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HOUSE BILL 2742

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State of Washington

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2010 Regular Session

By Representatives Goodman, Liias, Sells, Hasegawa, Maxwell, Roberts, Jacks, Carlyle, Rolfes, Simpson, O'Brien, and Morrell

Read first time 01/13/10. Referred to Committee on Judiciary.

1 AN ACT Relating to accountability for persons driving under the  
2 influence of intoxicating liquor or drugs; amending RCW 46.20.385,  
3 46.20.391, 46.20.720, 46.61.5055, 46.20.410, 46.20.342, 46.20.740,  
4 10.05.020, 10.05.090, and 10.05.160; adding a new section to chapter  
5 46.61 RCW; and prescribing penalties.

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

7 **Sec. 1.** RCW 46.20.385 and 2008 c 282 s 9 are each amended to read  
8 as follows:

9 (1)(a) Beginning January 1, 2009, any person licensed under this  
10 chapter who is convicted of (~~any offense involving the use,~~  
11 ~~consumption, or possession of alcohol while operating a motor vehicle~~  
12 ~~in~~) a violation of RCW 46.61.502 or 46.61.504(, other than vehicular  
13 homicide or vehicular assault) or an equivalent local or out-of-state  
14 statute or ordinance, or a violation of RCW 46.61.520(1)(a) or  
15 46.61.522(1)(b), or who has had or will have his or her license  
16 suspended, revoked, or denied under RCW 46.20.3101, may submit to the  
17 department an application for an ignition interlock driver's license.  
18 The department, upon receipt of the prescribed fee and upon determining

1 that the petitioner is eligible to receive the license, may issue an  
2 ignition interlock driver's license.

3 (b) A person may apply for an ignition interlock driver's license  
4 anytime, including immediately after receiving the notices under RCW  
5 46.20.308 or after his or her license is suspended, revoked, or denied.  
6 A person receiving an ignition interlock driver's license waives his or  
7 her right to a hearing or appeal under RCW 46.20.308.

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

11 (i) The department shall require the person to maintain the device  
12 on all vehicles operated by the person and shall restrict the person to  
13 operating only vehicles equipped with the device, for the remainder of  
14 the period of suspension, revocation, or denial. The installation of  
15 an ignition interlock device is not necessary on vehicles owned,  
16 leased, or rented by a person's employer and on those vehicles whose  
17 care and/or maintenance is the temporary responsibility of the  
18 employer, and driven at the direction of a person's employer as a  
19 requirement of employment during working hours. The person must  
20 provide the department with a declaration pursuant to RCW 9A.72.085  
21 from his or her employer stating that the person's employment requires  
22 the person to operate a vehicle owned by the employer or other persons  
23 during working hours.

24 (ii) Subject to any periodic renewal requirements established by  
25 the department under this section and subject to any applicable  
26 compliance requirements under this chapter or other law, an ignition  
27 interlock driver's license granted upon a suspension or revocation  
28 under RCW 46.61.5055 or 46.20.3101 extends through the remaining  
29 portion of any concurrent or consecutive suspension or revocation that  
30 may be imposed as the result of administrative action and criminal  
31 conviction arising out of the same incident.

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

36 (2) An applicant for an ignition interlock driver's license who  
37 qualifies under subsection (1) of this section is eligible to receive  
38 a license only if((÷

1       ~~(a) Within seven years immediately preceding the date of the~~  
2 ~~offense that gave rise to the present conviction or incident, the~~  
3 ~~applicant has not committed vehicular homicide under RCW 46.61.520 or~~  
4 ~~vehicular assault under RCW 46.61.522; and~~

5       ~~(b))~~ the applicant files satisfactory proof of financial  
6 responsibility under chapter 46.29 RCW.

7       (3) Upon receipt of evidence that a holder of an ignition interlock  
8 driver's license granted under this subsection no longer has a  
9 functioning ignition interlock device installed on all vehicles  
10 operated by the driver, the director shall give written notice by  
11 first-class mail to the driver that the ignition interlock driver's  
12 license shall be canceled. ~~((The effective date of cancellation shall~~  
13 ~~be fifteen days from the date of mailing the notice.))~~ If at any time  
14 before the cancellation goes into effect the driver submits evidence  
15 that a functioning ignition interlock device has been installed on all  
16 vehicles operated by the driver, the cancellation shall be stayed. If  
17 the cancellation becomes effective, the driver may obtain, at no  
18 additional charge, a new ignition interlock driver's license upon  
19 submittal of evidence that a functioning ignition interlock device has  
20 been installed on all vehicles operated by the driver.

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

24       (5) The director shall cancel an ignition interlock driver's  
25 license ~~((upon receipt of))~~ after receiving notice that the holder  
26 thereof has been convicted of operating a motor vehicle in violation of  
27 its restrictions, no longer meets the eligibility requirements, or  
28 ~~((of))~~ has been convicted of or found to have committed a separate  
29 offense or any other act or omission that under this chapter would  
30 warrant suspension or revocation of a regular driver's license. The  
31 department must give notice of the cancellation ~~((is effective as of~~  
32 ~~the date of the conviction, and continues with the same force and~~  
33 ~~effect as any suspension or revocation under this title))~~ as provided  
34 under RCW 46.20.245. A person whose ignition interlock driver's  
35 license has been canceled under this section may reapply for a new  
36 ignition interlock driver's license if he or she is otherwise qualified  
37 under this section and pays the fee required under RCW 46.20.380.

1 (6)(a) Unless costs are waived by the ignition interlock company or  
2 the person is indigent under RCW 10.101.010, the applicant shall pay  
3 the cost of installing, removing, and leasing the ignition interlock  
4 device and shall pay an additional fee of twenty dollars per month.  
5 Payments shall be made directly to the ignition interlock company. The  
6 company shall remit the additional twenty-dollar fee to the department.

7 (b) The department shall deposit the proceeds of the twenty-dollar  
8 fee into the ignition interlock device revolving account. Expenditures  
9 from the account may be used only to administer and operate the  
10 ignition interlock device revolving account program. The department  
11 shall adopt rules to provide monetary assistance according to greatest  
12 need and when funds are available.

13 (7) The department shall adopt rules to implement ignition  
14 interlock licensing. The department shall consult with the  
15 administrative office of the courts, the state patrol, the Washington  
16 association of sheriffs and police chiefs, ignition interlock  
17 companies, and any other organization or entity the department deems  
18 appropriate.

19 **Sec. 2.** RCW 46.20.391 and 2008 c 282 s 6 are each amended to read  
20 as follows:

21 (1) Any person licensed under this chapter who is convicted of an  
22 offense relating to motor vehicles for which suspension or revocation  
23 of the driver's license is mandatory, other than vehicular homicide,  
24 vehicular assault, driving while under the influence of intoxicating  
25 liquor or any drug, or being in actual physical control of a motor  
26 vehicle while under the influence of intoxicating liquor or any drug,  
27 may submit to the department an application for a temporary restricted  
28 driver's license. The department, upon receipt of the prescribed fee  
29 and upon determining that the petitioner is eligible to receive the  
30 license, may issue a temporary restricted driver's license and may set  
31 definite restrictions as provided in RCW 46.20.394.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (5) The director shall cancel an occupational or temporary  
21 restricted driver's license (~~upon receipt of~~) after receiving notice  
22 that the holder thereof has been convicted of operating a motor vehicle  
23 in violation of its restrictions, no longer meets the eligibility  
24 requirements, or (~~of~~) has been convicted of or found to have  
25 committed a separate offense or any other act or omission that under  
26 this chapter ((46.20-RCW)) would warrant suspension or revocation of a  
27 regular driver's license. The department must give notice of the  
28 cancellation ((is effective as of the date of the conviction, and  
29 continues with the same force and effect as any suspension or  
30 revocation under this title)) as provided under RCW 46.20.245. A  
31 person whose occupational or temporary restricted driver's license has  
32 been canceled under this section may reapply for a new occupational or  
33 temporary restricted driver's license if he or she is otherwise  
34 qualified under this section and pays the fee required under RCW  
35 46.20.380.

36 **Sec. 3.** RCW 46.20.720 and 2008 c 282 s 12 are each amended to read  
37 as follows:

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

10 (2) Under RCW 46.61.5055(~~(, 10.05.020, or section 18 of this act)~~)  
11 and subject to the exceptions listed in that statute, the court shall  
12 order any person convicted of (~~(an alcohol-related)~~) a violation of RCW  
13 46.61.502 or 46.61.504 or an equivalent local ordinance (~~(or~~  
14 ~~participating in a deferred prosecution program under RCW 10.05.020 or~~  
15 ~~section 18 of this act for an alcohol-related violation of RCW~~  
16 ~~46.61.502 or 46.61.504 or an equivalent local ordinance)~~) to apply for  
17 an ignition interlock driver's license from the department under RCW  
18 46.20.385 and to have a functioning ignition interlock device installed  
19 on all motor vehicles 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 a violation of RCW 46.61.502 or 46.61.504 or an equivalent local or  
25 out-of-state statute or 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 installation of an ignition interlock device is  
29 not necessary on vehicles owned, leased, or rented by a person's  
30 employer and on those vehicles whose care and/or maintenance is the  
31 temporary responsibility of the employer, and driven at the direction  
32 of a person's employer as a requirement of employment during working  
33 hours. The person must provide the department with a declaration  
34 pursuant to RCW 9A.72.085 from his or her employer stating that the  
35 person's employment requires the person to operate a vehicle owned by  
36 the employer or other persons during working hours.

37 The ignition interlock device shall be calibrated to prevent the  
38 motor vehicle from being started when the breath sample provided has an

1 alcohol concentration of 0.025 or more. Except as provided in  
2 subsection (4) of this section, the period of time of the restriction  
3 will be as follows:

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

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

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

10 (4) A restriction imposed under subsection (3) of this section  
11 shall remain in effect until the department receives a declaration from  
12 the person's ignition interlock device vendor, in a form provided or  
13 approved by the department, certifying that there have been none of the  
14 following incidents in the four consecutive months prior to the date of  
15 release:

16 (a) An attempt to start the vehicle with a breath alcohol  
17 concentration of 0.04 or more;

18 (b) Failure to take or pass any required retest; or

19 (c) Failure of the person to appear at the ignition interlock  
20 device vendor when required for maintenance, repair, calibration,  
21 monitoring, inspection, or replacement of the device.

22 **Sec. 4.** RCW 46.61.5055 and 2008 c 282 s 14 are each amended to  
23 read as follows:

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

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

32 (i) By imprisonment for not less than one day nor more than one  
33 year. Twenty-four consecutive hours of the imprisonment may not be  
34 suspended or deferred unless the court finds that the imposition of  
35 this mandatory minimum sentence would impose a substantial risk to the  
36 offender's physical or mental well-being. Whenever the mandatory  
37 minimum sentence is suspended or deferred, the court shall state in



1 writing the reason for granting the suspension or deferral and the  
2 facts upon which the suspension or deferral is based. In lieu of the  
3 mandatory minimum term of imprisonment required under this subsection  
4 (1)(a)(i), the court may order not less than fifteen days of electronic  
5 home monitoring. The offender shall pay the cost of electronic home  
6 monitoring. The county or municipality in which the penalty is being  
7 imposed shall determine the cost. The court may also require the  
8 offender's electronic home monitoring device to include an alcohol  
9 detection breathalyzer, and the court may restrict the amount of  
10 alcohol the offender may consume during the time the offender is on  
11 electronic home monitoring; and

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

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

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

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

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

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

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

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

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

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

34 (i) By imprisonment for not less than forty-five days nor more than  
35 one year and ninety days of electronic home monitoring. The offender  
36 shall pay for the cost of the electronic monitoring. The county or  
37 municipality where the penalty is being imposed shall determine the  
38 cost. The court may also require the offender's electronic home

1 monitoring device include an alcohol detection breathalyzer, and may  
2 restrict the amount of alcohol the offender may consume during the time  
3 the offender is on electronic home monitoring. Forty-five days of  
4 imprisonment and ninety days of electronic home monitoring may not be  
5 suspended or deferred unless the court finds that the imposition of  
6 this mandatory minimum sentence would impose a substantial risk to the  
7 offender's physical or mental well-being. Whenever the mandatory  
8 minimum sentence is suspended or deferred, the court shall state in  
9 writing the reason for granting the suspension or deferral and the  
10 facts upon which the suspension or deferral is based; and

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

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

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

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

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

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

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

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

29 (4) A person who is convicted of a violation of RCW 46.61.502 or  
30 46.61.504 shall be punished under chapter 9.94A RCW if: (a) The person  
31 has four or more prior offenses within ten years; or (b) the person has  
32 ever previously been convicted of: (i) A violation of RCW 46.61.520  
33 committed while under the influence of intoxicating liquor or any drug;  
34 (ii) a violation of RCW 46.61.522 committed while under the influence  
35 of intoxicating liquor or any drug; or (iii) an out-of-state offense  
36 comparable to the offense specified in (b)(i) or (ii) of this  
37 subsection.

1 (5)(a) The court shall require any person convicted of (~~an~~  
2 ~~alcohol-related~~) a violation of RCW 46.61.502 or 46.61.504 or an  
3 equivalent local ordinance to apply for an ignition interlock driver's  
4 license from the department (~~(under RCW 46.20.385)~~) and to have a  
5 functioning ignition interlock device installed on all motor vehicles  
6 operated by the person.

7 (b) The installation of an ignition interlock device is not  
8 necessary on vehicles owned, leased, or rented by a person's employer  
9 and on those vehicles whose care and/or maintenance is the temporary  
10 responsibility of the employer, and driven at the direction of a  
11 person's employer as a requirement of employment during working hours.  
12 The person must provide the department with a declaration pursuant to  
13 RCW 9A.72.085 from his or her employer stating that the person's  
14 employment requires the person to operate a vehicle owned by the  
15 employer or other persons during working hours.

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

19 (d) The court may waive the requirement that a person (~~(obtain)~~)  
20 apply for an ignition interlock driver's license (~~(and operate only~~  
21 ~~vehicles equipped with a functioning ignition interlock device)~~) if the  
22 court makes a specific finding in writing that:

23 (i) The person lives out-of-state and the devices are not  
24 reasonably available in the person's local area(~~(, that)~~);

25 (ii) The person does not operate a vehicle(~~(,)~~); or

26 (iii) The person is not eligible to receive an ignition interlock  
27 driver's license under RCW 46.20.385 because the person is not a  
28 resident of Washington, is a habitual traffic offender, has already  
29 applied for or is already in possession of an ignition interlock  
30 driver's license, has never had a driver's license, has been certified  
31 under chapter 74.20A RCW as noncompliant with a child support order, or  
32 is subject to any other condition or circumstance that makes the person  
33 ineligible to obtain an ignition interlock driver's license.

34 (e) (~~(When the requirement)~~) If the court orders that a person  
35 (~~(obtain)~~) refrain from consuming any alcohol and requires the person  
36 to apply for an ignition interlock driver's license (~~(and operate only~~  
37 ~~vehicles equipped with a functioning ignition interlock device is~~  
38 ~~waived by the court)~~), and the person states that he or she does not

1 operated a motor vehicle or the person is ineligible to obtain an  
2 ignition interlock driver's license, the court shall order the person  
3 to submit to alcohol monitoring through an alcohol detection  
4 breathalyzer device, transdermal sensor device, or other technology  
5 designed to detect alcohol in a person's system. The person shall pay  
6 for the cost of the monitoring. The county or municipality where the  
7 penalty is being imposed shall determine the cost.

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

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

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

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

16 (6) If a person who is convicted of a violation of RCW 46.61.502 or  
17 46.61.504 committed the offense while a passenger under the age of  
18 sixteen was in the vehicle, the court shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (11)(a) In addition to any nonsuspendable and nondeferrible jail  
2 sentence required by this section, whenever the court imposes less than  
3 one year in jail, the court shall also suspend but shall not defer a  
4 period of confinement for a period not exceeding five years. The court  
5 shall impose conditions of probation that include: (i) Not driving a  
6 motor vehicle within this state without a valid license to drive and  
7 proof of financial responsibility for the future; (ii) not driving a  
8 motor vehicle within this state while having an alcohol concentration  
9 of 0.08 or more within two hours after driving; and (iii) not refusing  
10 to submit to a test of his or her breath or blood to determine alcohol  
11 concentration upon request of a law enforcement officer who has  
12 reasonable grounds to believe the person was driving or was in actual  
13 physical control of a motor vehicle within this state while under the  
14 influence of intoxicating liquor. The court may impose conditions of  
15 probation that include nonrepetition, installation of an ignition  
16 interlock device on the probationer's motor vehicle, alcohol or drug  
17 treatment, supervised probation, or other conditions that may be  
18 appropriate. The sentence may be imposed in whole or in part upon  
19 violation of a condition of probation during the suspension period.

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

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

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

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

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



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

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

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

16 (13) An offender serving a sentence under this section, whether or  
17 not a mandatory minimum term has expired, may be granted an  
18 extraordinary medical placement by the jail administrator subject to  
19 the standards and limitations set forth in RCW 9.94A.728(~~(+4)~~) (3).

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

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

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

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

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

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

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

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

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

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

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

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

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

20 NEW SECTION. Sec. 5. A new section is added to chapter 46.61 RCW  
21 to read as follows:

22 If a person is required by a court to install an ignition interlock  
23 device on all motor vehicles operated by the person and the person is  
24 under the jurisdiction of the municipality or county probation or  
25 supervision department, the probation or supervision department must  
26 verify the initial installation of an ignition interlock device on all  
27 vehicles for which the person is the registered owner. The  
28 municipality or county shall have no further obligation to supervise  
29 the use of the ignition interlock device by the person and shall not be  
30 civilly liable for any injuries or damages caused by the person for  
31 failing to use an ignition interlock device or for driving under the  
32 influence of intoxicating liquor or any drug or being in actual  
33 physical control of a motor vehicle under the influence of intoxicating  
34 liquor or any drug.

35 **Sec. 6.** RCW 46.20.410 and 2008 c 282 s 8 are each amended to read  
36 as follows:

1       (1) Any person convicted for violation of any restriction of an  
2 occupational driver's license(~~(7)~~) or a temporary restricted driver's  
3 license(~~(, or an ignition interlock driver's license)~~) shall in  
4 addition to the (~~immediate revocation~~) cancellation of such license  
5 and any other penalties provided by law be fined not less than fifty  
6 nor more than two hundred dollars or imprisoned for not more than six  
7 months or both such fine and imprisonment.

8       (2) It is a gross misdemeanor for a person to violate any  
9 restriction of an ignition interlock driver's license.

10       **Sec. 7.** RCW 46.20.342 and 2008 c 282 s 4 are each amended to read  
11 as follows:

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

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

33       (b) A person who violates this section while an order of suspension  
34 or revocation prohibiting such operation is in effect and while the  
35 person is not eligible to reinstate his or her driver's license or  
36 driving privilege, other than for a suspension for the reasons  
37 described in (c) of this subsection, is guilty of driving while license

1 suspended or revoked in the second degree, a gross misdemeanor. For  
2 the purposes of this subsection, a person is not considered to be  
3 eligible to reinstate his or her driver's license or driving privilege  
4 if the person is eligible to obtain an ignition interlock driver's  
5 license but did not obtain such a license. This subsection applies  
6 when a person's driver's license or driving privilege has been  
7 suspended or revoked by reason of:

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

10 (ii) A previous conviction under this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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. 8.** RCW 46.20.740 and 2008 c 282 s 13 are each amended to read  
20 as follows:

21 (1) The department shall attach or imprint a notation on the  
22 driving record of any person restricted under RCW 46.20.720 (~~(or)~~)  
23 46.61.5055, or 10.05.140 stating that the person may operate only a  
24 motor vehicle equipped with a functioning ignition interlock device.  
25 The department shall determine the person's eligibility for licensing  
26 based upon written verification by a company doing business in the  
27 state that it has installed the required device on a vehicle owned or  
28 operated by the person seeking reinstatement. If, based upon  
29 notification from the interlock provider or otherwise, the department  
30 determines that an ignition interlock required under this section is no  
31 longer installed or functioning as required, the department shall  
32 suspend the person's license or privilege to drive. Whenever the  
33 license or driving privilege of any person is suspended or revoked as  
34 a result of noncompliance with an ignition interlock requirement, the  
35 suspension shall remain in effect until the person provides notice  
36 issued by a company doing business in the state that a vehicle owned or

1 operated by the person is equipped with a functioning ignition  
2 interlock device.

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

6 **Sec. 9.** RCW 10.05.020 and 2008 c 282 s 16 are each amended to read  
7 as follows:

8 (1) Except as provided in subsection (2) of this section (~~or~~  
9 ~~section 18 of this act~~)), the petitioner shall allege under oath in the  
10 petition that the wrongful conduct charged is the result of or caused  
11 by alcoholism, drug addiction, or mental problems for which the person  
12 is in need of treatment and unless treated the probability of future  
13 recurrence is great, along with a statement that the person agrees to  
14 pay the cost of a diagnosis and treatment of the alleged problem or  
15 problems if financially able to do so. The petition shall also contain  
16 a case history and written assessment prepared by an approved  
17 alcoholism treatment program as designated in chapter 70.96A RCW if the  
18 petition alleges alcoholism, an approved drug program as designated in  
19 chapter 71.24 RCW if the petition alleges drug addiction, or by an  
20 approved mental health center if the petition alleges a mental problem.

21 (2) In the case of a petitioner charged with a misdemeanor or gross  
22 misdemeanor under chapter 9A.42 RCW, the petitioner shall allege under  
23 oath in the petition that the petitioner is the natural or adoptive  
24 parent of the alleged victim; that the wrongful conduct charged is the  
25 result of parenting problems for which the petitioner is in need of  
26 services; that the petitioner is in need of child welfare services  
27 under chapter 74.13 RCW to improve his or her parenting skills in order  
28 to better provide his or her child or children with the basic  
29 necessities of life; that the petitioner wants to correct his or her  
30 conduct to reduce the likelihood of harm to his or her minor children;  
31 that in the absence of child welfare services the petitioner may be  
32 unable to reduce the likelihood of harm to his or her minor children;  
33 and that the petitioner has cooperated with the department of social  
34 and health services to develop a plan to receive appropriate child  
35 welfare services; along with a statement that the person agrees to pay  
36 the cost of the services if he or she is financially able to do so.

1 The petition shall also contain a case history and a written service  
2 plan from the department of social and health services.

3 (3) Before entry of an order deferring prosecution, a petitioner  
4 shall be advised of his or her rights as an accused and execute, as a  
5 condition of receiving treatment, a statement that contains: (a) An  
6 acknowledgment of his or her rights; (b) an acknowledgment and waiver  
7 of the right to testify, the right to a speedy trial, the right to call  
8 witnesses to testify, the right to present evidence in his or her  
9 defense, and the right to a jury trial; (c) a stipulation to the  
10 admissibility and sufficiency of the facts contained in the written  
11 police report; and (d) an acknowledgment that the statement will be  
12 entered and used to support a finding of guilty if the court finds  
13 cause to revoke the order granting deferred prosecution. The  
14 petitioner shall also be advised that he or she may, if he or she  
15 proceeds to trial and is found guilty, be allowed to seek suspension of  
16 some or all of the fines and incarceration that may be ordered upon the  
17 condition that he or she seek treatment and, further, that he or she  
18 may seek treatment from public and private agencies at any time without  
19 regard to whether or not he or she is found guilty of the offense  
20 charged. He or she shall also be advised that the court will not  
21 accept a petition for deferred prosecution from a person who: (i)  
22 Sincerely believes that he or she is innocent of the charges; (ii)  
23 sincerely believes that he or she does not, in fact, suffer from  
24 alcoholism, drug addiction, or mental problems(~~(, unless the petition~~  
25 ~~for deferred prosecution is under section 18 of this act)); or (iii) in~~  
26 the case of a petitioner charged under chapter 9A.42 RCW, sincerely  
27 believes that he or she does not need child welfare services.

28 (4) Before entering an order deferring prosecution, the court shall  
29 make specific findings that: (a) The petitioner has stipulated to the  
30 admissibility and sufficiency of the facts as contained in the written  
31 police report; (b) the petitioner has acknowledged the admissibility of  
32 the stipulated facts in any criminal hearing on the underlying offense  
33 or offenses held subsequent to revocation of the order granting  
34 deferred prosecution; (c) the petitioner has acknowledged and waived  
35 the right to testify, the right to a speedy trial, the right to call  
36 witnesses to testify, the right to present evidence in his or her  
37 defense, and the right to a jury trial; and (d) the petitioner's



1 statements were made knowingly and voluntarily. Such findings shall be  
2 included in the order granting deferred prosecution.

3 **Sec. 10.** RCW 10.05.090 and 2008 c 282 s 17 are each amended to  
4 read as follows:

5 If a petitioner, who has been accepted for a deferred prosecution,  
6 fails or neglects to carry out and fulfill any term or condition of the  
7 petitioner's treatment plan or any term or condition imposed in  
8 connection with the installation of an interlock or other device under  
9 RCW 46.20.720 (~~or 46.20.385~~), the facility, center, institution, or  
10 agency administering the treatment or the entity administering the use  
11 of the device, shall immediately report such breach to the court, the  
12 prosecutor, and the petitioner or petitioner's attorney of record,  
13 together with its recommendation. The court upon receiving such a  
14 report shall hold a hearing to determine whether the petitioner should  
15 be removed from the deferred prosecution program. At the hearing,  
16 evidence shall be taken of the petitioner's alleged failure to comply  
17 with the treatment plan or device installation and the petitioner shall  
18 have the right to present evidence on his or her own behalf. The court  
19 shall either order that the petitioner continue on the treatment plan  
20 or be removed from deferred prosecution. (~~(If the petitioner's~~  
21 ~~noncompliance is based on a violation of a term or condition imposed in~~  
22 ~~connection with the installation of an ignition interlock device under~~  
23 ~~RCW 46.20.385, the court shall either order that the petitioner comply~~  
24 ~~with the term or condition or be removed from deferred prosecution.))  
25 If removed from deferred prosecution, the court shall enter judgment  
26 pursuant to RCW 10.05.020 and, if the charge for which the deferred  
27 prosecution was granted was a misdemeanor or gross misdemeanor under  
28 Title 46 RCW, shall notify the department of licensing of the removal  
29 and entry of judgment.~~

30 **Sec. 11.** RCW 10.05.160 and 2008 c 282 s 19 are each amended to  
31 read as follows:

32 The prosecutor may appeal an order granting deferred prosecution on  
33 any or all of the following grounds:

- 34 (1) Prior deferred prosecution has been granted to the defendant;  
35 (2) Failure of the court to obtain proof of insurance or a  
36 treatment plan conforming to the requirements of this chapter;

1           (3) Failure of the court to comply with the requirements of RCW  
2 10.05.100;

3           (4) Failure of the evaluation facility to provide the information  
4 required in RCW 10.05.040 and 10.05.050, if the defendant has been  
5 referred to the facility for treatment. If an appeal on such basis is  
6 successful, the trial court may consider the use of another treatment  
7 program;

8           (5) Failure of the court to order the installation of an ignition  
9 interlock or other device under RCW ((~~46.20.720~~ or ~~46.20.385~~))  
10 10.05.140.

--- END ---