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**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 3254**

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**State of Washington**

**60th Legislature**

**2008 Regular Session**

**By** House Transportation (originally sponsored by Representatives Goodman, Pedersen, Simpson, Morrell, Green, Kelley, Kagi, and Roberts)

READ FIRST TIME 02/12/08.

1       AN ACT Relating to accountability for persons driving under the  
2 influence of intoxicating liquor or drugs; amending RCW 46.20.342,  
3 46.20.391, 46.20.400, 46.20.410, 46.20.720, 46.20.740, 46.61.5055,  
4 46.61.502, 46.61.504, 9.94A.533, and 9.94A.728; reenacting and amending  
5 RCW 46.20.308 and 46.63.020; adding a new section to chapter 46.04 RCW;  
6 adding a new section to chapter 46.68 RCW; adding new sections to  
7 chapter 46.20 RCW; adding a new section to chapter 46.61 RCW; adding a  
8 new section to chapter 70.96A RCW; creating new sections; prescribing  
9 penalties; and providing an effective date.

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

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

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

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

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

12 (2) The test or tests of breath shall be administered at the  
13 direction of a law enforcement officer having reasonable grounds to  
14 believe the person to have been driving or in actual physical control  
15 of a motor vehicle within this state while under the influence of  
16 intoxicating liquor or any drug or the person to have been driving or  
17 in actual physical control of a motor vehicle while having alcohol in  
18 a concentration in violation of RCW 46.61.503 in his or her system and  
19 being under the age of twenty-one. However, in those instances where  
20 the person is incapable due to physical injury, physical incapacity, or  
21 other physical limitation, of providing a breath sample or where the  
22 person is being treated in a hospital, clinic, doctor's office,  
23 emergency medical vehicle, ambulance, or other similar facility or  
24 where the officer has reasonable grounds to believe that the person is  
25 under the influence of a drug, a blood test shall be administered by a  
26 qualified person as provided in RCW 46.61.506(5). The officer shall  
27 inform the person of his or her right to refuse the breath or blood  
28 test, and of his or her right to have additional tests administered by  
29 any qualified person of his or her choosing as provided in RCW  
30 46.61.506. The officer shall warn the driver, in substantially the  
31 following language, that:

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

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

37 (c) If the driver submits to the test and the test is administered,  
38 the driver's license, permit, or privilege to drive will be suspended,

1 revoked, or denied for at least ninety days if the driver is age  
2 twenty-one or over and the test indicates the alcohol concentration of  
3 the driver's breath or blood is 0.08 or more, or if the driver is under  
4 age twenty-one and the test indicates the alcohol concentration of the  
5 driver's breath or blood is 0.02 or more, or if the driver is under age  
6 twenty-one and the driver is in violation of RCW 46.61.502 or  
7 46.61.504; and

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

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

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

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

31 (6) If, after arrest and after the other applicable conditions and  
32 requirements of this section have been satisfied, a test or tests of  
33 the person's blood or breath is administered and the test results  
34 indicate that the alcohol concentration of the person's breath or blood  
35 is 0.08 or more if the person is age twenty-one or over, or 0.02 or  
36 more if the person is under the age of twenty-one, or the person  
37 refuses to submit to a test, the arresting officer or other law

1 enforcement officer at whose direction any test has been given, or the  
2 department, where applicable, if the arrest results in a test of the  
3 person's blood, shall:

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

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

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

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

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

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

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

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

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

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

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

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

1 order that the suspension, revocation, or denial either be rescinded or  
2 sustained.

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

36 (10)(a) If a person whose driver's license, permit, or privilege to  
37 drive has been or will be suspended, revoked, or denied under  
38 subsection (7) of this section, other than as a result of a breath or

1 blood test refusal, and who has not committed an offense for which he  
2 or she was granted a deferred prosecution under chapter 10.05 RCW,  
3 petitions a court for a deferred prosecution on criminal charges  
4 arising out of the arrest for which action has been or will be taken  
5 under subsection (7) of this section, or notifies the department of  
6 licensing of the intent to seek such a deferred prosecution, then the  
7 license suspension or revocation shall be stayed pending entry of the  
8 deferred prosecution. The stay shall not be longer than one hundred  
9 fifty days after the date charges are filed, or two years after the  
10 date of the arrest, whichever time period is shorter. If the court  
11 stays the suspension, revocation, or denial, it may impose conditions  
12 on such stay. If the person is otherwise eligible for licensing, the  
13 department shall issue a temporary license, or extend any valid  
14 temporary license marked under subsection (6) of this section, for the  
15 period of the stay. If a deferred prosecution treatment plan is not  
16 recommended in the report made under RCW 10.05.050, or if treatment is  
17 rejected by the court, or if the person declines to accept an offered  
18 treatment plan, or if the person violates any condition imposed by the  
19 court, then the court shall immediately direct the department to cancel  
20 the stay and any temporary marked license or extension of a temporary  
21 license issued under this subsection.

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

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

35 (11) When it has been finally determined under the procedures of  
36 this section that a nonresident's privilege to operate a motor vehicle  
37 in this state has been suspended, revoked, or denied, the department



1 shall give information in writing of the action taken to the motor  
2 vehicle administrator of the state of the person's residence and of any  
3 state in which he or she has a license.

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

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

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

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

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

1 of confinement required shall not be suspended or deferred. A  
2 conviction under this subsection does not prevent a person from  
3 petitioning for reinstatement as provided by RCW 46.65.080.

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

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

14 (ii) A previous conviction under this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **Sec. 5.** RCW 46.20.391 and 2004 c 95 s 7 are each amended to read  
20 as follows:

21 (1)((~~a~~)) Any person licensed under this chapter who is convicted  
22 of an offense relating to motor vehicles for which suspension or  
23 revocation of the driver's license is mandatory, other than vehicular  
24 homicide (~~or~~), vehicular assault, (~~or who has had his or her license~~  
25 ~~suspended, revoked, or denied under RCW 46.20.3101~~) driving while  
26 under the influence of intoxicating liquor or any drug, or being in  
27 actual physical control of a motor vehicle while under the influence of  
28 intoxicating liquor or any drug, may submit to the department an  
29 application for a temporary restricted driver's license. The  
30 department, upon receipt of the prescribed fee and upon determining  
31 that the petitioner is eligible to receive the license, may issue a  
32 temporary restricted driver's license and may set definite restrictions  
33 as provided in RCW 46.20.394. (~~No person may petition for, and the~~  
34 ~~department shall not issue, a temporary restricted driver's license~~  
35 ~~that is effective during the first thirty days of any suspension or~~  
36 ~~revocation imposed for a violation of RCW 46.61.502 or 46.61.504 or,~~

1 for a suspension, revocation, or denial imposed under RCW 46.20.3101,  
2 during the required minimum portion of the periods of suspension,  
3 revocation, or denial established under (c) of this subsection.

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

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

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

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

25 (c) The department shall provide by rule the minimum portions of  
26 the periods of suspension, revocation, or denial set forth in RCW  
27 46.20.3101 after which a person may apply for a temporary restricted  
28 driver's license under this section. In establishing the minimum  
29 portions of the periods of suspension, revocation, or denial, the  
30 department shall consider the requirements of federal law regarding  
31 state eligibility for grants or other funding, and shall establish such  
32 periods so as to ensure that the state will maintain its eligibility,  
33 or establish eligibility, to obtain incentive grants or any other  
34 federal funding.))

35 (2)(a) A person licensed under this chapter whose driver's license  
36 is suspended administratively due to failure to appear or pay a traffic  
37 ticket under RCW 46.20.289; a violation of the financial responsibility

1 laws under chapter 46.29 RCW; or for multiple violations within a  
2 specified period of time under RCW 46.20.291, may apply to the  
3 department for an occupational driver's license.

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

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

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

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

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

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

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

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

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

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

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

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

35 (viii) Presents evidence that he or she has applied for a position  
36 in an apprenticeship or on-the-job training program for which a  
37 driver's license is required to begin the program, provided that a

1 license granted under this provision shall be in effect for no longer  
2 than fourteen days; and

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

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

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

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

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

32 **Sec. 6.** RCW 46.20.400 and 2004 c 95 s 9 are each amended to read  
33 as follows:

34 If an occupational (~~(or)~~) driver's license, a temporary restricted  
35 driver's license, or an ignition interlock driver's license is issued  
36 and is not revoked during the period for which issued the licensee may  
37 obtain a new driver's license at the end of such period, but no new

1 driver's license may be issued to such person until he or she  
2 surrenders his or her occupational ((~~or~~)) driver's license, temporary  
3 restricted driver's license, or ignition interlock driver's license and  
4 his or her copy of the order, and the director is satisfied that the  
5 person complies with all other provisions of law relative to the  
6 issuance of a driver's license.

7 **Sec. 7.** RCW 46.20.410 and 2004 c 95 s 10 are each amended to read  
8 as follows:

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

16 NEW SECTION. **Sec. 8.** A new section is added to chapter 46.20 RCW  
17 to read as follows:

18 (1)(a) Beginning January 1, 2009, any person licensed under this  
19 chapter who is convicted of a violation of RCW 46.61.502 or 46.61.504,  
20 other than vehicular homicide or vehicular assault, or who has had or  
21 will have his or her license suspended, revoked, or denied under RCW  
22 46.20.3101, may submit to the department an application for an ignition  
23 interlock driver's license. The department, upon determining that the  
24 petitioner is eligible to receive the license, may issue an ignition  
25 interlock driver's license.

26 (b) A person may apply for an ignition interlock driver's license  
27 anytime, including immediately after receiving the notices under RCW  
28 46.20.308 or after his or her license is suspended, revoked, or denied.  
29 A person receiving an ignition interlock driver's license waives his or  
30 her right to a hearing or appeal under RCW 46.20.308.

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

34 (i) The department shall require the person to maintain the device  
35 on all vehicles operated by the person and shall restrict the person to  
36 operating only vehicles equipped with the device, for the remainder of



1 the period of suspension, revocation, or denial. The installation of  
2 an ignition interlock device is not necessary on vehicles owned by a  
3 person's employer and driven as a requirement of employment during  
4 working hours. The person must provide the department with a  
5 declaration pursuant to RCW 9A.72.085 from his or her employer stating  
6 that the person's employment requires the person to operate a vehicle  
7 owned by the employer during working hours.

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

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

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

23 (a) Within seven years immediately preceding the date of the  
24 offense that gave rise to the present conviction or incident, the  
25 applicant has not committed vehicular homicide under RCW 46.61.520 or  
26 vehicular assault under RCW 46.61.522;

27 (b) The applicant has completed or agreed to complete an alcohol  
28 and drug assessment under sections 14 and 15 of this act. If the  
29 applicant has not completed an alcohol and drug assessment at the time  
30 he or she is applying for an ignition interlock license, the applicant  
31 must submit to the department proof of a completed assessment within  
32 thirty days of receiving an ignition interlock license; and

33 (c) 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, or if the driver has not completed an alcohol

1 and drug assessment within thirty days of receiving an ignition  
2 interlock license, the director shall give written notice by first-  
3 class mail to the driver that the ignition interlock driver's license  
4 shall be canceled. The effective date of cancellation shall be fifteen  
5 days from the date of mailing the notice. If at any time before the  
6 cancellation goes into effect the driver submits evidence that a  
7 functioning ignition interlock device has been installed on all  
8 vehicles operated by the driver, or evidence that the driver has  
9 completed an alcohol and drug assessment, the cancellation shall be  
10 stayed. If the cancellation becomes effective, the driver may obtain  
11 a new ignition interlock driver's license upon submittal of evidence  
12 that a functioning ignition interlock device has been installed on all  
13 vehicles operated by the driver or upon submittal of evidence that the  
14 driver has completed an alcohol and drug assessment.

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

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

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

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

34 (1) A pilot program is created for the purpose of monitoring  
35 compliance by persons required to use ignition interlock devices and by  
36 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 (4) As part of monitoring compliance, the Washington traffic safety  
15 commission shall also track recidivism for violations of RCW 46.61.502  
16 and 46.61.504 by persons required to have an ignition interlock license  
17 under section 8 of this act.

18 **Sec. 10.** RCW 46.63.020 and 2005 c 431 s 2, 2005 c 323 s 3, and  
19 2005 c 183 s 10 are each reenacted and amended to read as follows:

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

28 (1) RCW 46.09.120(2) relating to the operation of a nonhighway  
29 vehicle while under the influence of intoxicating liquor or a  
30 controlled substance;

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

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

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

36 (5) Chapter 46.12 RCW relating to certificates of ownership and

1 registration and markings indicating that a vehicle has been destroyed  
2 or declared a total loss;

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

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

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

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

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

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

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

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

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

22 (15) RCW 46.20.410 relating to the violation of restrictions of an  
23 occupational ((or)) driver's license, temporary restricted driver's  
24 license, or ignition interlock driver's license;

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

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

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

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

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

34 (21) RCW 46.37.435 relating to wrongful installation of  
35 sunscreening material;

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

1           (23) RCW 46.37.671 through 46.37.675 relating to signal preemption  
2 devices;  
3           (24) RCW 46.44.180 relating to operation of mobile home pilot  
4 vehicles;  
5           (~~(24)~~) (25) RCW 46.48.175 relating to the transportation of  
6 dangerous articles;  
7           (~~(25)~~) (26) RCW 46.52.010 relating to duty on striking an  
8 unattended car or other property;  
9           (~~(26)~~) (27) RCW 46.52.020 relating to duty in case of injury to  
10 or death of a person or damage to an attended vehicle;  
11           (~~(27)~~) (28) RCW 46.52.090 relating to reports by repairmen,  
12 storagemen, and appraisers;  
13           (~~(28)~~) (29) RCW 46.52.130 relating to confidentiality of the  
14 driving record to be furnished to an insurance company, an employer,  
15 and an alcohol/drug assessment or treatment agency;  
16           (~~(29)~~) (30) RCW 46.55.020 relating to engaging in the activities  
17 of a registered tow truck operator without a registration certificate;  
18           (~~(30)~~) (31) RCW 46.55.035 relating to prohibited practices by tow  
19 truck operators;  
20           (~~(31)~~) (32) RCW 46.55.300 relating to vehicle immobilization;  
21 (33) RCW 46.61.015 relating to obedience to police officers,  
22 flaggers, or firefighters;  
23           (~~(32)~~) (34) RCW 46.61.020 relating to refusal to give information  
24 to or cooperate with an officer;  
25           (~~(33)~~) (35) RCW 46.61.022 relating to failure to stop and give  
26 identification to an officer;  
27           (~~(34)~~) (36) RCW 46.61.024 relating to attempting to elude  
28 pursuing police vehicles;  
29           (~~(35)~~) (37) RCW 46.61.500 relating to reckless driving;  
30           (~~(36)~~) (38) RCW 46.61.502 and 46.61.504 relating to persons under  
31 the influence of intoxicating liquor or drugs;  
32           (~~(37)~~) (39) RCW 46.61.503 relating to a person under age twenty-  
33 one driving a motor vehicle after consuming alcohol;  
34           (~~(38)~~) (40) RCW 46.61.520 relating to vehicular homicide by motor  
35 vehicle;  
36           (~~(39)~~) (41) RCW 46.61.522 relating to vehicular assault;  
37           (~~(40)~~) (42) RCW 46.61.5249 relating to first degree negligent  
38 driving;

1        ~~((41))~~ (43) RCW 46.61.527(4) relating to reckless endangerment of  
2 roadway workers;  
3        ~~((42))~~ (44) RCW 46.61.530 relating to racing of vehicles on  
4 highways;  
5        ~~((43))~~ (45) RCW 46.61.655(7) (a) and (b) relating to failure to  
6 secure a load;  
7        ~~((44))~~ (46) RCW 46.61.685 relating to leaving children in an  
8 unattended vehicle with the motor running;  
9        ~~((45))~~ (47) RCW 46.61.740 relating to theft of motor vehicle  
10 fuel;  
11        ~~((46) RCW 46.37.671 through 46.37.675 relating to signal~~  
12 ~~preemption devices;~~  
13        ~~(47))~~ (48) RCW 46.64.010 relating to unlawful cancellation of or  
14 attempt to cancel a traffic citation;  
15        ~~((48))~~ (49) RCW 46.64.048 relating to attempting, aiding,  
16 abetting, coercing, and committing crimes;  
17        ~~((49))~~ (50) Chapter 46.65 RCW relating to habitual traffic  
18 offenders;  
19        ~~((50))~~ (51) RCW 46.68.010 relating to false statements made to  
20 obtain a refund;  
21        ~~((51))~~ (52) Chapter 46.70 RCW relating to unfair motor vehicle  
22 business practices, except where that chapter provides for the  
23 assessment of monetary penalties of a civil nature;  
24        ~~((52))~~ (53) Chapter 46.72 RCW relating to the transportation of  
25 passengers in for hire vehicles;  
26        ~~((53))~~ (54) RCW 46.72A.060 relating to limousine carrier  
27 insurance;  
28        ~~((54))~~ (55) RCW 46.72A.070 relating to operation of a limousine  
29 without a vehicle certificate;  
30        ~~((55))~~ (56) RCW 46.72A.080 relating to false advertising by a  
31 limousine carrier;  
32        ~~((56))~~ (57) Chapter 46.80 RCW relating to motor vehicle wreckers;  
33        ~~((57))~~ (58) Chapter 46.82 RCW relating to driver's training  
34 schools;  
35        ~~((58))~~ (59) RCW 46.87.260 relating to alteration or forgery of a  
36 cab card, letter of authority, or other temporary authority issued  
37 under chapter 46.87 RCW;

1       (~~(59)~~) (60) RCW 46.87.290 relating to operation of an  
2 unregistered or unlicensed vehicle under chapter 46.87 RCW.

3       **Sec. 11.** RCW 46.20.720 and 2004 c 95 s 11 are each amended to read  
4 as follows:

5       (1) The court may order that after a period of suspension,  
6 revocation, or denial of driving privileges, and for up to as long as  
7 the court has jurisdiction, any person convicted of any offense  
8 involving the use, consumption, or possession of alcohol while  
9 operating a motor vehicle may drive only a motor vehicle equipped with  
10 a functioning ignition interlock. The court shall establish a specific  
11 calibration setting at which the interlock will prevent the vehicle  
12 from being started. The court shall also establish the period of time  
13 for which interlock use will be required.

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

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

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

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

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

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

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

5 **Sec. 12.** RCW 46.20.740 and 2004 c 95 s 12 are each amended to read  
6 as follows:

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

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

26 **Sec. 13.** RCW 46.61.5055 and 2007 c 474 s 1 are each amended to  
27 read as follows:

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

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



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

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

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

26 (i) By imprisonment for not less than two days nor more than one  
27 year. Two consecutive days of the imprisonment may not be suspended or  
28 deferred unless the court finds that the imposition of this mandatory  
29 minimum sentence would impose a substantial risk to the offender's  
30 physical or mental well-being. Whenever the mandatory minimum sentence  
31 is suspended or deferred, the court shall state in writing the reason  
32 for granting the suspension or deferral and the facts upon which the  
33 suspension or deferral is based. In lieu of the mandatory minimum term  
34 of imprisonment required under this subsection (1)(b)(i), the court may  
35 order not less than thirty days of electronic home monitoring. The  
36 offender shall pay the cost of electronic home monitoring. The county  
37 or municipality in which the penalty is being imposed shall determine  
38 the cost. The court may also require the offender's electronic home

1 monitoring device to include an alcohol detection breathalyzer, and the  
2 court may restrict the amount of alcohol the offender may consume  
3 during the time the offender is on electronic home monitoring; and

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

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

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

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

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

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

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

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

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

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

28 (i) By imprisonment for not less than ninety days nor more than one  
29 year and one hundred twenty days of electronic home monitoring. The  
30 offender shall pay for the cost of the electronic monitoring. The  
31 county or municipality where the penalty is being imposed shall  
32 determine the cost. The court may also require the offender's  
33 electronic home monitoring device include an alcohol detection  
34 breathalyzer, and may restrict the amount of alcohol the offender may  
35 consume during the time the offender is on electronic home monitoring.  
36 Ninety days of imprisonment and one hundred twenty days of electronic  
37 home monitoring may not be suspended or deferred unless the court finds  
38 that the imposition of this mandatory minimum sentence would impose a

1 substantial risk to the offender's physical or mental well-being.  
2 Whenever the mandatory minimum sentence is suspended or deferred, the  
3 court shall state in writing the reason for granting the suspension or  
4 deferral and the facts upon which the suspension or deferral is based;  
5 and

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

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

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

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

34 (4) A person who is convicted of a violation of RCW 46.61.502 or  
35 46.61.504 (~~and who~~) shall be punished under chapter 9.94A RCW if:  
36 (a) The person has four or more prior offenses within ten years(~~(7)~~);  
37 or (~~who~~) (b) the person has ever previously been convicted of: (i)  
38 A violation of RCW 46.61.520 committed while under the influence of

1 intoxicating liquor or any drug ((~~or~~)); (ii) a violation of RCW  
2 46.61.522 committed while under the influence of intoxicating liquor or  
3 any drug(~~, shall be punished in accordance with chapter 9.94A RCW~~);  
4 or (iii) an out-of-state offense comparable to the offense specified in  
5 (b)(i) or (ii) of this subsection.

6 (5)(a) The court shall order any person convicted of a violation of  
7 RCW 46.61.502 or 46.61.504 to apply for an ignition interlock driver's  
8 license from the department under section 8 of this act and to have a  
9 functioning ignition interlock device installed on all motor vehicles  
10 operated by the person.

11 (b) The installation of an ignition interlock device is not  
12 necessary on vehicles owned by a person's employer and driven as a  
13 requirement of employment during working hours. The person must  
14 provide the department with a declaration pursuant to RCW 9A.72.085  
15 from his or her employer stating that the person's employment requires  
16 the person to operate a vehicle owned by the employer during working  
17 hours.

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

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

28 (e) When the requirement that a person obtain an ignition interlock  
29 driver's license and operate only vehicles equipped with a functioning  
30 ignition interlock device is waived by the court, the court shall order  
31 the person to submit to alcohol monitoring through an alcohol detection  
32 breathalyzer device, transdermal sensor device, or other technology  
33 designed to detect alcohol in a person's system.

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

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

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

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

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

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

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

16        ~~((+6))~~ (7) In exercising its discretion in setting penalties  
17 within the limits allowed by this section, the court shall particularly  
18 consider the following:

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

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

23        ~~((+7))~~ (8) An offender punishable under this section is subject to  
24 the alcohol assessment and treatment provisions of RCW 46.61.5056.

25        ~~((+8))~~ (9) The license, permit, or nonresident privilege of a  
26 person convicted of driving or being in physical control of a motor  
27 vehicle while under the influence of intoxicating liquor or drugs must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (~~((+9))~~) (10) After expiration of any period of suspension,  
24 revocation, or denial of the offender's license, permit, or privilege  
25 to drive required by this section, the department shall place the  
26 offender's driving privilege in probationary status pursuant to RCW  
27 46.20.355.

28 (~~((+10))~~) (11)(a) In addition to any nonsuspendable and  
29 nondeferrable jail sentence required by this section, whenever the  
30 court imposes less than one year in jail, the court shall also suspend  
31 but shall not defer a period of confinement for a period not exceeding  
32 five years. The court shall impose conditions of probation that  
33 include: (i) Not driving a motor vehicle within this state without a  
34 valid license to drive and proof of financial responsibility for the  
35 future; (ii) not driving a motor vehicle within this state while having  
36 an alcohol concentration of 0.08 or more within two hours after  
37 driving; and (iii) not refusing to submit to a test of his or her  
38 breath or blood to determine alcohol concentration upon request of a

1 law enforcement officer who has reasonable grounds to believe the  
2 person was driving or was in actual physical control of a motor vehicle  
3 within this state while under the influence of intoxicating liquor.  
4 The court may impose conditions of probation that include  
5 nonrepetition, installation of an ignition interlock device on the  
6 probationer's motor vehicle, alcohol or drug treatment, supervised  
7 probation, or other conditions that may be appropriate. The sentence  
8 may be imposed in whole or in part upon violation of a condition of  
9 probation during the suspension period.

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

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

24 (~~((11))~~) (12) A court may waive the electronic home monitoring  
25 requirements of this chapter when:

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

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

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

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



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

7           ~~((12))~~ (13) An offender serving a sentence under this section,  
8 whether or not a mandatory minimum term has expired, may be granted an  
9 extraordinary medical placement by the jail administrator subject to  
10 the standards and limitations set forth in RCW 9.94A.728(4).

11           ~~((13))~~ (14) For purposes of this section and RCW 46.61.502 and  
12 46.61.504:

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

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

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

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

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

22           (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
23 9A.36.050 or an equivalent local ordinance, if the conviction is the  
24 result of a charge that was originally filed as a violation of RCW  
25 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
26 46.61.520 or 46.61.522;

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

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

33           (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
34 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
35 ordinance, if the charge under which the deferred prosecution was  
36 granted was originally filed as a violation of RCW 46.61.502 or  
37 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
38 46.61.522;

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

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

5 NEW SECTION. **Sec. 14.** A new section is added to chapter 46.61 RCW  
6 to read as follows:

7 A person applying for an ignition interlock license under section  
8 8 of this act or petitioning for a deferred prosecution under RCW  
9 10.05.020 for a violation of RCW 46.61.502 or 46.61.504 shall undergo  
10 an alcohol and drug assessment prepared by an alcoholism agency  
11 approved by the department of social and health services or a qualified  
12 probation department approved by the department of social and health  
13 services. The assessment shall be performed in accordance with section  
14 15 of this act.

15 NEW SECTION. **Sec. 15.** A new section is added to chapter 70.96A  
16 RCW to read as follows:

17 (1) This section applies to alcohol and drug assessments conducted  
18 for persons applying for an ignition interlock license under section 8  
19 of this act and persons charged with a violation of RCW 46.61.502 or  
20 46.61.504 who are petitioning for a deferred prosecution under RCW  
21 10.05.020. All such alcohol and drug assessments shall be performed in  
22 accordance with this section. If the person is convicted or petitions  
23 for a deferred prosecution, the assessment obtained under this section  
24 may, at the court's discretion, be used to satisfy the requirements for  
25 evaluations and assessments under RCW 46.61.5056 and 10.05.020.

26 (2) Every assessment shall be conducted by a chemical dependency  
27 professional certified by the department of health under chapter 18.205  
28 RCW, by a chemical dependency professional trainee who is directly  
29 supervised by a supervisor approved under department of health rules,  
30 or by a probation assessment officer qualified under department of  
31 social and health services rules pursuant to RCW 46.61.516.

32 (3) An evaluation shall be made of a copy of the analysis of the  
33 client's blood alcohol level and other drug levels at the time of  
34 arrest, if available, and the client's self-reported driving record and  
35 a copy of the client's abstract of driving record. The evaluation must  
36 include a statement regarding the blood alcohol level and the client's

1 self-reported driving record, and a clinical interpretative statement  
2 about the abstract of driving record that includes a fifteen-year  
3 history of all alcohol-related convictions and related offenses reduced  
4 to lesser offenses, and deferred prosecutions, and how they relate to  
5 the assessment and diagnosis.

6 (4) Within five days of a request by the certified chemical  
7 dependency professional or trainee conducting an assessment, the court  
8 shall provide the professional or trainee with a copy of the client's  
9 defendant case history. If the court does not provide the history, the  
10 certified chemical dependency professional or trainee shall obtain a  
11 release of information from the client to receive a summation of the  
12 client's defendant case history using the judicial information system.  
13 If the client's defendant case history is not obtained, the  
14 circumstances that prevented obtaining the history shall be described  
15 in the assessment.

16 (5) A copy of the police report shall be obtained in cases where  
17 the blood or breath alcohol concentration test was refused. If the  
18 police report was not reviewed in cases of refusal, circumstances  
19 preventing such efforts shall be included in the assessment.

20 (6) A drug screen shall be obtained in accordance with rules  
21 adopted by the department. Results are to be assessed and included in  
22 the written assessment and recommendations. If a request for drug  
23 screen is refused, circumstances surrounding the refusal shall be  
24 described in the assessment.

25 (7) The department shall adopt rules to implement this section.

26 **Sec. 16.** RCW 46.61.502 and 2006 c 73 s 1 are each amended to read  
27 as follows:

28 (1) A person is guilty of driving while under the influence of  
29 intoxicating liquor or any drug if the person drives a vehicle within  
30 this state:

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

34 (b) While the person is under the influence of or affected by  
35 intoxicating liquor or any drug; or

36 (c) While the person is under the combined influence of or affected  
37 by intoxicating liquor and any drug.

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

5 (3) It is an affirmative defense to a violation of subsection  
6 (1)(a) of this section which the defendant must prove by a  
7 preponderance of the evidence that the defendant consumed a sufficient  
8 quantity of alcohol after the time of driving and before the  
9 administration of an analysis of the person's breath or blood to cause  
10 the defendant's alcohol concentration to be 0.08 or more within two  
11 hours after driving. The court shall not admit evidence of this  
12 defense unless the defendant notifies the prosecution prior to the  
13 omnibus or pretrial hearing in the case of the defendant's intent to  
14 assert the affirmative defense.

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

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

25 (6) It is a class C felony punishable under chapter 9.94A RCW, or  
26 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has  
27 four or more prior offenses within ten years as defined in RCW  
28 46.61.5055; or (b) the person has ever previously been convicted of (i)  
29 vehicular homicide while under the influence of intoxicating liquor or  
30 any drug, RCW 46.61.520(1)(a), ~~((or))~~ (ii) vehicular assault while  
31 under the influence of intoxicating liquor or any drug, RCW  
32 46.61.522(1)(b), or (iii) an out-of-state offense comparable to the  
33 offense specified in (b)(i) or (ii) of this subsection.

34 **Sec. 17.** RCW 46.61.504 and 2006 c 73 s 2 are each amended to read  
35 as follows:

36 (1) A person is guilty of being in actual physical control of a

1 motor vehicle while under the influence of intoxicating liquor or any  
2 drug if the person has actual physical control of a vehicle within this  
3 state:

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

8 (b) While the person is under the influence of or affected by  
9 intoxicating liquor or any drug; or

10 (c) While the person is under the combined influence of or affected  
11 by intoxicating liquor and any drug.

12 (2) The fact that a person charged with a violation of this section  
13 is or has been entitled to use a drug under the laws of this state does  
14 not constitute a defense against any charge of violating this section.  
15 No person may be convicted under this section if, prior to being  
16 pursued by a law enforcement officer, the person has moved the vehicle  
17 safely off the roadway.

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

28 (4) Analyses of blood or breath samples obtained more than two  
29 hours after the alleged being in actual physical control of a vehicle  
30 may be used as evidence that within two hours of the alleged being in  
31 such control, a person had an alcohol concentration of 0.08 or more in  
32 violation of subsection (1)(a) of this section, and in any case in  
33 which the analysis shows an alcohol concentration above 0.00 may be  
34 used as evidence that a person was under the influence of or affected  
35 by intoxicating liquor or any drug in violation of subsection (1)(b) or  
36 (c) of this section.

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

1 (6) It is a class C felony punishable under chapter 9.94A RCW, or  
2 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has  
3 four or more prior offenses within ten years as defined in RCW  
4 46.61.5055; or (b) the person has ever previously been convicted of (i)  
5 vehicular homicide while under the influence of intoxicating liquor or  
6 any drug, RCW 46.61.520(1)(a), ~~((or))~~ (ii) vehicular assault while  
7 under the influence of intoxicating liquor or any drug, RCW  
8 46.61.522(1)(b), or (iii) an out-of-state offense comparable to the  
9 offense specified in (b)(i) or (ii) of this subsection.

10 **Sec. 18.** RCW 9.94A.533 and 2007 c 368 s 9 are each amended to read  
11 as follows:

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

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

20 (3) The following additional times shall be added to the standard  
21 sentence range for felony crimes committed after July 23, 1995, if the  
22 offender or an accomplice was armed with a firearm as defined in RCW  
23 9.41.010 and the offender is being sentenced for one of the crimes  
24 listed in this subsection as eligible for any firearm enhancements  
25 based on the classification of the completed felony crime. If the  
26 offender is being sentenced for more than one offense, the firearm  
27 enhancement or enhancements must be added to the total period of  
28 confinement for all offenses, regardless of which underlying offense is  
29 subject to a firearm enhancement. If the offender or an accomplice was  
30 armed with a firearm as defined in RCW 9.41.010 and the offender is  
31 being sentenced for an anticipatory offense under chapter 9A.28 RCW to  
32 commit one of the crimes listed in this subsection as eligible for any  
33 firearm enhancements, the following additional times shall be added to  
34 the standard sentence range determined under subsection (2) of this  
35 section based on the felony crime of conviction as classified under RCW  
36 9A.28.020:

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

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

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

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

17 (e) Notwithstanding any other provision of law, all firearm  
18 enhancements under this section are mandatory, shall be served in total  
19 confinement, and shall run consecutively to all other sentencing  
20 provisions, including other firearm or deadly weapon enhancements, for  
21 all offenses sentenced under this chapter. However, whether or not a  
22 mandatory minimum term has expired, an offender serving a sentence  
23 under this subsection may be granted an extraordinary medical placement  
24 when authorized under RCW 9.94A.728(4);

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

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

37 (4) The following additional times shall be added to the standard  
38 sentence range for felony crimes committed after July 23, 1995, if the

1 offender or an accomplice was armed with a deadly weapon other than a  
2 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
3 for one of the crimes listed in this subsection as eligible for any  
4 deadly weapon enhancements based on the classification of the completed  
5 felony crime. If the offender is being sentenced for more than one  
6 offense, the deadly weapon enhancement or enhancements must be added to  
7 the total period of confinement for all offenses, regardless of which  
8 underlying offense is subject to a deadly weapon enhancement. If the  
9 offender or an accomplice was armed with a deadly weapon other than a  
10 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
11 for an anticipatory offense under chapter 9A.28 RCW to commit one of  
12 the crimes listed in this subsection as eligible for any deadly weapon  
13 enhancements, the following additional times shall be added to the  
14 standard sentence range determined under subsection (2) of this section  
15 based on the felony crime of conviction as classified under RCW  
16 9A.28.020:

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

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

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

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

33 (e) Notwithstanding any other provision of law, all deadly weapon  
34 enhancements under this section are mandatory, shall be served in total  
35 confinement, and shall run consecutively to all other sentencing  
36 provisions, including other firearm or deadly weapon enhancements, for  
37 all offenses sentenced under this chapter. However, whether or not a



1 mandatory minimum term has expired, an offender serving a sentence  
2 under this subsection may be granted an extraordinary medical placement  
3 when authorized under RCW 9.94A.728(4);

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

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

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

27 (a) Eighteen months for offenses committed under RCW 69.50.401(2)  
28 (a) or (b) or 69.50.410;

29 (b) Fifteen months for offenses committed under RCW 69.50.401(2)  
30 (c), (d), or (e);

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

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

35 (6) An additional twenty-four months shall be added to the standard  
36 sentence range for any ranked offense involving a violation of chapter  
37 69.50 RCW if the offense was also a violation of RCW 69.50.435 or

1 9.94A.605. All enhancements under this subsection shall run  
2 consecutively to all other sentencing provisions, for all offenses  
3 sentenced under this chapter.

4 (7) An additional two years shall be added to the standard sentence  
5 range for vehicular homicide committed while under the influence of  
6 intoxicating liquor or any drug as defined by RCW 46.61.502 for each  
7 prior offense as defined in RCW 46.61.5055. This enhancement is  
8 mandatory, shall be served in total confinement, and shall run  
9 consecutively to all other sentencing provisions, including other  
10 enhancements, for all offenses sentenced under this chapter. However,  
11 whether or not a mandatory minimum term has expired, an offender  
12 serving a sentence under this subsection may be granted an  
13 extraordinary medical placement when authorized under RCW 9.94A.728(4).

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

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

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

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

35 (iv) If the offender is being sentenced for any sexual motivation  
36 enhancements under (i), (ii), and/or (iii) of this subsection and the  
37 offender has previously been sentenced for any sexual motivation

1 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of  
2 this subsection, all sexual motivation enhancements under this  
3 subsection shall be twice the amount of the enhancement listed;

4 (b) Notwithstanding any other provision of law, all sexual  
5 motivation enhancements under this subsection are mandatory, shall be  
6 served in total confinement, and shall run consecutively to all other  
7 sentencing provisions, including other sexual motivation enhancements,  
8 for all offenses sentenced under this chapter. However, whether or not  
9 a mandatory minimum term has expired, an offender serving a sentence  
10 under this subsection may be granted an extraordinary medical placement  
11 when authorized under RCW 9.94A.728(4);

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

14 (d) If the standard sentence range under this subsection exceeds  
15 the statutory maximum sentence for the offense, the statutory maximum  
16 sentence shall be the presumptive sentence unless the offender is a  
17 persistent offender. If the addition of a sexual motivation  
18 enhancement increases the sentence so that it would exceed the  
19 statutory maximum for the offense, the portion of the sentence  
20 representing the enhancement may not be reduced;

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

24 (f) Nothing in this subsection prevents a sentencing court from  
25 imposing a sentence outside the standard sentence range pursuant to RCW  
26 9.94A.535.

27 (9) An additional one-year enhancement shall be added to the  
28 standard sentence range for the felony crimes of RCW 9A.44.073,  
29 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
30 or after July 22, 2007, if the offender engaged, agreed, or offered to  
31 engage the victim in the sexual conduct in return for a fee. If the  
32 offender is being sentenced for more than one offense, the one-year  
33 enhancement must be added to the total period of total confinement for  
34 all offenses, regardless of which underlying offense is subject to the  
35 enhancement. If the offender is being sentenced for an anticipatory  
36 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,  
37 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,  
38 solicited another, or conspired to engage, agree, or offer to engage

1 the victim in (~~{the}~~) the sexual conduct in return for a fee, an  
2 additional one-year enhancement shall be added to the standard sentence  
3 range determined under subsection (2) of this section. For purposes of  
4 this subsection, "sexual conduct" means sexual intercourse or sexual  
5 contact, both as defined in chapter 9A.44 RCW.

6 **Sec. 19.** RCW 9.94A.728 and 2007 c 483 s 304 are each amended to  
7 read as follows:

8 No person serving a sentence imposed pursuant to this chapter and  
9 committed to the custody of the department shall leave the confines of  
10 the correctional facility or be released prior to the expiration of the  
11 sentence except as follows:

12 (1) Except as otherwise provided for in subsection (2) of this  
13 section, the term of the sentence of an offender committed to a  
14 correctional facility operated by the department may be reduced by  
15 earned release time in accordance with procedures that shall be  
16 developed and promulgated by the correctional agency having  
17 jurisdiction in which the offender is confined. The earned release  
18 time shall be for good behavior and good performance, as determined by  
19 the correctional agency having jurisdiction. The correctional agency  
20 shall not credit the offender with earned release credits in advance of  
21 the offender actually earning the credits. Any program established  
22 pursuant to this section shall allow an offender to earn early release  
23 credits for presentence incarceration. If an offender is transferred  
24 from a county jail to the department, the administrator of a county  
25 jail facility shall certify to the department the amount of time spent  
26 in custody at the facility and the amount of earned release time. An  
27 offender who has been convicted of a felony committed after July 23,  
28 1995, that involves any applicable deadly weapon enhancements under RCW  
29 9.94A.533 (3) or (4), or both, shall not receive any good time credits  
30 or earned release time for that portion of his or her sentence that  
31 results from any deadly weapon enhancements. An offender convicted of  
32 vehicular homicide committed while under the influence of intoxicating  
33 liquor or any drug that involves a sentence enhancement under RCW  
34 9.94A.533(7) may not receive any earned early release time for the  
35 portion of his or her sentence that results from the enhancement.

36 (a) In the case of an offender convicted of a serious violent  
37 offense, or a sex offense that is a class A felony, committed on or

1 after July 1, 1990, and before July 1, 2003, the aggregate earned  
2 release time may not exceed fifteen percent of the sentence. In the  
3 case of an offender convicted of a serious violent offense, or a sex  
4 offense that is a class A felony, committed on or after July 1, 2003,  
5 the aggregate earned release time may not exceed ten percent of the  
6 sentence.

7 (b)(i) In the case of an offender who qualifies under (b)(ii) of  
8 this subsection, the aggregate earned release time may not exceed fifty  
9 percent of the sentence.

10 (ii) An offender is qualified to earn up to fifty percent of  
11 aggregate earned release time under this subsection (1)(b) if he or  
12 she:

13 (A) Is classified in one of the two lowest risk categories under  
14 (b)(iii) of this subsection;

15 (B) Is not confined pursuant to a sentence for:

16 (I) A sex offense;

17 (II) A violent offense;

18 (III) A crime against persons as defined in RCW 9.94A.411;

19 (IV) A felony that is domestic violence as defined in RCW  
20 10.99.020;

21 (V) A violation of RCW 9A.52.025 (residential burglary);

22 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
23 violate, RCW 69.50.401 by manufacture or delivery or possession with  
24 intent to deliver methamphetamine; or

25 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
26 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

27 (C) Has no prior conviction for:

28 (I) A sex offense;

29 (II) A violent offense;

30 (III) A crime against persons as defined in RCW 9.94A.411;

31 (IV) A felony that is domestic violence as defined in RCW  
32 10.99.020;

33 (V) A violation of RCW 9A.52.025 (residential burglary);

34 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
35 violate, RCW 69.50.401 by manufacture or delivery or possession with  
36 intent to deliver methamphetamine; or

37 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
38 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

1 (D) Participates in programming or activities as directed by the  
2 offender's individual reentry plan as provided under RCW 72.09.270 to  
3 the extent that such programming or activities are made available by  
4 the department; and

5 (E) Has not committed a new felony after July 22, 2007, while under  
6 community supervision, community placement, or community custody.

7 (iii) For purposes of determining an offender's eligibility under  
8 this subsection (1)(b), the department shall perform a risk assessment  
9 of every offender committed to a correctional facility operated by the  
10 department who has no current or prior conviction for a sex offense, a  
11 violent offense, a crime against persons as defined in RCW 9.94A.411,  
12 a felony that is domestic violence as defined in RCW 10.99.020, a  
13 violation of RCW 9A.52.025 (residential burglary), a violation of, or  
14 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by  
15 manufacture or delivery or possession with intent to deliver  
16 methamphetamine, or a violation of, or an attempt, solicitation, or  
17 conspiracy to violate, RCW 69.50.406 (delivery of a controlled  
18 substance to a minor). The department must classify each assessed  
19 offender in one of four risk categories between highest and lowest  
20 risk.

21 (iv) The department shall recalculate the earned release time and  
22 reschedule the expected release dates for each qualified offender under  
23 this subsection (1)(b).

24 (v) This subsection (1)(b) applies retroactively to eligible  
25 offenders serving terms of total confinement in a state correctional  
26 facility as of July 1, 2003.

27 (vi) This subsection (1)(b) does not apply to offenders convicted  
28 after July 1, 2010.

29 (c) In no other case shall the aggregate earned release time exceed  
30 one-third of the total sentence;

31 (2)(a) A person convicted of a sex offense or an offense  
32 categorized as a serious violent offense, assault in the second degree,  
33 vehicular homicide, vehicular assault, assault of a child in the second  
34 degree, any crime against persons where it is determined in accordance  
35 with RCW 9.94A.602 that the offender or an accomplice was armed with a  
36 deadly weapon at the time of commission, or any felony offense under  
37 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become

1 eligible, in accordance with a program developed by the department, for  
2 transfer to community custody status in lieu of earned release time  
3 pursuant to subsection (1) of this section;

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

10 (c) The department shall, as a part of its program for release to  
11 the community in lieu of earned release, require the offender to  
12 propose a release plan that includes an approved residence and living  
13 arrangement. All offenders with community placement or community  
14 custody terms eligible for release to community custody status in lieu  
15 of earned release shall provide an approved residence and living  
16 arrangement prior to release to the community;

17 (d) The department may deny transfer to community custody status in  
18 lieu of earned release time pursuant to subsection (1) of this section  
19 if the department determines an offender's release plan, including  
20 proposed residence location and living arrangements, may violate the  
21 conditions of the sentence or conditions of supervision, place the  
22 offender at risk to violate the conditions of the sentence, place the  
23 offender at risk to reoffend, or present a risk to victim safety or  
24 community safety. The department's authority under this section is  
25 independent of any court-ordered condition of sentence or statutory  
26 provision regarding conditions for community custody or community  
27 placement;

28 (e) If the department denies transfer to community custody status  
29 in lieu of earned early release pursuant to (d) of this subsection, the  
30 department may transfer an offender to partial confinement in lieu of  
31 earned early release up to three months. The three months in partial  
32 confinement is in addition to that portion of the offender's term of  
33 confinement that may be served in partial confinement as provided in  
34 this section;

35 (f) An offender serving a term of confinement imposed under RCW  
36 9.94A.670(4)(a) is not eligible for earned release credits under this  
37 section;

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

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

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

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

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

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

17 (c) The secretary shall require electronic monitoring for all  
18 offenders in extraordinary medical placement unless the electronic  
19 monitoring equipment interferes with the function of the offender's  
20 medical equipment or results in the loss of funding for the offender's  
21 medical care. The secretary shall specify who shall provide the  
22 monitoring services and the terms under which the monitoring shall be  
23 performed.

24 (d) The secretary may revoke an extraordinary medical placement  
25 under this subsection at any time;

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

30 (6) No more than the final six months of the offender's term of  
31 confinement may be served in partial confinement designed to aid the  
32 offender in finding work and reestablishing himself or herself in the  
33 community. This is in addition to that period of earned early release  
34 time that may be exchanged for partial confinement pursuant to  
35 subsection (2)(e) of this section;

36 (7) The governor may pardon any offender;

37 (8) The department may release an offender from confinement any



1 time within ten days before a release date calculated under this  
2 section; and

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

6 Notwithstanding any other provisions of this section, an offender  
7 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a  
8 mandatory minimum sentence of total confinement shall not be released  
9 from total confinement before the completion of the listed mandatory  
10 minimum sentence for that felony crime of conviction unless allowed  
11 under RCW 9.94A.540, however persistent offenders are not eligible for  
12 extraordinary medical placement.

13 NEW SECTION. **Sec. 20.** Sections 18 and 19 of this act apply  
14 prospectively only and not retroactively. Those provisions apply only  
15 to convictions occurring on or after the effective date of this act.

16 NEW SECTION. **Sec. 21.** Sections 2, 4 through 7, and 10 through 13  
17 of this act take effect January 1, 2009.

18 NEW SECTION. **Sec. 22.** If specific funding for the purposes of  
19 this act, referencing this act by bill or chapter number, is not  
20 provided by June 30, 2008, in the omnibus appropriations act, this act  
21 is null and void.

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