

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2302

Chapter 42, Laws of 2012

62nd Legislature
2012 Regular Session

DRIVING UNDER THE INFLUENCE--CHILD IN VEHICLE

EFFECTIVE DATE: 06/07/12

Passed by the House March 3, 2012
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate February 29, 2012
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved March 16, 2012, 1:37 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2302** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 16, 2012

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2302

AS AMENDED BY THE SENATE

Passed Legislature - 2012 Regular Session

State of Washington 62nd Legislature 2012 Regular Session

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

READ FIRST TIME 01/25/12.

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

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

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

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

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

1 grounds to believe the child should be taken into custody pursuant to
2 RCW 13.34.050 or 26.44.050.

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

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

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

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

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

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

36 (b) In the case of a person whose alcohol concentration was at

1 least 0.15, or for whom by reason of the person's refusal to take a
2 test offered pursuant to RCW 46.20.308 there is no test result
3 indicating the person's alcohol concentration:

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

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

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

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

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

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

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

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

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

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

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

5 (a) In the case of a person whose alcohol concentration was less
6 than 0.15, or for whom for reasons other than the person's refusal to
7 take a 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 ninety days nor more than
10 three hundred sixty-four days and one hundred twenty days of electronic
11 home 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. Ninety days of imprisonment and one hundred twenty days of
18 electronic home monitoring may not be suspended or deferred unless the
19 court finds that the imposition of this mandatory minimum sentence
20 would impose a substantial risk to the offender's physical or mental
21 well-being. Whenever the mandatory minimum sentence is suspended or
22 deferred, the court shall state in writing the reason for granting the
23 suspension or deferral and the facts upon which the suspension or
24 deferral is based; and

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

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

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

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

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

15 (4) A person who is convicted of a violation of RCW 46.61.502 or
16 46.61.504 shall be punished under chapter 9.94A RCW if:

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

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

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

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

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

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

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

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

1 employment requires the person to operate a vehicle owned by the
2 employer or other persons during working hours.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (d) In any case in which the person has two or three prior offenses
2 within seven years, and except as provided in RCW 46.61.502(6) or
3 46.61.504(6), order a penalty by a fine of not less than three thousand
4 dollars and not more than ten thousand dollars. One thousand dollars
5 of the fine may not be suspended or deferred unless the court finds the
6 offender to be indigent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (i) Not driving a motor vehicle within this state without a valid
24 license to drive and proof of financial responsibility for the future;

25 (ii) not driving a motor vehicle within this state while having an
26 alcohol concentration of 0.08 or more within two hours after driving;

27 and (iii) not refusing to submit to a test of his or her breath or
28 blood to determine alcohol concentration upon request of a law

29 enforcement officer who has reasonable grounds to believe the person
30 was driving or was in actual physical control of a motor vehicle within

31 this state while under the influence of intoxicating liquor. The court

32 may impose conditions of probation that include nonrepetition,

33 installation of an ignition interlock device on the probationer's motor
34 vehicle, alcohol or drug treatment, supervised probation, or other

35 conditions that may be appropriate. The sentence may be imposed in
36 whole or in part upon violation of a condition of probation during the

37 suspension period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
20 9A.36.050 or an equivalent local ordinance, if the conviction is the
21 result of a charge that was originally filed as a violation of RCW
22 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
23 46.61.520 or 46.61.522;

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

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

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

36 If a deferred prosecution is revoked based on a subsequent
37 conviction for an offense listed in this subsection (14)(a), the

1 subsequent conviction shall not be treated as a prior offense of the
2 revoked deferred prosecution for the purposes of sentencing;

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

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

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

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

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

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

36 (a) Five years for any felony defined under any law as a class A

1 felony or with a statutory maximum sentence of at least twenty years,
2 or both, and not covered under (f) of this subsection;

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

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

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

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

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

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

36 (4) The following additional times shall be added to the standard
37 sentence range for felony crimes committed after July 23, 1995, if the
38 offender or an accomplice was armed with a deadly weapon other than a

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

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

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

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

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

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

1 under this subsection may be granted an extraordinary medical placement
2 when authorized under RCW 9.94A.728(3);

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

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

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

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

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

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

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

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

1 consecutively to all other sentencing provisions, for all offenses
2 sentenced under this chapter.

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

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

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

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

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

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

37 (b) Notwithstanding any other provision of law, all sexual
38 motivation enhancements under this subsection are mandatory, shall be

1 served in total confinement, and shall run consecutively to all other
2 sentencing provisions, including other sexual motivation enhancements,
3 for all offenses sentenced under this chapter. However, whether or not
4 a mandatory minimum term has expired, an offender serving a sentence
5 under this subsection may be granted an extraordinary medical placement
6 when authorized under RCW 9.94A.728(3);

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

9 (d) If the standard sentence range under this subsection exceeds
10 the 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 sexual motivation
13 enhancement increases the sentence so that it would exceed the
14 statutory maximum for the offense, the portion of the sentence
15 representing the enhancement may not be reduced;

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

19 (f) Nothing in this subsection prevents a sentencing court from
20 imposing a sentence outside the standard sentence range pursuant to RCW
21 9.94A.535.

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

1 (10)(a) For a person age eighteen or older convicted of any
2 criminal street gang-related felony offense for which the person
3 compensated, threatened, or solicited a minor in order to involve the
4 minor in the commission of the felony offense, the standard sentence
5 range is determined by locating the sentencing grid sentence range
6 defined by the appropriate offender score and the seriousness level of
7 the completed crime, and multiplying the range by one hundred twenty-
8 five percent. If the standard sentence range under this subsection
9 exceeds the statutory maximum sentence for the offense, the statutory
10 maximum sentence is the presumptive sentence unless the offender is a
11 persistent offender.

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

15 (c) The increased penalty specified in (a) of this subsection is
16 unavailable in the event that the prosecution gives notice that it will
17 seek an exceptional sentence based on an aggravating factor under RCW
18 9.94A.535.

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

24 (12) An additional twelve months shall be added to the standard
25 sentence range for an offense that is also a violation of RCW
26 9.94A.831.

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

1 increases the sentence so that it would exceed the statutory maximum
2 for the offense, the portion of the sentence representing the
3 enhancement may not be reduced.

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