under this subsection shall provide proof to the  
5 satisfaction of the department that a functioning ignition interlock  
6 device has been installed on all vehicles operated by the person.

7 (i) The department shall require the person to maintain the device  
8 on all vehicles operated by the person and shall restrict the person to  
9 operating only vehicles equipped with the device, for the remainder of  
10 the period of suspension, revocation, or denial. The installation of  
11 an ignition interlock device is not necessary on vehicles owned by a  
12 person's employer and driven as a requirement of employment during  
13 working hours.

14 (ii) Subject to any periodic renewal requirements established by  
15 the department under this section and subject to any applicable  
16 compliance requirements under this chapter or other law, an ignition  
17 interlock driver's license granted upon a suspension or revocation  
18 under RCW 46.61.5055 or 46.20.3101 extends through the remaining  
19 portion of any concurrent or consecutive suspension or revocation that  
20 may be imposed as the result of administrative action and criminal  
21 conviction arising out of the same incident.

22 (iii) The time period during which the person is licensed under  
23 this section shall apply on a day-for-day basis toward satisfying the  
24 period of time the ignition interlock device restriction is required  
25 under RCW 46.20.720 and 46.61.5055.

26 (2) An applicant for an ignition interlock driver's license who  
27 qualifies under subsection (1) of this section is eligible to receive  
28 a license only if:

29 (a) Within seven years immediately preceding the date of the  
30 offense that gave rise to the present conviction or incident, the  
31 applicant has not committed vehicular homicide under RCW 46.61.520 or  
32 vehicular assault under RCW 46.61.522; and

33 (b) The applicant files satisfactory proof of financial  
34 responsibility under chapter 46.29 RCW.

35 (3) Upon receipt of evidence that a holder of an ignition interlock  
36 driver's license granted under this subsection no longer has a  
37 functioning ignition interlock device installed on all vehicles  
38 operated by the driver, the director shall give written notice by

1 first-class mail to the driver that the ignition interlock driver's  
2 license shall be canceled. The effective date of cancellation shall be  
3 fifteen days from the date of mailing the notice. If at any time  
4 before the cancellation goes into effect the driver submits evidence  
5 that a functioning ignition interlock device has been installed on all  
6 vehicles operated by the driver, the cancellation shall be stayed. If  
7 the cancellation becomes effective, the driver may obtain, at no  
8 additional charge, a new ignition interlock driver's license upon  
9 submittal of evidence that a functioning ignition interlock device has  
10 been installed on all vehicles operated by the driver.

11 (4) A person aggrieved by the decision of the department on the  
12 application for an ignition interlock driver's license may request a  
13 hearing as provided by rule of the department.

14 (5) The director shall cancel an ignition interlock driver's  
15 license upon receipt of notice that the holder thereof has been  
16 convicted of operating a motor vehicle in violation of its  
17 restrictions, or of a separate offense that under this chapter would  
18 warrant suspension or revocation of a regular driver's license. The  
19 cancellation is effective as of the date of the conviction, and  
20 continues with the same force and effect as any suspension or  
21 revocation under this title.

22 (6) Unless costs are waived by the ignition interlock company or  
23 the person is indigent under RCW 10.101.010, the applicant shall pay  
24 the cost of installing, removing, and leasing the ignition interlock  
25 device. Payments shall be made directly to the ignition interlock  
26 company.

27 (7) The department shall adopt rules to implement ignition  
28 interlock licensing. The department shall consult with the  
29 administrative office of the courts, the state patrol, the Washington  
30 association of sheriffs and police chiefs, ignition interlock  
31 companies, and any other organization or entity the department deems  
32 appropriate.

33 NEW SECTION. **Sec. 10.** A new section is added to chapter 46.20 RCW  
34 to read as follows:

35 (1) A pilot program is created for the purpose of monitoring  
36 compliance by persons required to use ignition interlock devices and by  
37 ignition interlock companies and vendors.

1 (2) The department, the state patrol, and the Washington traffic  
2 safety commission shall coordinate to establish a compliance pilot  
3 program that will target at least one county from eastern Washington  
4 and one county from western Washington, as determined by the  
5 department, state patrol, and Washington traffic safety commission.

6 (3) At a minimum, the compliance pilot program shall:

7 (a) Review the number of ignition interlock devices that are  
8 required to be installed in the targeted county and the number of  
9 ignition interlock devices actually installed;

10 (b) Work to identify those persons who are not complying with  
11 ignition interlock requirements or are repeatedly violating ignition  
12 interlock requirements; and

13 (c) Identify ways to track compliance and reduce noncompliance.

14 **Sec. 11.** RCW 46.63.020 and 2005 c 431 s 2, 2005 c 323 s 3, and  
15 2005 c 183 s 10 are each reenacted and amended to read as follows:

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

24 (1) RCW 46.09.120(2) relating to the operation of a nonhighway  
25 vehicle while under the influence of intoxicating liquor or a  
26 controlled substance;

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

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

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

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

35 (6) RCW 46.16.010 relating to the nonpayment of taxes and fees by  
36 failure to register a vehicle and falsifying residency when registering  
37 a motor vehicle;

1 (7) RCW 46.16.011 relating to permitting unauthorized persons to  
2 drive;

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

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

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

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

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

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

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

17 (15) RCW 46.20.410 relating to the violation of restrictions of an  
18 occupational ~~((or))~~ driver's license, temporary restricted driver's  
19 license, or ignition interlock driver's license;

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

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

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

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

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

29 (21) RCW 46.37.435 relating to wrongful installation of  
30 sunscreening material;

31 (22) RCW 46.37.650 relating to the sale, resale, distribution, or  
32 installation of a previously deployed air bag;

33 (23) RCW 46.37.671 through 46.37.675 relating to signal preemption  
34 devices;

35 (24) RCW 46.44.180 relating to operation of mobile home pilot  
36 vehicles;

37 ~~((+24))~~ (25) RCW 46.48.175 relating to the transportation of  
38 dangerous articles;

1       ~~((25))~~ (26) RCW 46.52.010 relating to duty on striking an  
2 unattended car or other property;  
3       ~~((26))~~ (27) RCW 46.52.020 relating to duty in case of injury to  
4 or death of a person or damage to an attended vehicle;  
5       ~~((27))~~ (28) RCW 46.52.090 relating to reports by repairmen,  
6 storagemen, and appraisers;  
7       ~~((28))~~ (29) RCW 46.52.130 relating to confidentiality of the  
8 driving record to be furnished to an insurance company, an employer,  
9 and an alcohol/drug assessment or treatment agency;  
10       ~~((29))~~ (30) RCW 46.55.020 relating to engaging in the activities  
11 of a registered tow truck operator without a registration certificate;  
12       ~~((30))~~ (31) RCW 46.55.035 relating to prohibited practices by tow  
13 truck operators;  
14       ~~((31))~~ (32) RCW 46.55.300 relating to vehicle immobilization;  
15       (33) RCW 46.61.015 relating to obedience to police officers,  
16 flaggers, or firefighters;  
17       ~~((32))~~ (34) RCW 46.61.020 relating to refusal to give information  
18 to or cooperate with an officer;  
19       ~~((33))~~ (35) RCW 46.61.022 relating to failure to stop and give  
20 identification to an officer;  
21       ~~((34))~~ (36) RCW 46.61.024 relating to attempting to elude  
22 pursuing police vehicles;  
23       ~~((35))~~ (37) RCW 46.61.500 relating to reckless driving;  
24       ~~((36))~~ (38) RCW 46.61.502 and 46.61.504 relating to persons under  
25 the influence of intoxicating liquor or drugs;  
26       ~~((37))~~ (39) RCW 46.61.503 relating to a person under age twenty-  
27 one driving a motor vehicle after consuming alcohol;  
28       ~~((38))~~ (40) RCW 46.61.520 relating to vehicular homicide by motor  
29 vehicle;  
30       ~~((39))~~ (41) RCW 46.61.522 relating to vehicular assault;  
31       ~~((40))~~ (42) RCW 46.61.5249 relating to first degree negligent  
32 driving;  
33       ~~((41))~~ (43) RCW 46.61.527(4) relating to reckless endangerment of  
34 roadway workers;  
35       ~~((42))~~ (44) RCW 46.61.530 relating to racing of vehicles on  
36 highways;  
37       ~~((43))~~ (45) RCW 46.61.655(7) (a) and (b) relating to failure to  
38 secure a load;

1        ~~((44))~~ (46) RCW 46.61.685 relating to leaving children in an  
2 unattended vehicle with the motor running;  
3        ~~((45))~~ (47) RCW 46.61.740 relating to theft of motor vehicle  
4 fuel;  
5        ~~((46)) RCW 46.37.671 through 46.37.675 relating to signal~~  
6 ~~preemption devices;~~  
7        ~~(47))~~ (48) RCW 46.64.010 relating to unlawful cancellation of or  
8 attempt to cancel a traffic citation;  
9        ~~((48))~~ (49) RCW 46.64.048 relating to attempting, aiding,  
10 abetting, coercing, and committing crimes;  
11        ~~((49))~~ (50) Chapter 46.65 RCW relating to habitual traffic  
12 offenders;  
13        ~~((50))~~ (51) RCW 46.68.010 relating to false statements made to  
14 obtain a refund;  
15        ~~((51))~~ (52) Chapter 46.70 RCW relating to unfair motor vehicle  
16 business practices, except where that chapter provides for the  
17 assessment of monetary penalties of a civil nature;  
18        ~~((52))~~ (53) Chapter 46.72 RCW relating to the transportation of  
19 passengers in for hire vehicles;  
20        ~~((53))~~ (54) RCW 46.72A.060 relating to limousine carrier  
21 insurance;  
22        ~~((54))~~ (55) RCW 46.72A.070 relating to operation of a limousine  
23 without a vehicle certificate;  
24        ~~((55))~~ (56) RCW 46.72A.080 relating to false advertising by a  
25 limousine carrier;  
26        ~~((56))~~ (57) Chapter 46.80 RCW relating to motor vehicle wreckers;  
27        ~~((57))~~ (58) Chapter 46.82 RCW relating to driver's training  
28 schools;  
29        ~~((58))~~ (59) RCW 46.87.260 relating to alteration or forgery of a  
30 cab card, letter of authority, or other temporary authority issued  
31 under chapter 46.87 RCW;  
32        ~~((59))~~ (60) RCW 46.87.290 relating to operation of an  
33 unregistered or unlicensed vehicle under chapter 46.87 RCW.

34        **Sec. 12.** RCW 46.20.720 and 2004 c 95 s 11 are each amended to read  
35 as follows:

36        (1) The court may order that after a period of suspension,  
37 revocation, or denial of driving privileges, and for up to as long as

1 the court has jurisdiction, any person convicted of any offense  
2 involving the use, consumption, or possession of alcohol while  
3 operating a motor vehicle may drive only a motor vehicle equipped with  
4 a functioning ignition interlock. The court shall establish a specific  
5 calibration setting at which the interlock will prevent the vehicle  
6 from being started. The court shall also establish the period of time  
7 for which interlock use will be required.

8 (2) Under RCW 46.61.5055, the court shall order any person  
9 convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent  
10 local ordinance to apply for an ignition interlock driver's license  
11 from the department under section 9 of this act and to have a  
12 functioning ignition interlock device installed on all motor vehicles  
13 operated by the person.

14 (3) The department shall require that, after any applicable period  
15 of suspension, revocation, or denial of driving privileges, a person  
16 may drive only a motor vehicle equipped with a functioning ignition  
17 interlock device if the person is convicted of an alcohol-related  
18 violation of RCW 46.61.502 or 46.61.504 or an equivalent local  
19 ordinance.

20 The department may waive the requirement for the use of such a  
21 device if it concludes that such devices are not reasonably available  
22 in the local area. The device is not necessary on vehicles owned by a  
23 person's employer and driven as a requirement of employment during  
24 working hours.

25 The ignition interlock device shall be calibrated to prevent the  
26 motor vehicle from being started when the breath sample provided has an  
27 alcohol concentration of 0.025 or more. The period of time of the  
28 restriction will be as follows:

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

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

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

35 **Sec. 13.** RCW 46.20.740 and 2004 c 95 s 12 are each amended to read  
36 as follows:

37 (1) The department shall attach or imprint a notation on the

1 driving record of any person restricted under RCW 46.20.720 or  
2 46.61.5055 stating that the person may operate only a motor vehicle  
3 equipped with a functioning ignition interlock device. The department  
4 shall determine the person's eligibility for licensing based upon  
5 written verification by a company doing business in the state that it  
6 has installed the required device on a vehicle owned or operated by the  
7 person seeking reinstatement. If, based upon notification from the  
8 interlock provider or otherwise, the department determines that an  
9 ignition interlock required under this section is no longer installed  
10 or functioning as required, the department shall suspend the person's  
11 license or privilege to drive. Whenever the license or driving  
12 privilege of any person is suspended or revoked as a result of  
13 noncompliance with an ignition interlock requirement, the suspension  
14 shall remain in effect until the person provides notice issued by a  
15 company doing business in the state that a vehicle owned or operated by  
16 the person is equipped with a functioning ignition interlock device.

17 (2) It is a misdemeanor for a person with such a notation on his or  
18 her driving record to operate a motor vehicle that is not so equipped.

19 **Sec. 14.** RCW 46.61.5055 and 2007 c 474 s 1 are each amended to  
20 read as follows:

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

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

29 (i) By imprisonment for not less than one day nor more than one  
30 year. Twenty-four consecutive hours of the imprisonment may not be  
31 suspended or deferred unless the court finds that the imposition of  
32 this mandatory minimum sentence would impose a substantial risk to the  
33 offender's physical or mental well-being. Whenever the mandatory  
34 minimum sentence is suspended or deferred, the court shall state in  
35 writing the reason for granting the suspension or deferral and the  
36 facts upon which the suspension or deferral is based. In lieu of the  
37 mandatory minimum term of imprisonment required under this subsection



1 (1)(a)(i), the court may order not less than fifteen days of electronic  
2 home monitoring. The offender shall pay the cost of electronic home  
3 monitoring. The county or municipality in which the penalty is being  
4 imposed shall determine the cost. The court may also require the  
5 offender's electronic home monitoring device to include an alcohol  
6 detection breathalyzer, and the court may restrict the amount of  
7 alcohol the offender may consume during the time the offender is on  
8 electronic home monitoring; and

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

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

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

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

37 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a

1 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
2 and who has one prior offense within seven years shall be punished as  
3 follows:

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

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

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

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

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

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

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

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

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

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

36 (ii) By a fine of not less than one thousand dollars nor more than  
37 five thousand dollars. One thousand dollars of the fine may not be

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

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

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

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

27 (4) A person who is convicted of a violation of RCW 46.61.502 or  
28 46.61.504 and who has four or more prior offenses within ten years, or  
29 who has ever previously been convicted of a violation of RCW 46.61.520  
30 committed while under the influence of intoxicating liquor or any drug  
31 or RCW 46.61.522 committed while under the influence of intoxicating  
32 liquor or any drug, shall be punished in accordance with chapter 9.94A  
33 RCW.

34 (5)(a) The court shall require any person convicted of a violation  
35 of RCW 46.61.502 or 46.61.504 to apply for an ignition interlock  
36 driver's license from the department under section 9 of this act and to  
37 have a functioning ignition interlock device installed on all motor  
38 vehicles operated by the person.

1       (b) The installation of an ignition interlock device is not  
2 necessary on vehicles owned by a person's employer and driven as a  
3 requirement of employment during working hours.

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

7       (d) The court may waive the requirement that a person obtain an  
8 ignition interlock driver's license and operate only vehicles equipped  
9 with a functioning ignition interlock device if the court makes a  
10 specific finding in writing that the devices are not reasonably  
11 available in the local area, that the person does not operate a  
12 vehicle, or the person is not eligible to receive an ignition interlock  
13 driver's license under section 9 of this act.

14       (e) When the requirement that a person obtain an ignition interlock  
15 driver's license and operate only vehicles equipped with a functioning  
16 ignition interlock device is waived by the court, the court shall order  
17 the person to submit to alcohol monitoring through an alcohol detection  
18 breathalyzer device, transdermal sensor device, or other technology  
19 designed to detect alcohol in a person's system. The person shall pay  
20 for the cost of the monitoring. The county or municipality where the  
21 penalty is being imposed shall determine the cost.

22       (f) The period of time for which ignition interlock use or alcohol  
23 monitoring is required will be as follows:

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

26       (ii) For a person who has previously been restricted under (f)(i)  
27 of this subsection, a period of five years;

28       (iii) For a person who has previously been restricted under (f)(ii)  
29 of this subsection, a period of ten years.

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

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

1 (b) In any case in which the installation and use of such a device  
2 is otherwise mandatory, order the use of such a device for an  
3 additional sixty days.

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

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

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

11 (~~(7)~~) (8) An offender punishable under this section is subject to  
12 the alcohol assessment and treatment provisions of RCW 46.61.5056.

13 (~~(8)~~) (9) The license, permit, or nonresident privilege of a  
14 person convicted of driving or being in physical control of a motor  
15 vehicle while under the influence of intoxicating liquor or drugs must:

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

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

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

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

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

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

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

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

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

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

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

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

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

9 For purposes of this subsection (~~((8))~~) (9), the department shall  
10 refer to the driver's record maintained under RCW 46.52.120 when  
11 determining the existence of prior offenses.

12 (~~((9))~~) (10) After expiration of any period of suspension,  
13 revocation, or denial of the offender's license, permit, or privilege  
14 to drive required by this section, the department shall place the  
15 offender's driving privilege in probationary status pursuant to RCW  
16 46.20.355.

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

37 (b) For each violation of mandatory conditions of probation under

1 (a)(i), (ii), or (iii) of this subsection, the court shall order the  
2 convicted person to be confined for thirty days, which shall not be  
3 suspended or deferred.

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

14 ~~((+11+))~~ (12) A court may waive the electronic home monitoring  
15 requirements of this chapter when:

- 16 (a) The offender does not have a dwelling, telephone service, or  
17 any other necessity to operate an electronic home monitoring system;
- 18 (b) The offender does not reside in the state of Washington; or
- 19 (c) The court determines that there is reason to believe that the  
20 offender would violate the conditions of the electronic home monitoring  
21 penalty.

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

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

34 ~~((+12+))~~ (13) An offender serving a sentence under this section,  
35 whether or not a mandatory minimum term has expired, may be granted an  
36 extraordinary medical placement by the jail administrator subject to  
37 the standards and limitations set forth in RCW 9.94A.728(4).



1       (~~(13)~~) (14) For purposes of this section and RCW 46.61.502 and  
2 46.61.504:

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

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

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

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

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

12       (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
13 9A.36.050 or an equivalent local ordinance, if the conviction is the  
14 result of a charge that was originally filed as a violation of RCW  
15 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
16 46.61.520 or 46.61.522;

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

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

23       (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
24 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
25 ordinance, if the charge under which the deferred prosecution was  
26 granted was originally filed as a violation of RCW 46.61.502 or  
27 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
28 46.61.522;

29       (b) "Within seven years" means that the arrest for a prior offense  
30 occurred within seven years of the arrest for the current offense; and

31       (c) "Within ten years" means that the arrest for a prior offense  
32 occurred within ten years of the arrest for the current offense.

33       NEW SECTION.   **Sec. 15.** Sections 2, 4 through 8, and 11 through 14  
34 of this act take effect January 1, 2009.

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