
SUBSTITUTE HOUSE BILL 2030

State of Washington**63rd Legislature****2013 1st Special Session**

By House Public Safety (originally sponsored by Representatives Morrell, Klippert, Goodman, Short, Van De Wege, Warnick, Bergquist, Harris, Hansen, Zeiger, Tharinger, Hurst, Dahlquist, Fitzgibbon, Kochmar, Fey, Hope, Kirby, O'Ban, Seaquist, Haler, Habib, Hargrove, Sells, Smith, Stanford, Sullivan, Maxwell, McCoy, Springer, Hunt, Llias, Stonier, Pollet, Ryu, Farrell, Orwall, Moscoso, and Upthegrove; by request of Governor Inslee)

READ FIRST TIME 05/29/13.

1 AN ACT Relating to driving while under the influence of
2 intoxicating liquor or drugs; amending RCW 2.28.175, 3.66.068,
3 3.66.067, 3.50.320, 3.50.330, 35.20.255, 9.94A.525, 10.31.100,
4 9.94A.501, 43.43.395, 46.20.720, 46.20.270, 9.94A.603, 46.25.090,
5 46.25.120, 46.25.110, 9.94A.535, 3.62.090, 46.61.5249, 46.61.5058,
6 46.61.502, 46.61.504, 46.20.385, 10.05.140, and 4.24.545; reenacting
7 and amending RCW 46.61.5055, 46.61.5055, and 46.20.308; adding a new
8 section to chapter 10.21 RCW; adding a new section to chapter 46.64
9 RCW; adding a new section to chapter 43.59 RCW; adding new sections to
10 chapter 36.28A RCW; adding a new section to chapter 43.101 RCW; adding
11 a new section to chapter 46.68 RCW; adding a new section to chapter
12 43.43 RCW; creating new sections; prescribing penalties; providing an
13 effective date; and providing an expiration date.

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

15 NEW SECTION. **Sec. 1.** A new section is added to chapter 10.21 RCW
16 to read as follows:

17 (1) Unless waived by the court, when any person charged with or
18 arrested for a violation of RCW 46.61.502, 46.61.504, 46.61.520,
19 46.61.522, or equivalent local ordinance, in which the person has one

1 or more prior offenses as defined in RCW 46.61.5055 and the current
2 offense involves alcohol, is released from custody before arraignment
3 or trial on bail or personal recognizance, the court authorizing the
4 release shall require, as a condition of release, that person to: (a)
5 Have a functioning ignition interlock device installed on all motor
6 vehicles operated by the person, with proof of installation filed with
7 the court by the person or the certified interlock provider within five
8 business days of the date of release from custody; (b) comply with 24/7
9 alcohol/drug monitoring, as defined in RCW 46.61.5055; (c) or comply
10 with both (a) and (b) of this subsection.

11 (2) Upon acquittal or dismissal of all pending or current charges
12 relating to a violation of RCW 46.61.502, 46.61.504, 46.61.520, or
13 46.61.522, or equivalent local ordinance, or if charges are not filed
14 against the person, the court shall authorize removal of the ignition
15 interlock device and lift any requirement to comply with electronic
16 24/7 alcohol/drug monitoring imposed under subsection (1) of this
17 section. Nothing in this section limits the authority of the court or
18 department under RCW 46.20.720.

19 **Sec. 2.** RCW 2.28.175 and 2012 c 183 s 1 are each amended to read
20 as follows:

21 (1) Counties and municipalities may establish and operate DUI
22 courts. Municipalities may also enter into cooperative agreements with
23 counties that have DUI courts to provide DUI court services.

24 (2) For the purposes of this section, "DUI court" means a court
25 that has special calendars or dockets designed to achieve a reduction
26 in recidivism of impaired driving among nonviolent, alcohol abusing
27 offenders, whether adult or juvenile, by increasing their likelihood
28 for successful rehabilitation through early, continuous, and intense
29 judicially supervised treatment; mandatory periodic testing for alcohol
30 use and, if applicable, drug use; and the use of appropriate sanctions
31 and other rehabilitation services.

32 (3)(a) Any jurisdiction that seeks a state appropriation to fund a
33 DUI court program must first:

34 (i) Exhaust all federal funding that is available to support the
35 operations of its DUI court and associated services; and

36 (ii) Match, on a dollar-for-dollar basis, state moneys allocated
37 for DUI court programs with local cash or in-kind resources. Moneys

1 allocated by the state must be used to supplement, not supplant, other
2 federal, state, and local funds for DUI court operations and associated
3 services. However, until June 30, 2014, no match is required for state
4 moneys expended for the administrative and overhead costs associated
5 with the operation of a DUI court established as of January 1, 2011.

6 (b) Any jurisdiction that establishes a DUI court pursuant to this
7 section shall establish minimum requirements for the participation of
8 offenders in the program. The DUI court may adopt local requirements
9 that are more stringent than the minimum. The minimum requirements
10 are:

11 (i) The offender would benefit from alcohol treatment;

12 (ii) The offender has not previously been convicted of a serious
13 violent offense or sex offense as defined in RCW 9.94A.030, vehicular
14 homicide under RCW 46.61.520, vehicular assault under RCW 46.61.522, or
15 an equivalent out-of-state offense; and

16 (iii) Without regard to whether proof of any of these elements is
17 required to convict, the offender is not currently charged with or
18 convicted of an offense:

19 (A) That is a sex offense;

20 (B) That is a serious violent offense;

21 (C) That is vehicular homicide or vehicular assault;

22 (D) During which the defendant used a firearm; or

23 (E) During which the defendant caused substantial or great bodily
24 harm or death to another person.

25 **Sec. 3.** RCW 3.66.068 and 2010 c 274 s 405 are each amended to read
26 as follows:

27 (1) A court has continuing jurisdiction and authority to suspend
28 the execution of all or any part of its sentence upon stated terms,
29 including installment payment of fines for a period not to exceed:

30 (a) Five years after imposition of sentence for a defendant
31 sentenced for a domestic violence offense or under RCW 46.61.5055; and

32 (b) Two years after imposition of sentence for all other
33 offenses((, the)).

34 (2)(a) Except as provided in (b) of this subsection, a court has
35 continuing jurisdiction and authority to ((suspend or)) defer the
36 execution of all or any part of its sentence upon stated terms,
37 including installment payment of fines for a period not to exceed:

1 (i) Five years after imposition of sentence for a defendant
2 sentenced for a domestic violence offense; and

3 (ii) Two years after imposition of sentence for all other offenses.

4 (b) A court shall not defer sentence for an offense sentenced under
5 RCW 46.61.5055.

6 (3) A defendant who has been sentenced, or whose sentence has been
7 deferred, and who then fails to appear for any hearing to address the
8 defendant's compliance with the terms of probation when ordered to do
9 so by the court, shall have the term of probation tolled until such
10 time as the defendant makes his or her presence known to the court on
11 the record.

12 (4) However, the court's jurisdiction period in this section does
13 not apply to the enforcement of orders issued under RCW 46.20.720.

14 (5) For the purposes of this section, "domestic violence offense"
15 means a crime listed in RCW 10.99.020 that is not a felony offense.

16 **Sec. 4.** RCW 3.66.067 and 2001 c 94 s 1 are each amended to read as
17 follows:

18 After a conviction, the court may impose sentence by suspending all
19 or a portion of the defendant's sentence or by deferring the sentence
20 of the defendant and may place the defendant on probation for a period
21 of no longer than two years and prescribe the conditions thereof. A
22 defendant who has been sentenced, or whose sentence has been deferred,
23 and who then fails to appear for any hearing to address the defendant's
24 compliance with the terms of probation when ordered to do so by the
25 court, shall have the term of probation tolled until such time as the
26 defendant makes his or her presence known to the court on the record.
27 During the time of the deferral, the court may, for good cause shown,
28 permit a defendant to withdraw the plea of guilty and to enter a plea
29 of not guilty, and the court may dismiss the charges. A court shall
30 not defer sentence for an offense sentenced under RCW 46.61.5055.

31 **Sec. 5.** RCW 3.50.320 and 2001 c 94 s 4 are each amended to read as
32 follows:

33 After a conviction, the court may impose sentence by suspending all
34 or a portion of the defendant's sentence or by deferring the sentence
35 of the defendant and may place the defendant on probation for a period
36 of no longer than two years and prescribe the conditions thereof. A

1 defendant who has been sentenced, or whose sentence has been deferred,
2 and who then fails to appear for any hearing to address the defendant's
3 compliance with the terms of probation when ordered to do so by the
4 court, shall have the term of probation tolled until such time as the
5 defendant makes his or her presence known to the court on the record.
6 During the time of the deferral, the court may, for good cause shown,
7 permit a defendant to withdraw the plea of guilty, permit the defendant
8 to enter a plea of not guilty, and dismiss the charges. A court shall
9 not defer sentence for an offense sentenced under RCW 46.61.5055.

10 **Sec. 6.** RCW 3.50.330 and 2010 c 274 s 406 are each amended to read
11 as follows:

12 (1) A court has continuing jurisdiction and authority to suspend
13 the execution of all or any part of its sentence upon stated terms,
14 including installment payment of fines for a period not to exceed:

15 (a) Five years after imposition of sentence for a defendant
16 sentenced for a domestic violence offense or under RCW 46.61.5055; and

17 (b) Two years after imposition of sentence for all other
18 offenses((, the)).

19 (2)(a) Except as provided in (b) of this subsection, a court shall
20 have continuing jurisdiction and authority to ((suspend or)) defer the
21 execution of all or any part of the sentence upon stated terms,
22 including installment payment of fines for a period not to exceed:

23 (i) Five years after imposition of sentence for a defendant
24 sentenced for a domestic violence offense; and

25 (ii) Two years after imposition of sentence for all other offenses.

26 (b) A court shall not defer sentence for an offense sentenced under
27 RCW 46.61.5055.

28 (3) A defendant who has been sentenced, or whose sentence has been
29 deferred, and who then fails to appear for any hearing to address the
30 defendant's compliance with the terms of probation when ordered to do
31 so by the court, shall have the term of probation tolled until such
32 time as the defendant makes his or her presence known to the court on
33 the record.

34 (4) However, the court's jurisdiction period in this section does
35 not apply to the enforcement of orders issued under RCW 46.20.720.

36 (5) Any time before entering an order terminating probation, the

1 court may modify or revoke its order suspending or deferring the
2 imposition or execution of the sentence.

3 (6) For the purposes of this section, "domestic violence offense"
4 means a crime listed in RCW 10.99.020 that is not a felony offense.

5 **Sec. 7.** RCW 35.20.255 and 2010 c 274 s 407 are each amended to
6 read as follows:

7 (1) Except as provided in subsection (3) of this section, judges of
8 the municipal court, in their discretion, shall have the power in all
9 criminal proceedings within their jurisdiction including violations of
10 city ordinances, to defer imposition of any sentence, suspend all or
11 part of any sentence including installment payment of fines, fix the
12 terms of any such deferral or suspension, and provide for such
13 probation as in their opinion is reasonable and necessary under the
14 circumstances of the case, but in no case shall it extend for more than
15 five years from the date of conviction for a defendant to be sentenced
16 for a domestic violence offense or under RCW 46.61.5055 and two years
17 from the date of conviction for all other offenses. A defendant who
18 has been sentenced, or whose sentence has been deferred, and who then
19 fails to appear for any hearing to address the defendant's compliance
20 with the terms of probation when ordered to do so by the court, shall
21 have the term of probation tolled until such time as the defendant
22 makes his or her presence known to the court on the record. However,
23 the jurisdiction period in this section does not apply to the
24 enforcement of orders issued under RCW 46.20.720. Any time before
25 entering an order terminating probation, the court may modify or revoke
26 its order suspending or deferring the imposition or execution of the
27 sentence. For the purposes of this subsection, "domestic violence
28 offense" means a crime listed in RCW 10.99.020 that is not a felony
29 offense.

30 (2)(a) If a defendant whose sentence has been deferred requests
31 permission to travel or transfer to another state, the director of
32 probation services or a designee thereof shall determine whether such
33 request is subject to RCW 9.94A.745, the interstate compact for adult
34 offender supervision. If such request is subject to the compact, the
35 director or designee shall:

36 (i) Notify the department of corrections of the defendant's
37 request;

1 (ii) Provide the department of corrections with the supporting
2 documentation it requests for processing an application for transfer;

3 (iii) Notify the defendant of the fee due to the department of
4 corrections for processing an application under the compact;

5 (iv) Cease supervision of the defendant while another state
6 supervises the defendant pursuant to the compact;

7 (v) Resume supervision if the defendant returns to this state
8 before the period of deferral expires.

9 (b) The defendant shall receive credit for time served while being
10 supervised by another state.

11 (c) If the probationer is returned to the state at the request of
12 the receiving state under rules of the interstate compact for adult
13 offender supervision, the department of corrections is responsible for
14 the cost of returning the probationer.

15 (d) The state of Washington, the department of corrections and its
16 employees, and any city and its employees are not liable for civil
17 damages resulting from any act or omission authorized or required under
18 this section unless the act or omission constitutes gross negligence.

19 (3) Judges of the municipal court shall not defer sentence for an
20 offense sentenced under RCW 46.61.5055.

21 **Sec. 8.** RCW 9.94A.525 and 2011 c 166 s 3 are each amended to read
22 as follows:

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

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

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

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

34 (b) Class B prior felony convictions other than sex offenses shall
35 not be included in the offender score, if since the last date of
36 release from confinement (including full-time residential treatment)

1 pursuant to a felony conviction, if any, or entry of judgment and
2 sentence, the offender had spent ten consecutive years in the community
3 without committing any crime that subsequently results in a conviction.

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

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

17 (e) If the present conviction is felony driving while under the
18 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
19 felony physical control of a vehicle while under the influence of
20 intoxicating liquor or any drug (RCW 46.61.504(6)), ((prior convictions
21 of felony driving while under the influence of intoxicating liquor or
22 any drug, felony physical control of a vehicle while under the
23 influence of intoxicating liquor or any drug, and serious traffic
24 offenses shall be included in the offender score if: (i) The prior
25 convictions were committed within five years since the last date of
26 release from confinement (including full time residential treatment) or
27 entry of judgment and sentence; or (ii) the prior convictions would be
28 considered "prior offenses within ten years" as defined in RCW
29 46.61.5055)) all predicate crimes for the offense as defined by RCW
30 46.61.5055(14) shall be included in the offender score, and prior
31 convictions for felony driving while under the influence of
32 intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical
33 control of a vehicle while under the influence of intoxicating liquor
34 or any drug (RCW 46.61.504(6)) shall always be included in the offender
35 score. All other convictions of the defendant shall be scored
36 according to this section.

37 (f) Prior convictions for a repetitive domestic violence offense,
38 as defined in RCW 9.94A.030, shall not be included in the offender

1 score if, since the last date of release from confinement or entry of
2 judgment and sentence, the offender had spent ten consecutive years in
3 the community without committing any crime that subsequently results in
4 a conviction.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (11) If the present conviction is for a felony traffic offense
38 count two points for each adult or juvenile prior conviction for

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

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

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

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

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

37 (16) If the present conviction is for Burglary 2 or residential
38 burglary, count priors as in subsection (7) of this section; however,

1 count two points for each adult and juvenile prior Burglary 1
2 conviction, two points for each adult prior Burglary 2 or residential
3 burglary conviction, and one point for each juvenile prior Burglary 2
4 or residential burglary conviction.

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

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

16 (19) If the present conviction is for an offense committed while
17 the offender was under community custody, add one point. For purposes
18 of this subsection, community custody includes community placement or
19 postrelease supervision, as defined in chapter 9.94B RCW.

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

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

35 (a) Count two points for each adult prior conviction where domestic
36 violence as defined in RCW 9.94A.030 was plead and proven after August
37 1, 2011, for the following offenses: A violation of a no-contact order
38 that is a felony offense, a violation of a protection order that is a

1 felony offense, a felony domestic violence harassment offense, a felony
2 domestic violence stalking offense, a domestic violence Burglary 1
3 offense, a domestic violence Kidnapping 1 offense, a domestic violence
4 Kidnapping 2 offense, a domestic violence unlawful imprisonment
5 offense, a domestic violence Robbery 1 offense, a domestic violence
6 Robbery 2 offense, a domestic violence Assault 1 offense, a domestic violence
7 Assault 2 offense, a domestic violence Assault 3 offense, a
8 domestic violence Arson 1 offense, or a domestic violence Arson 2
9 offense;

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

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

18 (22) The fact that a prior conviction was not included in an
19 offender's offender score or criminal history at a previous sentencing
20 shall have no bearing on whether it is included in the criminal history
21 or offender score for the current offense. Prior convictions that were
22 not counted in the offender score or included in criminal history under
23 repealed or previous versions of the sentencing reform act shall be
24 included in criminal history and shall count in the offender score if
25 the current version of the sentencing reform act requires including or
26 counting those convictions. Prior convictions that were not included
27 in criminal history or in the offender score shall be included upon any
28 resentencing to ensure imposition of an accurate sentence.

29 **Sec. 9.** RCW 10.31.100 and 2010 c 274 s 201 are each amended to
30 read as follows:

31 A police officer having probable cause to believe that a person has
32 committed or is committing a felony shall have the authority to arrest
33 the person without a warrant. A police officer may arrest a person
34 without a warrant for committing a misdemeanor or gross misdemeanor
35 only when the offense is committed in the presence of the officer,
36 except as provided in subsections (1) through (10) of this section.

1 (1) Any police officer having probable cause to believe that a
2 person has committed or is committing a misdemeanor or gross
3 misdemeanor, involving physical harm or threats of harm to any person
4 or property or the unlawful taking of property or involving the use or
5 possession of cannabis, or involving the acquisition, possession, or
6 consumption of alcohol by a person under the age of twenty-one years
7 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070
8 or 9A.52.080, shall have the authority to arrest the person.

9 (2) A police officer shall arrest and take into custody, pending
10 release on bail, personal recognizance, or court order, a person
11 without a warrant when the officer has probable cause to believe that:

12 (a) An order has been issued of which the person has knowledge
13 under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26,
14 26.50, or 74.34 RCW restraining the person and the person has violated
15 the terms of the order restraining the person from acts or threats of
16 violence, or restraining the person from going onto the grounds of or
17 entering a residence, workplace, school, or day care, or prohibiting
18 the person from knowingly coming within, or knowingly remaining within,
19 a specified distance of a location or, in the case of an order issued
20 under RCW 26.44.063, imposing any other restrictions or conditions upon
21 the person; or

22 (b) A foreign protection order, as defined in RCW 26.52.010, has
23 been issued of which the person under restraint has knowledge and the
24 person under restraint has violated a provision of the foreign
25 protection order prohibiting the person under restraint from contacting
26 or communicating with another person, or excluding the person under
27 restraint from a residence, workplace, school, or day care, or
28 prohibiting the person from knowingly coming within, or knowingly
29 remaining within, a specified distance of a location, or a violation of
30 any provision for which the foreign protection order specifically
31 indicates that a violation will be a crime; or

32 (c) The person is sixteen years or older and within the preceding
33 four hours has assaulted a family or household member as defined in RCW
34 10.99.020 and the officer believes: (i) A felonious assault has
35 occurred; (ii) an assault has occurred which has resulted in bodily
36 injury to the victim, whether the injury is observable by the
37 responding officer or not; or (iii) that any physical action has
38 occurred which was intended to cause another person reasonably to fear

1 imminent serious bodily injury or death. Bodily injury means physical
2 pain, illness, or an impairment of physical condition. When the
3 officer has probable cause to believe that family or household members
4 have assaulted each other, the officer is not required to arrest both
5 persons. The officer shall arrest the person whom the officer believes
6 to be the primary physical aggressor. In making this determination,
7 the officer shall make every reasonable effort to consider: (i) The
8 intent to protect victims of domestic violence under RCW 10.99.010;
9 (ii) the comparative extent of injuries inflicted or serious threats
10 creating fear of physical injury; and (iii) the history of domestic
11 violence of each person involved, including whether the conduct was
12 part of an ongoing pattern of abuse; or

13 (d) The person has committed a violation of RCW 46.61.502 or
14 46.61.504 or an equivalent local ordinance and the police officer has
15 knowledge that the person has a prior offense as defined in RCW
16 46.61.5055 within ten years.

17 (3) Any police officer having probable cause to believe that a
18 person has committed or is committing a violation of any of the
19 following traffic laws shall have the authority to arrest the person:

20 (a) RCW 46.52.010, relating to duty on striking an unattended car
21 or other property;

22 (b) RCW 46.52.020, relating to duty in case of injury to or death
23 of a person or damage to an attended vehicle;

24 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or
25 racing of vehicles;

26 (d) RCW 46.61.502 or 46.61.504, relating to persons under the
27 influence of intoxicating liquor or drugs;

28 (e) RCW 46.61.503 or 46.25.110, relating to persons having alcohol
29 or THC in their system;

30 (f) RCW 46.20.342, relating to driving a motor vehicle while
31 operator's license is suspended or revoked;

32 ((f)) (g) RCW 46.61.5249, relating to operating a motor vehicle
33 in a negligent manner.

34 (4) A law enforcement officer investigating at the scene of a motor
35 vehicle accident may arrest the driver of a motor vehicle involved in
36 the accident if the officer has probable cause to believe that the
37 driver has committed in connection with the accident a violation of any
38 traffic law or regulation.

1 (5) Any police officer having probable cause to believe that a
2 person has committed or is committing a violation of RCW 79A.60.040
3 shall have the authority to arrest the person.

4 (6) An officer may act upon the request of a law enforcement
5 officer in whose presence a traffic infraction was committed, to stop,
6 detain, arrest, or issue a notice of traffic infraction to the driver
7 who is believed to have committed the infraction. The request by the
8 witnessing officer shall give an officer the authority to take
9 appropriate action under the laws of the state of Washington.

10 (7) Any police officer having probable cause to believe that a
11 person has committed or is committing any act of indecent exposure, as
12 defined in RCW 9A.88.010, may arrest the person.

13 (8) A police officer may arrest and take into custody, pending
14 release on bail, personal recognizance, or court order, a person
15 without a warrant when the officer has probable cause to believe that
16 an order has been issued of which the person has knowledge under
17 chapter 10.14 RCW and the person has violated the terms of that order.

18 (9) Any police officer having probable cause to believe that a
19 person has, within twenty-four hours of the alleged violation,
20 committed a violation of RCW 9A.50.020 may arrest such person.

21 (10) A police officer having probable cause to believe that a
22 person illegally possesses or illegally has possessed a firearm or
23 other dangerous weapon on private or public elementary or secondary
24 school premises shall have the authority to arrest the person.

25 For purposes of this subsection, the term "firearm" has the meaning
26 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning
27 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

28 (11) Except as specifically provided in subsections (2), (3), (4),
29 and (6) of this section, nothing in this section extends or otherwise
30 affects the powers of arrest prescribed in Title 46 RCW.

31 (12) No police officer may be held criminally or civilly liable for
32 making an arrest pursuant to subsection (2) or (8) of this section if
33 the police officer acts in good faith and without malice.

34 **Sec. 10.** RCW 46.61.5055 and 2012 c 183 s 12, 2012 c 42 s 2, and
35 2012 c 28 s 1 are each reenacted and amended to read as follows:

36 (1) **No prior offenses in seven years.** Except as provided in RCW

1 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation
2 of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven
3 years shall be punished as follows:

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

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

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

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

36 (i) By imprisonment for not less than two days nor more than three
37 hundred sixty-four days. ((~~Two consecutive days~~)) Forty-eight
38 consecutive hours of the imprisonment may not be suspended ((~~or~~

1 deferred)) unless the court finds that the imposition of this mandatory
2 minimum sentence would impose a substantial risk to the offender's
3 physical or mental well-being. Whenever the mandatory minimum sentence
4 is suspended ((or deferred)), the court shall state in writing the
5 reason for granting the suspension ((or deferral)) and the facts upon
6 which the suspension ((or deferral)) is based. In lieu of the
7 mandatory minimum term of imprisonment required under this subsection
8 (1)(b)(i), the court may order not less than thirty days of electronic
9 home monitoring. The offender shall pay the cost of electronic home
10 monitoring. The county or municipality in which the penalty is being
11 imposed shall determine the cost. The court may also require the
12 offender's electronic home monitoring device to include an alcohol
13 detection breathalyzer or other separate alcohol monitoring device, and
14 the court may restrict the amount of alcohol the offender may consume
15 during the time the offender is on electronic home monitoring; and

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

20 (2) **One prior offense in seven years.** Except as provided in RCW
21 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation
22 of RCW 46.61.502 or 46.61.504 and who has one prior offense within
23 seven years shall be punished as follows:

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

29 (i) (A) By imprisonment for not less than ((thirty)) forty days nor
30 more than three hundred sixty-four days ((and)) sixty days of
31 electronic home monitoring, and upon completion of the initial
32 mandatory minimum sentence either: (I) An additional ninety days in
33 jail; or (II) if available, a minimum of ninety days of 24/7
34 alcohol/drug monitoring. In all instances, the court shall order an
35 expanded alcohol and drug assessment, and shall order treatment as
36 recommended by the agency conducting the assessment.

37 (B) In lieu of the mandatory minimum term of sixty days electronic
38 home monitoring, the court may order at least an additional four days

1 in jail. The offender shall pay for the cost of the electronic
2 monitoring. The county or municipality where the penalty is being
3 imposed shall determine the cost, and may include an additional fee to
4 cover the cost of electronic monitoring for indigent offenders. The
5 court may also require the offender's electronic home monitoring device
6 include an alcohol detection breathalyzer or other separate alcohol
7 monitoring device, and may restrict the amount of alcohol the offender
8 may consume during the time the offender is on electronic home
9 monitoring. ((Thirty)) Forty days of imprisonment and sixty days of
10 electronic home monitoring may not be suspended ((~~or deferred~~)) unless
11 the court finds that the imposition of this mandatory minimum sentence
12 would impose a substantial risk to the offender's physical or mental
13 well-being. Whenever the mandatory minimum sentence is suspended ((~~or~~
14 ~~deferred~~)), the court shall state in writing the reason for granting
15 the suspension ((~~or deferral~~)) and the facts upon which the suspension
16 ((~~or deferral~~)) is based.

17 (C) The assessment-based treatment must be approved by the
18 department of social and health services; and

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

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

28 (i) (A) By imprisonment for not less than ((forty-five)) fifty-five
29 days nor more than three hundred sixty-four days ((and)), ninety days
30 of electronic home monitoring, and upon completion of the initial
31 mandatory minimum sentence either: (I) An additional ninety days in
32 jail; or (II) if available, a minimum of ninety days of 24/7
33 alcohol/drug monitoring. In all instances, the court shall order an
34 expanded alcohol and drug assessment, and shall order treatment as
35 recommended by the agency conducting the assessment.

36 (B) In lieu of the mandatory minimum term of ninety days electronic
37 home monitoring, the court may order at least an additional six days in
38 jail. The offender shall pay for the cost of the electronic

1 monitoring. The county or municipality where the penalty is being
2 imposed shall determine the cost, and may include an additional fee to
3 cover the cost of electronic monitoring for indigent offenders. The
4 court may also require the offender's electronic home monitoring device
5 include an alcohol detection breathalyzer or other separate alcohol
6 monitoring device, and may restrict the amount of alcohol the offender
7 may consume during the time the offender is on electronic home
8 monitoring. ((Forty-five)) Fifty-five days of imprisonment and ninety
9 days of electronic home monitoring may not be suspended ((~~or deferred~~))
10 unless the court finds that the imposition of this mandatory minimum
11 sentence would impose a substantial risk to the offender's physical or
12 mental well-being. Whenever the mandatory minimum sentence is
13 suspended ((~~or deferred~~)), the court shall state in writing the reason
14 for granting the suspension ((~~or deferral~~)) and the facts upon which
15 the suspension ((~~or deferral~~)) is based.

16 (C) The assessment-based treatment must be approved by the
17 department of social and health services; and

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

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

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

31 (i)(A) By imprisonment for not less than ((ninety)) one hundred
32 days nor more than three hundred sixty-four days ((and)) one hundred
33 twenty days of electronic home monitoring, and upon completion of the
34 initial mandatory minimum sentence either: (I) An additional one
35 hundred eighty days in jail; or (II) if available, a minimum of one
36 hundred eighty days of 24/7 alcohol/drug monitoring. In all instances,
37 the court shall order an expanded alcohol and drug assessment, and

1 shall order treatment as recommended by the agency conducting the
2 assessment.

3 (B) In lieu of the mandatory minimum term of one hundred twenty
4 days of electronic home monitoring, the court may order at least an
5 additional eight days in jail. The offender shall pay for the cost of
6 the electronic monitoring. The county or municipality where the
7 penalty is being imposed shall determine the cost, and may include an
8 additional fee to cover the cost of electronic monitoring for indigent
9 offenders. The court may also require the offender's electronic home
10 monitoring device include an alcohol detection breathalyzer or other
11 separate alcohol monitoring device, and may restrict the amount of
12 alcohol the offender may consume during the time the offender is on
13 electronic home monitoring. ((Ninety)) One hundred days of
14 imprisonment and one hundred twenty days of electronic home monitoring
15 may not be suspended ((or deferred)) unless the court finds that the
16 imposition of this mandatory minimum sentence would impose a
17 substantial risk to the offender's physical or mental well-being.
18 Whenever the mandatory minimum sentence is suspended ((or deferred)),
19 the court shall state in writing the reason for granting the suspension
20 ((or deferral)) and the facts upon which the suspension ((or deferral))
21 is based.

22 (C) The assessment-based treatment must be approved by the
23 department of social and health services; and

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

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

33 (i)(A) By imprisonment for not less than one hundred ((twenty))
34 thirty days nor more than three hundred sixty-four days ((and)) one
35 hundred fifty days of electronic home monitoring, and upon completion
36 of the initial mandatory minimum sentence either: (I) An additional
37 one hundred eighty days in jail; or (II) if available, a minimum of one
38 hundred eighty days of 24/7 alcohol/drug monitoring. In all instances,

1 the court shall order an expanded alcohol and drug assessment, and
2 shall order treatment as recommended by the agency conducting the
3 assessment.

4 (B) In lieu of the mandatory minimum term of one hundred fifty days
5 of electronic home monitoring, the court may order at least an
6 additional ten days in jail. The offender shall pay for the cost of
7 the electronic monitoring. The county or municipality where the
8 penalty is being imposed shall determine the cost, and may include an
9 additional fee to cover the cost of electronic monitoring for indigent
10 offenders. The court may also require the offender's electronic home
11 monitoring device include an alcohol detection breathalyzer or other
12 separate alcohol monitoring device, and may restrict the amount of
13 alcohol the offender may consume during the time the offender is on
14 electronic home monitoring. One hundred ((twenty)) thirty days of
15 imprisonment and one hundred fifty days of electronic home monitoring
16 may not be suspended ((~~or deferred~~)) unless the court finds that the
17 imposition of this mandatory minimum sentence would impose a
18 substantial risk to the offender's physical or mental well-being.
19 Whenever the mandatory minimum sentence is suspended ((~~or deferred~~)),
20 the court shall state in writing the reason for granting the suspension
21 ((~~or deferral~~)) and the facts upon which the suspension ((~~or deferral~~))
22 is based.

23 (C) The assessment-based treatment must be approved by the
24 department of social and health services; 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
28 the offender to be indigent.

29 (4) **Four or more prior offenses in ten years.** A person who is
30 convicted of a violation of RCW 46.61.502 or 46.61.504 shall be
31 punished under chapter 9.94A RCW if:

- 32 (a) The person has four or more prior offenses within ten years; or
33 (b) The person has ever previously been convicted of:

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

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

1 (iii) An out-of-state offense comparable to the offense specified
2 in (b)(i) or (ii) of this subsection; or
3 (iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

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

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

19 (6) ((If)) **Penalty for having a minor passenger in vehicle.** In
20 addition to any other penalty provided by law, if it is found by the
21 court that a person who is convicted of a violation of RCW 46.61.502 or
22 46.61.504 committed the offense while a passenger under the age of
23 sixteen was in the vehicle, the ((court shall)) following must occur:

24 (a) ((Order)) The department of licensing shall require the use of
25 an ignition interlock or other device for an additional 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), the court shall order ((a)) an additional penalty of
29 twenty-four hours of imprisonment and by a fine of not less than one
30 thousand dollars and not more than five thousand dollars. One thousand
31 dollars of the fine may not be suspended ((or deferred)) unless the
32 court finds the offender to be indigent;

33 (c) In any case in which the person has one prior offense within
34 seven years, and except as provided in RCW 46.61.502(6) or
35 46.61.504(6), the court shall order ((a)) an additional penalty of five
36 days of imprisonment and by a fine of not less than two thousand
37 dollars and not more than five thousand dollars. One thousand dollars

1 of the fine may not be suspended ((or deferred)) unless the court finds
2 the offender to be indigent;

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

10 (7) **Other items courts must consider while setting penalties.** In
11 exercising its discretion in setting penalties within the limits
12 allowed by this section, the court shall particularly consider the
13 following:

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

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

19 (c) Whether the driver was driving in the opposite direction of the
20 normal flow of traffic on a multiple lane highway, as defined by RCW
21 46.04.350, with a posted speed limit of forty-five miles per hour or
22 greater; and

23 (d) Whether a child passenger under the age of sixteen was an
24 occupant in the driver's vehicle.

25 (8) **Treatment and information school.** An offender punishable under
26 this section is subject to the alcohol assessment and treatment
27 provisions of RCW 46.61.5056.

28 (9) **Driver's license privileges of the defendant.** The license,
29 permit, or nonresident privilege of a person convicted of driving or
30 being in physical control of a motor vehicle while under the influence
31 of intoxicating liquor or drugs must:

32 (a) **Penalty for alcohol concentration less than 0.15.** If the
33 person's alcohol concentration was less than 0.15, or if for reasons
34 other than the person's refusal to take a test offered under RCW
35 46.20.308 there is no test result indicating the person's alcohol
36 concentration:

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

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

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

5 (b) **Penalty for alcohol concentration at least 0.15.** If the
6 person's alcohol concentration was at least 0.15:

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

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

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

13 (c) **Penalty for refusing to take test.** If by reason of the
14 person's refusal to take a test offered under RCW 46.20.308, there is
15 no test result indicating the person's alcohol concentration:

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

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

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

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

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

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

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

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

12 (i) Not driving a motor vehicle within this state without both a
13 valid license to drive and proof of liability insurance or other
14 financial responsibility for the future pursuant to RCW 46.30.020;

15 (ii) Not driving a motor vehicle within this state while having an
16 alcohol concentration of 0.08 or more within two hours after driving;
17 ((and))

18 (iii) Not being in physical control of a motor vehicle within this
19 state while having an alcohol concentration of 0.08 or more within two
20 hours after driving;

21 (iv) Not driving a motor vehicle within this state while having a
22 THC concentration of 5.00 nanograms per milliliter of whole blood or
23 higher within two hours after driving;

24 (v) Not being in physical control of a motor vehicle within this
25 state while having a THC concentration of 5.00 nanograms per milliliter
26 of whole blood or higher within two hours after driving;

27 (vi) Not refusing to submit to a test of his or her breath or blood
28 to determine alcohol or drug 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 or drug;
32 and

33 (vii) Mandatory participation in 24/7 alcohol/drug monitoring for
34 a minimum period of: (A) Three months if the person has been convicted
35 of one prior violation of RCW 46.61.502 or 46.61.504 within seven
36 years; or (B) six months if the person has been convicted of two prior
37 violations of RCW 46.61.502 or 46.61.504 within seven years.

1 (b) The court may impose conditions of probation that include
2 nonrepetition, installation of an ignition interlock device on the
3 probationer's motor vehicle, alcohol or drug treatment, supervised
4 probation, or other conditions that may be appropriate. The sentence
5 may be imposed in whole or in part upon violation of a condition of
6 probation during the suspension period.

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

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

21 (12) **Waiver of electronic home monitoring.** A court may waive the
22 electronic home monitoring requirements of this chapter when:

23 (a) The offender does not have a dwelling, telephone service, or
24 any other necessity to operate an electronic home monitoring system.
25 However, if a court determines that an alcohol monitoring device
26 utilizing wireless reporting technology is reasonably available, the
27 court may require the person to obtain such a device during the period
28 of required electronic home monitoring;

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

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

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

1 ignition interlock device, the 24/7 alcohol/drug monitoring, additional
2 jail time, work crew, or work camp.

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

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

14 (14) **Definitions.** For purposes of this section and RCW 46.61.502
15 and 46.61.504:

16 (a) "24/7 alcohol/drug monitoring" means the monitoring by the use
17 of any electronic instrument that is capable of determining and
18 monitoring the presence of alcohol or drugs in a person's body and
19 includes any associated equipment a participant needs in order for the
20 device to properly perform;

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

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

1 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
2 9A.36.050 or an equivalent local ordinance, if the conviction is the
3 result of a charge that was originally filed as a violation of RCW
4 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
5 46.61.520 or 46.61.522;

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

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

12 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
13 prosecution for a violation of RCW 46.61.5249, or an equivalent local
14 ordinance, if the charge under which the deferred prosecution was
15 granted was originally filed as a violation of RCW 46.61.502 or
16 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
17 46.61.522; ((or))

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

24 (x) A deferred sentence imposed in a prosecution for a violation of
25 RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local
26 ordinance, if the charge under which the deferred sentence was imposed
27 was originally filed as a violation of RCW 46.61.502 or 46.61.504, or
28 an equivalent local ordinance, or a violation of RCW 46.61.520 or
29 46.61.522;

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

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

37 ((+e)) (d) "Within ten years" means that the arrest for a prior

1 offense occurred within ten years before or after the arrest for the
2 current offense.

3 (15) **Cost of 24/7 alcohol/drug monitoring.** For purposes of this
4 section, costs for participation in 24/7 alcohol/drug monitoring shall
5 be paid by the offender. The county or municipality where the
6 monitoring is being administered shall determine the cost. In addition
7 to any other costs associated with 24/7 alcohol/drug monitoring imposed
8 on the person restricted under this section, the person shall pay an
9 additional fee of twenty dollars per month. Payments must be made
10 directly to the sheriff or chief, or the entity designated by the
11 sheriff or chief, and deposited with the county or city treasurer
12 pursuant to section 36 of this act. The county or city treasurer shall
13 remit the additional twenty dollar fee to the criminal justice training
14 commission to be deposited into the 24/7 alcohol/drug monitoring
15 revolving account under section 39 of this act.

16 **Sec. 11.** RCW 46.61.5055 and 2012 c 183 s 12, 2012 c 42 s 2, and
17 2012 c 28 s 1 are each reenacted and amended to read as follows:

18 (1) **No prior offenses in seven years.** Except as provided in RCW
19 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation
20 of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven
21 years shall be punished as follows:

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

27 (i) By imprisonment for not less than one day nor more than three
28 hundred sixty-four days. Twenty-four consecutive hours of the
29 imprisonment may not be suspended ((or deferred)) unless the court
30 finds that the imposition of this mandatory minimum sentence would
31 impose a substantial risk to the offender's physical or mental well-
32 being. Whenever the mandatory minimum sentence is suspended ((or
33 deferred)), the court shall state in writing the reason for granting
34 the suspension ((or deferral)) and the facts upon which the suspension
35 ((or deferral)) is based. In lieu of the mandatory minimum term of
36 imprisonment required under this subsection (1)(a)(i), the court may
37 order not less than fifteen days of electronic home monitoring. The

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

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

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

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

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

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

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

10 (i)(A) By imprisonment for not less than ((thirty)) forty days nor
11 more than three hundred sixty-four days ((and)), sixty days of
12 electronic home monitoring, and upon completion of the initial
13 mandatory minimum sentence either: (I) An additional ninety days in
14 jail; or (II) if available, a minimum of ninety days of 24/7
15 alcohol/drug monitoring. In all instances, the court shall order an
16 expanded alcohol and drug assessment, and shall order treatment as
17 recommended by the agency conducting the assessment.

18 (B) In lieu of the mandatory minimum term of sixty days electronic
19 home monitoring, the court may order at least an additional four days
20 in jail. The offender shall pay for the cost of the electronic
21 monitoring. The county or municipality where the penalty is being
22 imposed shall determine the cost, and may include an additional fee to
23 cover the cost of electronic monitoring for indigent offenders. The
24 court may also require the offender's electronic home monitoring device
25 include an alcohol detection breathalyzer or other separate alcohol
26 monitoring device, and may restrict the amount of alcohol the offender
27 may consume during the time the offender is on electronic home
28 monitoring. ((Thirty)) Forty days of imprisonment and sixty days of
29 electronic home monitoring may not be suspended ((or deferred)) unless
30 the court finds that the imposition of this mandatory minimum sentence
31 would impose a substantial risk to the offender's physical or mental
32 well-being. Whenever the mandatory minimum sentence is suspended ((or
33 deferred)), the court shall state in writing the reason for granting
34 the suspension ((or deferral)) and the facts upon which the suspension
35 ((or deferral)) is based.

36 (C) The assessment-based treatment must be approved by the
37 department of social and health services; and

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

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

10 (i)(A) By imprisonment for not less than ((forty-five)) fifty-five
11 days nor more than three hundred sixty-four days ((and)), ninety days
12 of electronic home monitoring, and upon completion of the initial
13 mandatory minimum sentence either: (I) An additional ninety days in
14 jail; or (II) if available, a minimum of ninety days of 24/7
15 alcohol/drug monitoring. In all instances, the court shall order an
16 expanded alcohol and drug assessment, and shall order treatment as
17 recommended by the agency conducting the assessment.

18 (B) In lieu of the mandatory minimum term of ninety days electronic
19 home monitoring, the court may order at least an additional six days in
20 jail. The offender shall pay for the cost of the electronic monitoring.
21 The county or municipality where the penalty is being imposed shall
22 determine the cost, and may include an additional fee to cover the cost
23 of electronic monitoring for indigent offenders. The court may also
24 require the offender's electronic home monitoring device include an
25 alcohol detection breathalyzer or other separate alcohol monitoring
26 device, and may restrict the amount of alcohol the offender may consume
27 during the time the offender is on electronic home monitoring.
28 ((Forty-five)) Fifty-five days of imprisonment and ninety days of
29 electronic home monitoring may not be suspended ((or deferred)) unless
30 the court finds that the imposition of this mandatory minimum sentence
31 would impose a substantial risk to the offender's physical or mental
32 well-being. Whenever the mandatory minimum sentence is suspended ((or
33 deferred)), the court shall state in writing the reason for granting
34 the suspension ((or deferral)) and the facts upon which the suspension
35 ((or deferral)) is based.

36 (C) The assessment-based treatment must be approved by the
37 department of social and health services; and

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

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

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

14 (i)(A) By imprisonment for not less than ((ninety)) one hundred
15 days nor more than three hundred sixty-four days ((and)), one hundred
16 twenty days of electronic home monitoring, and upon completion of the
17 initial mandatory minimum sentence either: (I) An additional one
18 hundred eighty days in jail; or (II) if available, a minimum of one
19 hundred eighty days of 24/7 alcohol/drug monitoring. In all instances,
20 the court shall order an expanded alcohol and drug assessment, and
21 shall order treatment as recommended by the agency conducting the
22 assessment.

23 (B) In lieu of the mandatory minimum term of one hundred twenty
24 days of electronic home monitoring, the court may order at least an
25 additional eight days in jail. The offender shall pay for the cost of
26 the electronic monitoring. The county or municipality where the
27 penalty is being imposed shall determine the cost, and may include an
28 additional fee to cover the cost of electronic monitoring for indigent
29 offenders. The court may also require the offender's electronic home
30 monitoring device include an alcohol detection breathalyzer or other
31 separate alcohol monitoring device, and may restrict the amount of
32 alcohol the offender may consume during the time the offender is on
33 electronic home monitoring. ((Ninety)) One hundred days of
34 imprisonment and one hundred twenty days of electronic home monitoring
35 may not be suspended ((or deferred)) unless the court finds that the
36 imposition of this mandatory minimum sentence would impose a
37 substantial risk to the offender's physical or mental well-being.
38 Whenever the mandatory minimum sentence is suspended ((or deferred)),

1 the court shall state in writing the reason for granting the suspension
2 ((or deferral)) and the facts upon which the suspension ((or deferral))
3 is based.

4 (C) The assessment-based treatment must be approved by the
5 department of social and health services; and

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

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

15 (i)(A) By imprisonment for not less than one hundred ((twenty))
16 thirty days nor more than three hundred sixty-four days ((and)), one
17 hundred fifty days of electronic home monitoring, and upon completion
18 of the initial mandatory minimum sentence either: (I) An additional
19 one hundred eighty days in jail; or (II) if available, a minimum of one
20 hundred eighty days of 24/7 alcohol/drug monitoring. In all instances,
21 the court shall order an expanded alcohol and drug assessment, and
22 shall order treatment as recommended by the agency conducting the
23 assessment.

24 (B) In lieu of the mandatory minimum term of one hundred fifty days
25 of electronic home monitoring, the court may order at least an
26 additional ten days in jail. The offender shall pay for the cost of
27 the electronic monitoring. The county or municipality where the
28 penalty is being imposed shall determine the cost, and may include an
29 additional fee to cover the cost of electronic monitoring for indigent
30 offenders. The court may also require the offender's electronic home
31 monitoring device include an alcohol detection breathalyzer or other
32 separate alcohol monitoring device, and may restrict the amount of
33 alcohol the offender may consume during the time the offender is on
34 electronic home monitoring. One hundred ((twenty)) thirty days of
35 imprisonment and one hundred fifty days of electronic home monitoring
36 may not be suspended ((or deferred)) unless the court finds that the
37 imposition of this mandatory minimum sentence would impose a
38 substantial risk to the offender's physical or mental well-being.

1 Whenever the mandatory minimum sentence is suspended ((or deferred)),
2 the court shall state in writing the reason for granting the suspension
3 ((or deferral)) and the facts upon which the suspension ((or deferral))
4 is based.

5 (C) The assessment-based treatment must be approved by the
6 department of social and health services; and

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

11 (4) **Three or more prior offenses in ten years.** A person who is
12 convicted of a violation of RCW 46.61.502 or 46.61.504 shall be
13 punished under chapter 9.94A RCW if:

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

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

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

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

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

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

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

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

1 (6) ((If)) **Penalty for having a minor passenger in vehicle.** In
2 addition to any other penalty provided by law, if it is found by the
3 court that a person who is convicted of a violation of RCW 46.61.502 or
4 46.61.504 committed the offense while a passenger under the age of
5 sixteen was in the vehicle, the ((court shall)) following must occur:

6 (a) ((Order)) The department of licensing shall require the use of
7 an ignition interlock or other device for an additional six months;

8 (b) In any case in which the person has no prior offenses within
9 seven years, and except as provided in RCW 46.61.502(6) or
10 46.61.504(6), the court shall order ((a)) an additional penalty of
11 twenty-four hours of imprisonment and by a fine of not less than one
12 thousand dollars and not more than five thousand dollars. One thousand
13 dollars of the fine may not be suspended ((or deferred)) unless the
14 court finds the offender to be indigent;

15 (c) In any case in which the person has one prior offense within
16 seven years, and except as provided in RCW 46.61.502(6) or
17 46.61.504(6), the court shall order ((a)) an additional penalty of five
18 days of imprisonment and by a fine of not less than two thousand
19 dollars and not more than five thousand dollars. One thousand dollars
20 of the fine may not be suspended ((or deferred)) unless the court finds
21 the offender to be indigent;

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

29 (7) **Other items courts must consider while setting penalties.** In
30 exercising its discretion in setting penalties within the limits
31 allowed by this section, the court shall particularly consider the
32 following:

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

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

1 (c) Whether the driver was driving in the opposite direction of the
2 normal flow of traffic on a multiple lane highway, as defined by RCW
3 46.04.350, with a posted speed limit of forty-five miles per hour or
4 greater; and

5 (d) Whether a child passenger under the age of sixteen was an
6 occupant in the driver's vehicle.

7 (8) **Treatment and information school.** An offender punishable under
8 this section is subject to the alcohol assessment and treatment
9 provisions of RCW 46.61.5056.

10 (9) **Driver's license privileges of the defendant.** The license,
11 permit, or nonresident privilege of a person convicted of driving or
12 being in physical control of a motor vehicle while under the influence
13 of intoxicating liquor or drugs must:

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

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

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

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

25 (b) **Penalty for alcohol concentration at least 0.15.** If the
26 person's alcohol concentration was at least 0.15:

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

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

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

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

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

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

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

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

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

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

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

26 (11) **Conditions of probation.** (a) In addition to any
27 nonsuspendable and nondeferrable jail sentence required by this
28 section, whenever the court imposes up to three hundred sixty-four days
29 in jail, the court shall also suspend ((but shall not defer)) a period
30 of confinement for a period not exceeding five years. The court shall
31 impose conditions of probation that include:

32 (i) Not driving a motor vehicle within this state without both a
33 valid license to drive and proof of liability insurance or other
34 financial responsibility for the future pursuant to RCW 46.30.020;

35 (ii) Not driving a motor vehicle within this state while having an
36 alcohol concentration of 0.08 or more within two hours after driving;
37 ((and))

1 (iii) Not being in physical control of a motor vehicle within this
2 state while having an alcohol concentration of 0.08 or more within two
3 hours after driving;

4 (iv) Not driving a motor vehicle within this state while having a
5 THC concentration of 5.00 nanograms per milliliter of whole blood or
6 higher within two hours after driving;

7 (v) Not being in physical control of a motor vehicle within this
8 state while having a THC concentration of 5.00 nanograms per milliliter
9 of whole blood or higher within two hours after driving;

10 (vi) Not refusing to submit to a test of his or her breath or blood
11 to determine alcohol or drug concentration upon request of a law
12 enforcement officer who has reasonable grounds to believe the person
13 was driving or was in actual physical control of a motor vehicle within
14 this state while under the influence of intoxicating liquor or drug;
15 and

16 (vii) Mandatory participation in 24/7 alcohol/drug monitoring for
17 a minimum period of: (A) Three months if the person has been convicted
18 of one prior violation of RCW 46.61.502 or 46.61.504 within seven
19 years; or (B) six months if the person has been convicted of two prior
20 violations of RCW 46.61.502 or 46.61.504 within seven years.

21 (b) The court may impose conditions of probation that include
22 nonrepetition, installation of an ignition interlock device on the
23 probationer's motor vehicle, alcohol or drug treatment, supervised
24 probation, or other conditions that may be appropriate. The sentence
25 may be imposed in whole or in part upon violation of a condition of
26 probation during the suspension period.

27 ((b)) (c) For each violation of mandatory conditions of probation
28 under (a)((i), (ii), or (iii)) and (b) of this subsection, the court
29 shall order the convicted person to be confined for thirty days, which
30 shall not be suspended ((or deferred)).

31 ((e)) (d) For each incident involving a violation of a mandatory
32 condition of probation imposed under this subsection, the license,
33 permit, or privilege to drive of the person shall be suspended by the
34 court for thirty days or, if such license, permit, or privilege to
35 drive already is suspended, revoked, or denied at the time the finding
36 of probation violation is made, the suspension, revocation, or denial
37 then in effect shall be extended by thirty days. The court shall

1 notify the department of any suspension, revocation, or denial or any
2 extension of a suspension, revocation, or denial imposed under this
3 subsection.

4 (12) **Waiver of electronic home monitoring.** A court may waive the
5 electronic home monitoring requirements of this chapter when:

6 (a) The offender does not have a dwelling, telephone service, or
7 any other necessity to operate an electronic home monitoring system.
8 However, if a court determines that an alcohol monitoring device
9 utilizing wireless reporting technology is reasonably available, the
10 court may require the person to obtain such a device during the period
11 of required electronic home monitoring;

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

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

16 Whenever the mandatory minimum term of electronic home monitoring
17 is waived, the court shall state in writing the reason for granting the
18 waiver and the facts upon which the waiver is based, and shall impose
19 an alternative sentence with similar punitive consequences. The
20 alternative sentence may include, but is not limited to, use of an
21 ignition interlock device, the 24/7 alcohol/drug monitoring, additional
22 jail time, work crew, or work camp.

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

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

34 (14) **Definitions.** For purposes of this section and RCW 46.61.502
35 and 46.61.504:

36 (a) "24/7 alcohol/drug monitoring" means the monitoring by the use
37 of any electronic instrument that is capable of determining and

1 monitoring the presence of alcohol or drugs in a person's body and
2 includes any associated equipment a participant needs in order for the
3 device to properly perform;

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

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

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

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

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

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

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

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

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

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

7 (x) A deferred sentence imposed in a prosecution for a violation of
8 RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local
9 ordinance, if the charge under which the deferred sentence was imposed
10 was originally filed as a violation of RCW 46.61.502 or 46.61.504, or
11 an equivalent local ordinance, or a violation of RCW 46.61.520 or
12 46.61.522;

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

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

20 ((+e)) (d) "Within ten years" means that the arrest for a prior
21 offense occurred within ten years before or after the arrest for the
22 current offense.

23 (15) Cost of 24/7 alcohol/drug monitoring. For purposes of this
24 section, costs for participation in 24/7 alcohol/drug monitoring shall
25 be paid by the offender. The county or municipality where the
26 monitoring is being administered shall determine the cost. In addition
27 to any other costs associated with 24/7 alcohol/drug monitoring imposed
28 on the person restricted under this section, the person shall pay an
29 additional fee of twenty dollars per month. Payments must be made
30 directly to the sheriff or chief, or the entity designated by the
31 sheriff or chief, and deposited with the county or city treasurer
32 pursuant to section 36 of this act. The county or city treasurer shall
33 remit the additional twenty dollar fee to the criminal justice training
34 commission to be deposited into the 24/7 alcohol/drug monitoring
35 revolving account under section 39 of this act.

36 **Sec. 12.** RCW 9.94A.501 and 2011 1st sp.s. c 40 s 2 are each
37 amended to read as follows:

1 (1) The department shall supervise the following offenders who are
2 sentenced to probation in superior court, pursuant to RCW 9.92.060,
3 9.95.204, or 9.95.210:

4 (a) Offenders convicted of:

5 (i) Sexual misconduct with a minor second degree;

6 (ii) Custodial sexual misconduct second degree;

7 (iii) Communication with a minor for immoral purposes; and

8 (iv) Violation of RCW 9A.44.132(2) (failure to register); and

9 (b) Offenders who have:

10 (i) A current conviction for a repetitive domestic violence offense
11 where domestic violence has been plead and proven after August 1, 2011;
12 and

13 (ii) A prior conviction for a repetitive domestic violence offense
14 or domestic violence felony offense where domestic violence has been
15 plead and proven after August 1, 2011.

16 (2) Misdemeanor and gross misdemeanor offenders supervised by the
17 department pursuant to this section shall be placed on community
18 custody.

19 (3) The department shall supervise every felony offender sentenced
20 to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk
21 assessment classifies the offender as one who is at a high risk to
22 reoffend.

23 (4) Notwithstanding any other provision of this section, the
24 department shall supervise an offender sentenced to community custody
25 regardless of risk classification if the offender:

26 (a) Has a current conviction for a sex offense or a serious violent
27 offense and was sentenced to a term of community custody pursuant to
28 RCW 9.94A.701, 9.94A.702, or 9.94A.507;

29 (b) Has been identified by the department as a dangerous mentally
30 ill offender pursuant to RCW 72.09.370;

31 (c) Has an indeterminate sentence and is subject to parole pursuant
32 to RCW 9.95.017;

33 (d) Has a current conviction for violating RCW 9A.44.132(1)
34 (failure to register) and was sentenced to a term of community custody
35 pursuant to RCW 9.94A.701;

36 (e) Has a current conviction for a domestic violence felony offense
37 where domestic violence has been plead and proven after August 1, 2011,

1 and a prior conviction for a repetitive domestic violence offense or
2 domestic violence felony offense where domestic violence has been plead
3 and proven after August 1, 2011;

4 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or
5 9.94A.670; ((or))

6 (g) Is subject to supervision pursuant to RCW 9.94A.745; or

7 (h) Was convicted of and sentenced under RCW 46.61.520 (vehicular
8 homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6) (felony-
9 DUI), or RCW 46.61.504(6) (felony-physical control).

10 (5) The department is not authorized to, and may not, supervise any
11 offender sentenced to a term of community custody or any probationer
12 unless the offender or probationer is one for whom supervision is
13 required under this section or RCW 9.94A.5011.

14 (6) The department shall conduct a risk assessment for every felony
15 offender sentenced to a term of community custody who may be subject to
16 supervision under this section or RCW 9.94A.5011.

17 **Sec. 13.** RCW 43.43.395 and 2012 c 183 s 16 are each amended to
18 read as follows:

19 (1) The state patrol shall by rule provide standards for the
20 certification, installation, repair, maintenance, monitoring,
21 inspection, and removal of ignition interlock devices, as defined under
22 RCW 46.04.215, and equipment as outlined under this section, and may
23 inspect the records and equipment of manufacturers and vendors during
24 regular business hours for compliance with statutes and rules and may
25 suspend or revoke certification for any noncompliance. ((The state
26 patrol may only inspect ignition interlock devices in the vehicles of
27 customers for proper installation and functioning when installation is
28 being done at the vendors' place of business.))

29 (2)(a) When a certified service provider or individual installer of
30 ignition interlock devices is found to be out of compliance, the
31 installation privileges of that certified service provider or
32 individual installer may be suspended or revoked until the certified
33 service provider or individual installer comes into compliance. During
34 any suspension or revocation period, the certified service provider or
35 individual installer is responsible for notifying affected customers of
36 any changes in their service agreement.

1 (b) A certified service provider or individual installer whose
2 certification is suspended or revoked for noncompliance has a right to
3 an administrative hearing under chapter 34.05 RCW to contest the
4 suspension or revocation, or both. For the administrative hearing, the
5 procedure and rules of evidence are as specified in chapter 34.05 RCW,
6 except as otherwise provided in this chapter. Any request for an
7 administrative hearing must be made in writing and must be received by
8 the state patrol within twenty days after the receipt of the notice of
9 suspension or revocation.

10 (3)(a) An ignition interlock device must employ fuel cell
11 technology. For the purposes of this subsection, "fuel cell
12 technology" consists of the following electrochemical method: An
13 electrolyte designed to oxidize the alcohol and release electrons to be
14 collected by an active electrode; a current flow is generated within
15 the electrode proportional to the amount of alcohol oxidized on the
16 fuel cell surface; and the electrical current is measured and reported
17 as breath alcohol concentration. Fuel cell technology is highly
18 specific for alcohols.

19 (b) When reasonably available in the area, as determined by the
20 state patrol, an ignition interlock device must employ technology
21 capable of taking a photo identification of the user giving the breath
22 sample and recording on the photo the time the breath sample was given.

23 (c) To be certified, an ignition interlock device must:

24 (i) Meet or exceed the minimum test standards according to rules
25 adopted by the state patrol. Only a notarized statement from a
26 laboratory that is certified by the international organization of
27 standardization and is capable of performing the tests specified will
28 be accepted as proof of meeting or exceeding the standards. The
29 notarized statement must include the name and signature of the person
30 in charge of the tests under the (~~following statement~~:

31 ~~"Two samples of (model name), manufactured by (manufacturer)~~
32 ~~were tested by (laboratory) certified by the Internal Organization of~~
33 ~~Standardization. They do meet or exceed all specifications listed in~~
34 ~~the Federal Register, Volume 71, Number 31 (57 FR 11772), Breath~~
35 ~~Alcohol Ignition Interlock Devices (BAIID), NHTSA 2005 23470. "~~)
36 ~~certification statement. The state patrol must adopt by rule the~~
37 ~~required language of the certification statement that must, at a~~

1 minimum, outline that the testing meets or exceeds all specifications
2 listed in the federal register adopted in rule by the state patrol; and

3 (ii) Be maintained in accordance with the rules and standards
4 adopted by the state patrol.

5 **Sec. 14.** RCW 46.20.720 and 2012 c 183 s 9 are each amended to read
6 as follows:

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

16 (2) Under RCW 46.61.5055 and subject to the exceptions listed in
17 that statute, the court shall order any person convicted of a violation
18 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to
19 comply with the rules and requirements of the department regarding the
20 installation and use of a functioning ignition interlock device
21 installed on all motor vehicles operated by the person. The court
22 shall order any person participating in a deferred prosecution program
23 under RCW 10.05.020 for a violation of RCW 46.61.502 or 46.61.504 or an
24 equivalent local ordinance to have a functioning ignition interlock
25 device installed on all motor vehicles operated by the person.

26 (3)(a) The department shall require that, after any applicable
27 period of suspension, revocation, or denial of driving privileges, a
28 person may drive only a motor vehicle equipped with a functioning
29 ignition interlock device if the person is convicted of a violation of
30 RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state
31 statute or ordinance. The department shall require that a person may
32 drive only a motor vehicle equipped with a functioning ignition
33 interlock device if the person is convicted of a violation of RCW
34 46.61.5249 or 46.61.500 and is required under RCW 46.61.5249(4) or
35 46.61.500(3) (a) or (b) to install an ignition interlock device on all
36 vehicles operated by the person.

1 ((The department may waive the requirement for the use of such a
2 device if it concludes that such devices are not reasonably available
3 in the local area.))

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

14 (ii) The employer exemption does not apply:

15 (A) When the employer's vehicle is assigned exclusively to the
16 restricted driver and used solely for commuting to and from
17 employment((, the employer exemption does not apply));

18 (B) For the first thirty days after an ignition interlock device
19 has been installed as the result of a first conviction of a violation
20 of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state
21 statute or ordinance; or

22 (C) For the first three hundred sixty-five days after an ignition
23 interlock device has been installed as the result of a second or
24 subsequent conviction of a violation of RCW 46.61.502 or 46.61.504 or
25 an equivalent local or out-of-state statute or ordinance.

26 (c) The ignition interlock device shall be calibrated to prevent
27 the motor vehicle from being started when the breath sample provided
28 has an alcohol concentration of 0.025 or more. Subject to the
29 provisions of subsections (4) and (5) of this section, the period of
30 time of the restriction will be no less than:

31 ~~((+a))~~ (i) For a person who has not previously been restricted
32 under this section, a period of one year;

33 ~~((+b))~~ (ii) For a person who has previously been restricted under
34 ~~((+a))~~ (c)(i) of this subsection, a period of five years;

35 ~~((+e))~~ (iii) For a person who has previously been restricted under
36 ~~((+b))~~ (c)(ii) of this subsection, a period of ten years.

37 (4) A restriction imposed under subsection (3) of this section
38 shall remain in effect until the department receives a declaration from

1 the person's ignition interlock device vendor, in a form provided or
2 approved by the department, certifying that there have been none of the
3 following incidents in the four consecutive months prior to the date of
4 release:

5 (a) ((An)) Any attempt to start the vehicle with a breath alcohol
6 concentration of 0.04 or more unless a subsequent test performed within
7 ten minutes registers a breath alcohol concentration lower than 0.04
8 and the digital image confirms the same person provided both samples;

9 (b) Failure to take ((or pass)) any ((required retest)) random test
10 unless a review of the digital image confirms that the vehicle was not
11 occupied by the driver at the time of the missed test; ((or))

12 (c) Failure to pass any random retest with a breath alcohol
13 concentration of 0.025 or lower unless a subsequent test performed
14 within ten minutes registers a breath alcohol concentration lower than
15 0.025, and the digital image confirms the same person provided both
16 samples; or

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

20 (5) For a person required to install an ignition interlock device
21 pursuant to RCW 46.61.5249(4) or 46.61.500(3), the period of time of
22 the restriction shall be for six months and shall be subject to
23 subsection (4) of this section.

24 (6) In addition to any other costs associated with the use of an
25 ignition interlock device imposed on the person restricted under this
26 section, the person shall pay an additional fee of twenty dollars per
27 month. Payments must be made directly to the ignition interlock
28 company. The company shall remit the additional twenty dollar fee to
29 the department to be deposited into the ignition interlock device
30 revolving account.

31 **Sec. 15.** RCW 46.20.308 and 2013 c 3 s 31 (Initiative Measure No.
32 502), 2012 c 183 s 7, and 2012 c 80 s 12 are each reenacted and amended
33 to read as follows:

34 (1) Any person who operates a motor vehicle within this state is
35 deemed to have given consent, subject to the provisions of RCW
36 46.61.506, to a test or tests of his or her breath ((or blood)) for the
37 purpose of determining the alcohol concentration, THC concentration, or

presence of any drug in his or her breath ((or blood)) if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath ((or blood)).

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

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

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

(c) If the driver submits to the test and the test is administered, the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ninety days if:

(i) The driver is age twenty-one or over and the test indicates either that the alcohol concentration of the driver's breath ((or

1 blood)) is 0.08 or more or that the THC concentration of the ((driver's
2 blood)) driver is 5.00 or more; or

3 (ii) The driver is under age twenty-one and the test indicates
4 either that the alcohol concentration of the driver's breath ((or
5 blood)) is 0.02 or more or that the THC concentration of the ((driver's
6 blood)) driver is above 0.00; or

7 (iii) The driver is under age twenty-one and the driver is in
8 violation of RCW 46.61.502 or 46.61.504; and

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

12 (3) Except as provided in this section, the test administered shall
13 be of the breath only. If an individual is unconscious or is under
14 arrest for the crime of felony driving under the influence of
15 intoxicating liquor or drugs under RCW 46.61.502(6), felony physical
16 control of a motor vehicle while under the influence of intoxicating
17 liquor or any drug under RCW 46.61.504(6), vehicular homicide as
18 provided in RCW 46.61.520, or vehicular assault as provided in RCW
19 46.61.522, or if an individual is under arrest for the crime of driving
20 while under the influence of intoxicating liquor or drugs as provided
21 in RCW 46.61.502, which arrest results from an accident in which there
22 has been serious bodily injury to another person, a breath ((or blood))
23 test may be administered without the consent of the individual so
24 arrested pursuant to a search warrant, a valid waiver of the warrant
25 requirement, or when exigent circumstances exist.

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

32 (5))) If, following his or her arrest and receipt of warnings under
33 subsection (2) of this section, the person arrested refuses upon the
34 request of a law enforcement officer to submit to a test or tests of
35 his or her breath ((or blood)), no test shall be given except as
36 authorized ((under subsection (3) or (4) of this section)) by a search
37 warrant.

1 ((+6)) (5) If, after arrest and after the other applicable
2 conditions and requirements of this section have been satisfied, a test
3 or tests of the person's ((blood or)) breath is administered and the
4 test results indicate that the alcohol concentration of the person's
5 breath ((or blood)) is 0.08 or more, or the THC concentration of the
6 ((person's blood)) person is 5.00 or more, if the person is age twenty-
7 one or over, or that the alcohol concentration of the person's breath
8 ((or blood)) is 0.02 or more, or the THC concentration of the
9 ((person's blood)) person is above 0.00, if the person is under the age
10 of twenty-one, or the person refuses to submit to a test, the arresting
11 officer or other law enforcement officer at whose direction any test
12 has been given, or the department, where applicable, if the arrest
13 results in a test of the person's blood, shall:

14 (a) Serve notice in writing on the person on behalf of the
15 department of its intention to suspend, revoke, or deny the person's
16 license, permit, or privilege to drive as required by subsection
17 ((+7)) (6) of this section;

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

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

25 (d)) Serve notice in writing that the ((marked)) license or
26 permit, if any, is a temporary license that is valid for sixty days
27 from the date of arrest or from the date notice has been given in the
28 event notice is given by the department following a blood test, or
29 until the suspension, revocation, or denial of the person's license,
30 permit, or privilege to drive is sustained at a hearing pursuant to
31 subsection ((+8)) (7) of this section, whichever occurs first. No
32 temporary license is valid to any greater degree than the license or
33 permit that it replaces; and

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

1 (i) That the officer had reasonable grounds to believe the arrested
2 person had been driving or was in actual physical control of a motor
3 vehicle within this state while under the influence of intoxicating
4 liquor or drugs, or both, or was under the age of twenty-one years and
5 had been driving or was in actual physical control of a motor vehicle
6 while having an alcohol or THC concentration in violation of RCW
7 46.61.503;

8 (ii) That after receipt of the warnings required by subsection (2)
9 of this section the person refused to submit to a test of his or her
10 ((blood or)) breath, or a test was administered and the results
11 indicated that the alcohol concentration of the person's breath ((or
12 blood)) was 0.08 or more, or the THC concentration of the ((person's
13 blood)) person was 5.00 or more, if the person is age twenty-one or
14 over, or that the alcohol concentration of the person's breath ((or
15 blood)) was 0.02 or more, or the THC concentration of the ((person's
16 blood)) person was above 0.00, if the person is under the age of
17 twenty-one; and

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

19 ((+7))) (6) The department of licensing, upon the receipt of a
20 sworn report or report under a declaration authorized by RCW 9A.72.085
21 under subsection ((+6)(e))) (5)(d) of this section, shall suspend,
22 revoke, or deny the person's license, permit, or privilege to drive or
23 any nonresident operating privilege, as provided in RCW 46.20.3101,
24 such suspension, revocation, or denial to be effective beginning sixty
25 days from the date of arrest or from the date notice has been given in
26 the event notice is given by the department following a blood test, or
27 when sustained at a hearing pursuant to subsection ((+8))) (7) of this
28 section, whichever occurs first.

29 ((+8))) (7) A person receiving notification under subsection
30 ((+6))) (5)(b) of this section may, within twenty days after the notice
31 has been given, request in writing a formal hearing before the
32 department. The person shall pay a fee of ((three)) two hundred
33 seventy-five dollars as part of the request. If the request is mailed,
34 it must be postmarked within twenty days after receipt of the
35 notification. Upon timely receipt of such a request for a formal
36 hearing, including receipt of the required ((three)) two hundred
37 seventy-five dollar fee, the department shall afford the person an
38 opportunity for a hearing. The department may waive the required

1 ((three)) two hundred seventy-five dollar fee if the person is an
2 indigent as defined in RCW 10.101.010. Except as otherwise provided in
3 this section, the hearing is subject to and shall be scheduled and
4 conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing
5 shall be conducted in the county of the arrest, except that all or part
6 of the hearing may, at the discretion of the department, be conducted
7 by telephone or other electronic means. The hearing shall be held
8 within sixty days following the arrest or following the date notice has
9 been given in the event notice is given by the department following a
10 blood test, unless otherwise agreed to by the department and the
11 person, in which case the action by the department shall be stayed, and
12 any valid temporary license marked under subsection ((+6)(c)) (5) of
13 this section extended, if the person is otherwise eligible for
14 licensing. For the purposes of this section, the scope of the hearing
15 shall cover the issues of whether a law enforcement officer had
16 reasonable grounds to believe the person had been driving or was in
17 actual physical control of a motor vehicle within this state while
18 under the influence of intoxicating liquor or any drug or had been
19 driving or was in actual physical control of a motor vehicle within
20 this state while having alcohol in his or her system in a concentration
21 of 0.02 or more, or THC in his or her system in a concentration above
22 0.00, if the person was under the age of twenty-one, whether the person
23 was placed under arrest, and (a) whether the person refused to submit
24 to the test or tests upon request of the officer after having been
25 informed that such refusal would result in the revocation of the
26 person's license, permit, or privilege to drive, or (b) if a test or
27 tests were administered, whether the applicable requirements of this
28 section were satisfied before the administration of the test or tests,
29 whether the person submitted to the test or tests, or whether a test
30 was administered without express consent as permitted under this
31 section, and whether the test or tests indicated that the alcohol
32 concentration of the person's breath ((or blood)) was 0.08 or more, or
33 the THC concentration of the ((person's blood)) person was 5.00 or
34 more, if the person was age twenty-one or over at the time of the
35 arrest, or that the alcohol concentration of the person's breath ((or
36 blood)) was 0.02 or more, or the THC concentration of the ((person's
37 blood)) person was above 0.00, if the person was under the age of
38 twenty-one at the time of the arrest. The sworn report or report under

1 a declaration authorized by RCW 9A.72.085 submitted by a law
2 enforcement officer is prima facie evidence that the officer had
3 reasonable grounds to believe the person had been driving or was in
4 actual physical control of a motor vehicle within this state while
5 under the influence of intoxicating liquor or drugs, or both, or the
6 person had been driving or was in actual physical control of a motor
7 vehicle within this state while having alcohol in his or her system in
8 a concentration of 0.02 or more, or THC in his or her system in a
9 concentration above 0.00, and was under the age of twenty-one and that
10 the officer complied with the requirements of this section.

11 A hearing officer shall conduct the hearing, may issue subpoenas
12 for the attendance of witnesses and the production of documents, and
13 shall administer oaths to witnesses. The hearing officer shall not
14 issue a subpoena for the attendance of a witness at the request of the
15 person unless the request is accompanied by the fee required by RCW
16 5.56.010 for a witness in district court. The sworn report or report
17 under a declaration authorized by RCW 9A.72.085 of the law enforcement
18 officer and any other evidence accompanying the report shall be
19 admissible without further evidentiary foundation and the
20 certifications authorized by the criminal rules for courts of limited
21 jurisdiction shall be admissible without further evidentiary
22 foundation. The person may be represented by counsel, may question
23 witnesses, may present evidence, and may testify. The department shall
24 order that the suspension, revocation, or denial either be rescinded or
25 sustained.

26 ((+9)) (8) If the suspension, revocation, or denial is sustained
27 after such a hearing, the person whose license, privilege, or permit is
28 suspended, revoked, or denied has the right to file a petition in the
29 superior court of the county of arrest to review the final order of
30 revocation by the department in the same manner as an appeal from a
31 decision of a court of limited jurisdiction. Notice of appeal must be
32 filed within thirty days after the date the final order is served or
33 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
34 1.1, or other statutes or rules referencing de novo review, the appeal
35 shall be limited to a review of the record of the administrative
36 hearing. The appellant must pay the costs associated with obtaining
37 the record of the hearing before the hearing officer. The filing of
38 the appeal does not stay the effective date of the suspension,

1 revocation, or denial. A petition filed under this subsection must
2 include the petitioner's grounds for requesting review. Upon granting
3 petitioner's request for review, the court shall review the
4 department's final order of suspension, revocation, or denial as
5 expeditiously as possible. The review must be limited to a
6 determination of whether the department has committed any errors of
7 law. The superior court shall accept those factual determinations
8 supported by substantial evidence in the record: (a) That were
9 expressly made by the department; or (b) that may reasonably be
10 inferred from the final order of the department. The superior court
11 may reverse, affirm, or modify the decision of the department or remand
12 the case back to the department for further proceedings. The decision
13 of the superior court must be in writing and filed in the clerk's
14 office with the other papers in the case. The court shall state the
15 reasons for the decision. If judicial relief is sought for a stay or
16 other temporary remedy from the department's action, the court shall
17 not grant such relief unless the court finds that the appellant is
18 likely to prevail in the appeal and that without a stay the appellant
19 will suffer irreparable injury. If the court stays the suspension,
20 revocation, or denial it may impose conditions on such stay.

21 ((+10)) (9)(a) If a person whose driver's license, permit, or
22 privilege to drive has been or will be suspended, revoked, or denied
23 under subsection ((+7)) (6) of this section, other than as a result of
24 a breath ((or blood)) test refusal, and who has not committed an
25 offense for which he or she was granted a deferred prosecution under
26 chapter 10.05 RCW, petitions a court for a deferred prosecution on
27 criminal charges arising out of the arrest for which action has been or
28 will be taken under subsection ((+7)) (6) of this section, or notifies
29 the department of licensing of the intent to seek such a deferred
30 prosecution, then the license suspension or revocation shall be stayed
31 pending entry of the deferred prosecution. The stay shall not be
32 longer than one hundred fifty days after the date charges are filed, or
33 two years after the date of the arrest, whichever time period is
34 shorter. If the court stays the suspension, revocation, or denial, it
35 may impose conditions on such stay. If the person is otherwise
36 eligible for licensing, the department shall issue a temporary license,
37 or extend any valid temporary license ((marked)) under subsection
38 ((+6)) (5) of this section, for the period of the stay. If a deferred

1 prosecution treatment plan is not recommended in the report made under
2 RCW 10.05.050, or if treatment is rejected by the court, or if the
3 person declines to accept an offered treatment plan, or if the person
4 violates any condition imposed by the court, then the court shall
5 immediately direct the department to cancel the stay and any temporary
6 marked license or extension of a temporary license issued under this
7 subsection.

8 (b) A suspension, revocation, or denial imposed under this section,
9 other than as a result of a breath ((or blood)) test refusal, shall be
10 stayed if the person is accepted for deferred prosecution as provided
11 in chapter 10.05 RCW for the incident upon which the suspension,
12 revocation, or denial is based. If the deferred prosecution is
13 terminated, the stay shall be lifted and the suspension, revocation, or
14 denial reinstated. If the deferred prosecution is completed, the stay
15 shall be lifted and the suspension, revocation, or denial canceled.

16 (c) The provisions of (b) of this subsection relating to a stay of
17 a suspension, revocation, or denial and the cancellation of any
18 suspension, revocation, or denial do not apply to the suspension,
19 revocation, denial, or disqualification of a person's commercial
20 driver's license or privilege to operate a commercial motor vehicle.

21 ((+11)) (10) When it has been finally determined under the
22 procedures of this section that a nonresident's privilege to operate a
23 motor vehicle in this state has been suspended, revoked, or denied, the
24 department shall give information in writing of the action taken to the
25 motor vehicle administrator of the state of the person's residence and
26 of any state in which he or she has a license.

27 **Sec. 16.** RCW 46.20.270 and 2010 c 249 s 11 are each amended to
28 read as follows:

29 (1) ((Whenever any person is convicted of any offense for which
30 this title makes mandatory the withholding of the driving privilege of
31 such person by the department, the court in which such conviction is
32 had shall forthwith mark the person's Washington state driver's license
33 or permit to drive, if any, in a manner authorized by the department.
34 A valid driver's license or permit to drive marked under this
35 subsection shall remain in effect until the person's driving privilege
36 is withheld by the department pursuant to notice given under RCW
37 46.20.245, unless the license or permit expires or otherwise becomes

1 ~~invalid prior to the effective date of this action. Perfection of~~
2 ~~notice of appeal shall stay the execution of sentence including the~~
3 ~~withholding of the driving privilege.~~

4 (+2)) Every court having jurisdiction over offenses committed under
5 this chapter, or any other act of this state or municipal ordinance
6 adopted by a local authority regulating the operation of motor vehicles
7 on highways, or any federal authority having jurisdiction over offenses
8 substantially the same as those set forth in this title which occur on
9 federal installations within this state, shall immediately forward to
10 the department a forfeiture of bail or collateral deposited to secure
11 the defendant's appearance in court, a payment of a fine, penalty, or
12 court cost, a plea of guilty or nolo contendere or a finding of guilt,
13 or a finding that any person has committed a traffic infraction an
14 abstract of the court record in the form prescribed by rule of the
15 supreme court, showing the conviction of any person or the finding that
16 any person has committed a traffic infraction in said court for a
17 violation of any said laws other than regulations governing standing,
18 stopping, parking, and pedestrian offenses.

19 ((+3)) (2) Every state agency or municipality having jurisdiction
20 over offenses committed under this chapter, or under any other act of
21 this state or municipal ordinance adopted by a state or local authority
22 regulating the operation of motor vehicles on highways, may forward to
23 the department within ten days of failure to respond, failure to pay a
24 penalty, failure to appear at a hearing to contest the determination
25 that a violation of any statute, ordinance, or regulation relating to
26 standing, stopping, parking, or civil penalties issued under RCW
27 46.63.160 has been committed, or failure to appear at a hearing to
28 explain mitigating circumstances, an abstract of the citation record in
29 the form prescribed by rule of the department, showing the finding by
30 such municipality that two or more violations of laws governing
31 standing, stopping, and parking or one or more civil penalties issued
32 under RCW 46.63.160 have been committed and indicating the nature of
33 the defendant's failure to act. Such violations or infractions may not
34 have occurred while the vehicle is stolen from the registered owner or
35 is leased or rented under a bona fide commercial vehicle lease or
36 rental agreement between a lessor engaged in the business of leasing
37 vehicles and a lessee who is not the vehicle's registered owner. The

1 department may enter into agreements of reciprocity with the duly
2 authorized representatives of the states for reporting to each other
3 violations of laws governing standing, stopping, and parking.

4 ((+4)) (3) For the purposes of this title and except as defined in
5 RCW 46.25.010, "conviction" means a final conviction in a state or
6 municipal court or by any federal authority having jurisdiction over
7 offenses substantially the same as those set forth in this title which
8 occur on federal installations in this state, an unvacated forfeiture
9 of bail or collateral deposited to secure a defendant's appearance in
10 court, the payment of a fine or court cost, a plea of guilty or nolo
11 contendere, or a finding of guilt on a traffic law violation charge,
12 regardless of whether the imposition of sentence or sanctions are
13 deferred or the penalty is suspended, but not including entry into a
14 deferred prosecution agreement under chapter 10.05 RCW.

15 (4) Perfection of a notice of appeal shall stay the execution of
16 the sentence pertaining to the withholding of the driving privilege.

17 (5) For the purposes of this title, "finding that a traffic
18 infraction has been committed" means a failure to respond to a notice
19 of infraction or a determination made by a court pursuant to this
20 chapter. Payment of a monetary penalty made pursuant to RCW
21 46.63.070(2) is deemed equivalent to such a finding.

22 **Sec. 17.** RCW 9.94A.603 and 2006 c 73 s 4 are each amended to read
23 as follows:

24 (1) When sentencing an offender convicted of a violation of RCW
25 46.61.502(6) or 46.61.504(6), the court, in addition to imposing the
26 provisions of this chapter, shall order the offender to undergo alcohol
27 or chemical dependency treatment services during incarceration. The
28 offender shall be liable for the cost of treatment unless the court
29 finds the offender indigent and no third-party insurance coverage is
30 available.

31 (2) The provisions under RCW 46.61.5055 ((+8)) (9) and ((+9+))
32 (10) regarding the suspension, revocation, or denial of the offender's
33 license, permit, or nonresident privilege to drive shall apply to an
34 offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6).

35 (3) The provisions under RCW 46.20.720 and 46.61.5055((+5+)) (6)
36 regarding ignition interlock devices shall apply to an offender
37 convicted of a violation of RCW 46.61.502(6) or 46.61.504(6).

1 **Sec. 18.** RCW 46.25.090 and 2011 c 227 s 4 are each amended to read
2 as follows:

3 (1) A person is disqualified from driving a commercial motor
4 vehicle for a period of not less than one year if a report has been
5 received by the department pursuant to RCW 46.20.308 or 46.25.120, or
6 if the person has been convicted of a first violation, within this or
7 any other jurisdiction, of:

8 (a) Driving or in physical control of a motor vehicle under the
9 influence of alcohol or any drug;

10 (b)(i) Driving a commercial motor vehicle while the alcohol
11 concentration in the person's system is 0.04 or more~~(, or driving a
12 noncommercial motor vehicle while the alcohol concentration in the
13 person's system is 0.08 or more, or is 0.02 or more)~~; (ii) driving a
14 commercial motor vehicle with any measurable amount of THC
15 concentration; (iii) driving a noncommercial motor vehicle while the
16 alcohol concentration in the person's system is 0.08 or more; (iv)
17 driving a noncommercial motor vehicle while the alcohol concentration
18 in the person's system is 0.02 or more if the person is under age
19 twenty-one; (v) driving a noncommercial motor vehicle with a THC
20 concentration of 5.00 or more; or (vi) driving a noncommercial motor
21 vehicle with a THC concentration above 0.00 if the person is under age
22 twenty-one, as determined by any testing methods approved by law in
23 this state or any other state or jurisdiction;

24 (c) Leaving the scene of an accident involving a motor vehicle
25 driven by the person;

26 (d) Using a motor vehicle in the commission of a felony;

27 (e) Refusing to submit to a test or tests to determine the driver's
28 alcohol concentration or the presence of any drug while driving a motor
29 vehicle;

30 (f) Driving a commercial motor vehicle when, as a result of prior
31 violations committed while operating a commercial motor vehicle, the
32 driver's commercial driver's license is revoked, suspended, or
33 canceled, or the driver is disqualified from operating a commercial
34 motor vehicle;

35 (g) Causing a fatality through the negligent operation of a
36 commercial motor vehicle, including but not limited to the crimes of
37 vehicular homicide and negligent homicide.

1 If any of the violations set forth in this subsection occurred
2 while transporting hazardous material, the person is disqualified for
3 a period of not less than three years.

4 (2) A person is disqualified for life if it has been determined
5 that the person has committed or has been convicted of two or more
6 violations of any of the offenses specified in subsection (1) of this
7 section, or any combination of those offenses, arising from two or more
8 separate incidents.

9 (3) The department may adopt rules, in accordance with federal
10 regulations, establishing guidelines, including conditions, under which
11 a disqualification for life under subsection (2) of this section may be
12 reduced to a period of not less than ten years.

13 (4) A person is disqualified from driving a commercial motor
14 vehicle for life who uses a motor vehicle in the commission of a felony
15 involving the manufacture, distribution, or dispensing of a controlled
16 substance, as defined by chapter 69.50 RCW, or possession with intent
17 to manufacture, distribute, or dispense a controlled substance, as
18 defined by chapter 69.50 RCW.

19 (5)(a) A person is disqualified from driving a commercial motor
20 vehicle for a period of:

21 (i) Not less than sixty days if:

22 (A) Convicted of or found to have committed a second serious
23 traffic violation while driving a commercial motor vehicle; or

24 (B) Convicted of reckless driving, where there has been a prior
25 serious traffic violation; or

26 (ii) Not less than one hundred twenty days if:

27 (A) Convicted of or found to have committed a third or subsequent
28 serious traffic violation while driving a commercial motor vehicle; or

29 (B) Convicted of reckless driving, where there has been two or more
30 prior serious traffic violations.

31 (b) The disqualification period under (a)(ii) of this subsection
32 must be in addition to any other previous period of disqualification.

33 (c) For purposes of determining prior serious traffic violations
34 under this subsection, each conviction of or finding that a driver has
35 committed a serious traffic violation while driving a commercial motor
36 vehicle or noncommercial motor vehicle, arising from a separate
37 incident occurring within a three-year period, must be counted.

1 (6) A person is disqualified from driving a commercial motor
2 vehicle for a period of:

3 (a) Not less than one hundred eighty days nor more than one year if
4 convicted of or found to have committed a first violation of an out-of-
5 service order while driving a commercial vehicle;

6 (b) Not less than two years nor more than five years if, during a
7 ten-year period, the person is convicted of or is found to have
8 committed two violations of out-of-service orders while driving a
9 commercial motor vehicle in separate incidents;

10 (c) Not less than three years nor more than five years if, during
11 a ten-year period, the person is convicted of or is found to have
12 committed three or more violations of out-of-service orders while
13 driving commercial motor vehicles in separate incidents;

14 (d) Not less than one hundred eighty days nor more than two years
15 if the person is convicted of or is found to have committed a first
16 violation of an out-of-service order while transporting hazardous
17 materials, or while operating motor vehicles designed to transport
18 sixteen or more passengers, including the driver. A person is
19 disqualified for a period of not less than three years nor more than
20 five years if, during a ten-year period, the person is convicted of or
21 is found to have committed subsequent violations of out-of-service
22 orders, in separate incidents, while transporting hazardous materials,
23 or while operating motor vehicles designed to transport sixteen or more
24 passengers, including the driver.

25 (7) A person is disqualified from driving a commercial motor
26 vehicle if a report has been received by the department under RCW
27 46.25.125 that the person has received a verified positive drug test or
28 positive alcohol confirmation test as part of the testing program
29 conducted under 49 C.F.R. 40. A disqualification under this subsection
30 remains in effect until the person undergoes a drug and alcohol
31 assessment by a substance abuse professional meeting the requirements
32 of 49 C.F.R. 40, and the person presents evidence of satisfactory
33 participation in or successful completion of a drug or alcohol
34 treatment and/or education program as recommended by the substance
35 abuse professional, and until the person has met the requirements of
36 RCW 46.25.100. The substance abuse professional shall forward a
37 diagnostic evaluation and treatment recommendation to the department of
38 licensing for use in determining the person's eligibility for driving

1 a commercial motor vehicle. Persons who are disqualified under this
2 subsection more than twice in a five-year period are disqualified for
3 life.

4 (8)(a) A person is disqualified from driving a commercial motor
5 vehicle for the period of time specified in (b) of this subsection if
6 he or she is convicted of or is found to have committed one of the
7 following six offenses at a railroad-highway grade crossing while
8 operating a commercial motor vehicle in violation of a federal, state,
9 or local law or regulation:

10 (i) For drivers who are not required to always stop, failing to
11 slow down and check that the tracks are clear of an approaching train;

12 (ii) For drivers who are not required to always stop, failing to
13 stop before reaching the crossing, if the tracks are not clear;

14 (iii) For drivers who are always required to stop, failing to stop
15 before driving onto the crossing;

16 (iv) For all drivers, failing to have sufficient space to drive
17 completely through the crossing without stopping;

18 (v) For all drivers, failing to obey a traffic control device or
19 the directions of an enforcement officer at the crossing;

20 (vi) For all drivers, failing to negotiate a crossing because of
21 insufficient undercarriage clearance.

22 (b) A person is disqualified from driving a commercial motor
23 vehicle for a period of:

24 (i) Not less than sixty days if the driver is convicted of or is
25 found to have committed a first violation of a railroad-highway grade
26 crossing violation;

27 (ii) Not less than one hundred twenty days if the driver is
28 convicted of or is found to have committed a second railroad-highway
29 grade crossing violation in separate incidents within a three-year
30 period;

31 (iii) Not less than one year if the driver is convicted of or is
32 found to have committed a third or subsequent railroad-highway grade
33 crossing violation in separate incidents within a three-year period.

34 (9) A person is disqualified from driving a commercial motor
35 vehicle for not more than one year if a report has been received by the
36 department from the federal motor carrier safety administration that
37 the person's driving has been determined to constitute an imminent
38 hazard as defined by 49 C.F.R. 383.5. A person who is simultaneously

1 disqualified from driving a commercial motor vehicle under this
2 subsection and under other provisions of this chapter, or under 49
3 C.F.R. 383.52, shall serve those disqualification periods concurrently.

4 (10) Within ten days after suspending, revoking, or canceling a
5 commercial driver's license or disqualifying a driver from operating a
6 commercial motor vehicle, the department shall update its records to
7 reflect that action.

8 **Sec. 19.** RCW 46.25.120 and 2006 c 327 s 5 are each amended to read
9 as follows:

10 (1) A person who drives a commercial motor vehicle within this
11 state is deemed to have given consent, subject to RCW 46.61.506, to
12 take a test or tests of that person's blood or breath for the purpose
13 of determining that person's alcohol concentration or the presence of
14 other drugs.

15 (2) A test or tests may be administered at the direction of a law
16 enforcement officer, who after stopping or detaining the commercial
17 motor vehicle driver, has probable cause to believe that driver was
18 driving a commercial motor vehicle while having alcohol in his or her
19 system or while under the influence of any drug.

20 (3) The law enforcement officer requesting the test under
21 subsection (1) of this section shall warn the person requested to
22 submit to the test that a refusal to submit will result in that person
23 being disqualified from operating a commercial motor vehicle under RCW
24 46.25.090.

25 (4) If the person refuses testing, or submits to a test that
26 discloses an alcohol concentration of 0.04 or more or any measurable
27 amount of THC concentration, the law enforcement officer shall submit
28 a sworn report to the department certifying that the test was requested
29 pursuant to subsection (1) of this section and that the person refused
30 to submit to testing, or submitted to a test that disclosed an alcohol
31 concentration of 0.04 or more or any measurable amount of THC
concentration.

33 (5) Upon receipt of the sworn report of a law enforcement officer
34 under subsection (4) of this section, the department shall disqualify
35 the driver from driving a commercial motor vehicle under RCW 46.25.090,
36 subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The
37 hearing shall be conducted in the county of the arrest. For the

1 purposes of this section, the hearing shall cover the issues of whether
2 a law enforcement officer had reasonable grounds to believe the person
3 had been driving or was in actual physical control of a commercial
4 motor vehicle within this state while having alcohol in the person's
5 system or while under the influence of any drug, whether the person
6 refused to submit to the test or tests upon request of the officer
7 after having been informed that the refusal would result in the
8 disqualification of the person from driving a commercial motor vehicle,
9 and, if the test was administered, whether the results indicated an
10 alcohol concentration of 0.04 percent or more or any measurable amount
11 of THC concentration. The department shall order that the
12 disqualification of the person either be rescinded or sustained. Any
13 decision by the department disqualifying a person from driving a
14 commercial motor vehicle is stayed and does not take effect while a
15 formal hearing is pending under this section or during the pendency of
16 a subsequent appeal to superior court so long as there is no conviction
17 for a moving violation or no finding that the person has committed a
18 traffic infraction that is a moving violation during the pendency of
19 the hearing and appeal. If the disqualification of the person is
20 sustained after the hearing, the person who is disqualified may file a
21 petition in the superior court of the county of arrest to review the
22 final order of disqualification by the department in the manner
23 provided in RCW 46.20.334.

24 (6) If a motor carrier or employer who is required to have a
25 testing program under 49 C.F.R. 382 knows that a commercial driver in
26 his or her employ has refused to submit to testing under this section
27 and has not been disqualified from driving a commercial motor vehicle,
28 the employer may notify law enforcement or his or her medical review
29 officer or breath alcohol technician that the driver has refused to
30 submit to the required testing.

31 (7) The hearing provisions of this section do not apply to those
32 persons disqualified from driving a commercial motor vehicle under RCW
33 46.25.090(7).

34 **Sec. 20.** RCW 46.25.110 and 1989 c 178 s 13 are each amended to
35 read as follows:

36 (1) Notwithstanding any other provision of Title 46 RCW, a person

1 may not drive, operate, or be in physical control of a commercial motor
2 vehicle while having alcohol or THC in his or her system.

3 (2) Law enforcement or appropriate officials shall issue an out-of-
4 service order valid for twenty-four hours against a person who drives,
5 operates, or is in physical control of a commercial motor vehicle while
6 having alcohol or THC in his or her system or who refuses to take a
7 test to determine his or her alcohol content or THC concentration as
8 provided by RCW 46.25.120.

9 **Sec. 21.** RCW 9.94A.535 and 2011 c 87 s 1 are each amended to read
10 as follows:

11 The court may impose a sentence outside the standard sentence range
12 for an offense if it finds, considering the purpose of this chapter,
13 that there are substantial and compelling reasons justifying an
14 exceptional sentence. Facts supporting aggravated sentences, other
15 than the fact of a prior conviction, shall be determined pursuant to
16 the provisions of RCW 9.94A.537.

17 Whenever a sentence outside the standard sentence range is imposed,
18 the court shall set forth the reasons for its decision in written
19 findings of fact and conclusions of law. A sentence outside the
20 standard sentence range shall be a determinate sentence.

21 If the sentencing court finds that an exceptional sentence outside
22 the standard sentence range should be imposed, the sentence is subject
23 to review only as provided for in RCW 9.94A.585(4).

24 A departure from the standards in RCW 9.94A.589 (1) and (2)
25 governing whether sentences are to be served consecutively or
26 concurrently is an exceptional sentence subject to the limitations in
27 this section, and may be appealed by the offender or the state as set
28 forth in RCW 9.94A.585 (2) through (6).

29 (1) Mitigating Circumstances - Court to Consider

30 The court may impose an exceptional sentence below the standard
31 range if it finds that mitigating circumstances are established by a
32 preponderance of the evidence. The following are illustrative only and
33 are not intended to be exclusive reasons for exceptional sentences.

34 (a) To a significant degree, the victim was an initiator, willing
35 participant, aggressor, or provoker of the incident.

36 (b) Before detection, the defendant compensated, or made a good

1 faith effort to compensate, the victim of the criminal conduct for any
2 damage or injury sustained.

3 (c) The defendant committed the crime under duress, coercion,
4 threat, or compulsion insufficient to constitute a complete defense but
5 which significantly affected his or her conduct.

6 (d) The defendant, with no apparent predisposition to do so, was
7 induced by others to participate in the crime.

8 (e) The defendant's capacity to appreciate the wrongfulness of his
9 or her conduct, or to conform his or her conduct to the requirements of
10 the law, was significantly impaired. Voluntary use of drugs or alcohol
11 is excluded.

12 (f) The offense was principally accomplished by another person and
13 the defendant manifested extreme caution or sincere concern for the
14 safety or well-being of the victim.

15 (g) The operation of the multiple offense policy of RCW 9.94A.589
16 results in a presumptive sentence that is clearly excessive in light of
17 the purpose of this chapter, as expressed in RCW 9.94A.010.

18 (h) The defendant or the defendant's children suffered a continuing
19 pattern of physical or sexual abuse by the victim of the offense and
20 the offense is a response to that abuse.

21 (i) The defendant was making a good faith effort to obtain or
22 provide medical assistance for someone who is experiencing a drug-
23 related overdose.

24 (j) The current offense involved domestic violence, as defined in
25 RCW 10.99.020, and the defendant suffered a continuing pattern of
26 coercion, control, or abuse by the victim of the offense and the
27 offense is a response to that coercion, control, or abuse.

28 (2) Aggravating Circumstances - Considered and Imposed by the Court
29 The trial court may impose an aggravated exceptional sentence
30 without a finding of fact by a jury under the following circumstances:

31 (a) The defendant and the state both stipulate that justice is best
32 served by the imposition of an exceptional sentence outside the
33 standard range, and the court finds the exceptional sentence to be
34 consistent with and in furtherance of the interests of justice and the
35 purposes of the sentencing reform act.

36 (b) The defendant's prior unscored misdemeanor or prior unscored
37 foreign criminal history results in a presumptive sentence that is

1 clearly too lenient in light of the purpose of this chapter, as
2 expressed in RCW 9.94A.010.

3 (c) The defendant has committed multiple current offenses and the
4 defendant's high offender score results in some of the current offenses
5 going unpunished.

6 (d) The failure to consider the defendant's prior criminal history
7 which was omitted from the offender score calculation pursuant to RCW
8 9.94A.525 results in a presumptive sentence that is clearly too
9 lenient.

10 (3) Aggravating Circumstances - Considered by a Jury - Imposed by
11 the Court

12 Except for circumstances listed in subsection (2) of this section,
13 the following circumstances are an exclusive list of factors that can
14 support a sentence above the standard range. Such facts should be
15 determined by procedures specified in RCW 9.94A.537.

16 (a) The defendant's conduct during the commission of the current
17 offense manifested deliberate cruelty to the victim.

18 (b) The defendant knew or should have known that the victim of the
19 current offense was particularly vulnerable or incapable of resistance.

20 (c) The current offense was a violent offense, and the defendant
21 knew that the victim of the current offense was pregnant.

22 (d) The current offense was a major economic offense or series of
23 offenses, so identified by a consideration of any of the following
24 factors:

25 (i) The current offense involved multiple victims or multiple
26 incidents per victim;

27 (ii) The current offense involved attempted or actual monetary loss
28 substantially greater than typical for the offense;

29 (iii) The current offense involved a high degree of sophistication
30 or planning or occurred over a lengthy period of time; or

31 (iv) The defendant used his or her position of trust, confidence,
32 or fiduciary responsibility to facilitate the commission of the current
33 offense.

34 (e) The current offense was a major violation of the Uniform
35 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
36 trafficking in controlled substances, which was more onerous than the
37 typical offense of its statutory definition: The presence of ANY of
38 the following may identify a current offense as a major VUCSA:

1 (i) The current offense involved at least three separate
2 transactions in which controlled substances were sold, transferred, or
3 possessed with intent to do so;

4 (ii) The current offense involved an attempted or actual sale or
5 transfer of controlled substances in quantities substantially larger
6 than for personal use;

7 (iii) The current offense involved the manufacture of controlled
8 substances for use by other parties;

9 (iv) The circumstances of the current offense reveal the offender
10 to have occupied a high position in the drug distribution hierarchy;

11 (v) The current offense involved a high degree of sophistication or
12 planning, occurred over a lengthy period of time, or involved a broad
13 geographic area of disbursement; or

14 (vi) The offender used his or her position or status to facilitate
15 the commission of the current offense, including positions of trust,
16 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
17 other medical professional).

18 (f) The current offense included a finding of sexual motivation
19 pursuant to RCW 9.94A.835.

20 (g) The offense was part of an ongoing pattern of sexual abuse of
21 the same victim under the age of eighteen years manifested by multiple
22 incidents over a prolonged period of time.

23 (h) The current offense involved domestic violence, as defined in
24 RCW 10.99.020, and one or more of the following was present:

25 (i) The offense was part of an ongoing pattern of psychological,
26 physical, or sexual abuse of a victim or multiple victims manifested by
27 multiple incidents over a prolonged period of time;

28 (ii) The offense occurred within sight or sound of the victim's or
29 the offender's minor children under the age of eighteen years; or

30 (iii) The offender's conduct during the commission of the current
31 offense manifested deliberate cruelty or intimidation of the victim.

32 (i) The offense resulted in the pregnancy of a child victim of
33 rape.

34 (j) The defendant knew that the victim of the current offense was
35 a youth who was not residing with a legal custodian and the defendant
36 established or promoted the relationship for the primary purpose of
37 victimization.

1 (k) The offense was committed with the intent to obstruct or impair
2 human or animal health care or agricultural or forestry research or
3 commercial production.

4 (l) The current offense is trafficking in the first degree or
5 trafficking in the second degree and any victim was a minor at the time
6 of the offense.

7 (m) The offense involved a high degree of sophistication or
8 planning.

9 (n) The defendant used his or her position of trust, confidence, or
10 fiduciary responsibility to facilitate the commission of the current
11 offense.

12 (o) The defendant committed a current sex offense, has a history of
13 sex offenses, and is not amenable to treatment.

14 (p) The offense involved an invasion of the victim's privacy.

15 (q) The defendant demonstrated or displayed an egregious lack of
16 remorse.

17 (r) The offense involved a destructive and foreseeable impact on
18 persons other than the victim.

19 (s) The defendant committed the offense to obtain or maintain his
20 or her membership or to advance his or her position in the hierarchy of
21 an organization, association, or identifiable group.

22 (t) The defendant committed the current offense shortly after being
23 released from incarceration.

24 (u) The current offense is a burglary and the victim of the
25 burglary was present in the building or residence when the crime was
26 committed.

27 (v) The offense was committed against a law enforcement officer who
28 was performing his or her official duties at the time of the offense,
29 the offender knew that the victim was a law enforcement officer, and
30 the victim's status as a law enforcement officer is not an element of
31 the offense.

32 (w) The defendant committed the offense against a victim who was
33 acting as a good samaritan.

34 (x) The defendant committed the offense against a public official
35 or officer of the court in retaliation of the public official's
36 performance of his or her duty to the criminal justice system.

37 (y) The victim's injuries substantially exceed the level of bodily

1 harm necessary to satisfy the elements of the offense. This aggravator
2 is not an exception to RCW 9.94A.530(2).

3 (z)(i)(A) The current offense is theft in the first degree, theft
4 in the second degree, possession of stolen property in the first
5 degree, or possession of stolen property in the second degree; (B) the
6 stolen property involved is metal property; and (C) the property damage
7 to the victim caused in the course of the theft of metal property is
8 more than three times the value of the stolen metal property, or the
9 theft of the metal property creates a public hazard.

10 (ii) For purposes of this subsection, "metal property" means
11 commercial metal property, private metal property, or nonferrous metal
12 property, as defined in RCW 19.290.010.

13 (aa) The defendant committed the offense with the intent to
14 directly or indirectly cause any benefit, aggrandizement, gain, profit,
15 or other advantage to or for a criminal street gang as defined in RCW
16 9.94A.030, its reputation, influence, or membership.

17 (bb) The current offense involved paying to view, over the internet
18 in violation of RCW 9.68A.075, depictions of a minor engaged in an act
19 of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through
20 (g).

21 (cc) The offense was intentionally committed because the defendant
22 perceived the victim to be homeless, as defined in RCW 9.94A.030.

23 (dd) During the commission of the current offense, the defendant
24 was driving in the opposite direction of the normal flow of traffic on
25 a multiple lane highway, as defined by RCW 46.04.350, with a posted
26 speed limit of forty-five miles per hour or greater.

27 **Sec. 22.** RCW 3.62.090 and 2004 c 15 s 5 are each amended to read
28 as follows:

29 (1) There shall be assessed and collected in addition to any fines,
30 forfeitures, or penalties assessed, other than for parking infractions,
31 by all courts organized under Title 3 or 35 RCW a public safety and
32 education assessment equal to seventy percent of such fines,
33 forfeitures, or penalties, which shall be remitted as provided in
34 chapters 3.46, 3.50, 3.62, and 35.20 RCW. The assessment required by
35 this section shall not be suspended or waived by the court. This
36 public safety and education assessment shall not be applied to the

1 mandatory fine imposed under RCW 46.61.5055(6) for defendants convicted
2 of a violation of RCW 46.61.502 or 46.61.504 committed while a
3 passenger under the age of sixteen was in the vehicle.

4 (2) There shall be assessed and collected in addition to any fines,
5 forfeitures, or penalties assessed, other than for parking infractions
6 and for fines levied under RCW 46.61.5055, and in addition to the
7 public safety and education assessment required under subsection (1) of
8 this section, by all courts organized under Title 3 or 35 RCW, an
9 additional public safety and education assessment equal to fifty
10 percent of the public safety and education assessment required under
11 subsection (1) of this section, which shall be remitted to the state
12 treasurer and deposited as provided in RCW 43.08.250. The additional
13 assessment required by this subsection shall not be suspended or waived
14 by the court.

15 (3) This section does not apply to the fee imposed under RCW
16 46.63.110(7), the penalty imposed under RCW 46.63.110(8), or the
17 penalty assessment imposed under RCW 10.99.080.

18 **Sec. 23.** RCW 46.61.5249 and 2012 c 183 s 13 are each amended to
19 read as follows:

20 (1)(a) A person is guilty of negligent driving in the first degree
21 if he or she operates a motor vehicle in a manner that is both
22 negligent and endangers or is likely to endanger any person or
23 property, and exhibits the effects of having consumed liquor,
24 marijuana, or ((an illegal)) any drug or exhibits the effects of having
25 inhaled or ingested any chemical, whether or not a legal substance, for
26 its intoxicating or hallucinatory effects.

27 (b) It is an affirmative defense to negligent driving in the first
28 degree by means of exhibiting the effects of having consumed ((an
29 illegal)) any drug that must be proved by the defendant by a
30 preponderance of the evidence, that the driver has a valid prescription
31 for the drug consumed, and has been consuming it according to the
32 prescription directions and warnings.

33 (c) Negligent driving in the first degree is a misdemeanor.

34 (2) For the purposes of this section:

35 (a) "Negligent" means the failure to exercise ordinary care, and is
36 the doing of some act that a reasonably careful person would not do

1 under the same or similar circumstances or the failure to do something
2 that a reasonably careful person would do under the same or similar
3 circumstances.

4 (b) "Exhibiting the effects of having consumed liquor, marijuana,
5 or any drug" means that a person has the odor of liquor, marijuana, or
6 any drug on his or her breath, or that by speech, manner, appearance,
7 behavior, lack of coordination, or otherwise exhibits that he or she
8 has consumed liquor, marijuana, or any drug, and either:

9 (i) Is in possession of or in close proximity to a container that
10 has or recently had liquor, marijuana, or any drug in it; or

11 (ii) Is shown by other evidence to have recently consumed liquor,
12 marijuana, or any drug.

13 (c) "Exhibiting the effects of having consumed ((an illegal)) any
14 drug" means that a person by speech, manner, appearance, behavior, lack
15 of coordination, or otherwise exhibits that he or she has consumed ((an
16 illegal)) any drug and either:

17 (i) Is in possession of ((an illegal)) any drug; or

18 (ii) Is shown by other evidence to have recently consumed ((an
19 illegal)) any drug.

20 (d) "Exhibiting the effects of having inhaled or ingested any
21 chemical, whether or not a legal substance, for its intoxicating or
22 hallucinatory effects" means that a person by speech, manner,
23 appearance, behavior, or lack of coordination or otherwise exhibits
24 that he or she has inhaled or ingested a chemical and either:

25 (i) Is in possession of the canister or container from which the
26 chemical came; or

27 (ii) Is shown by other evidence to have recently inhaled or
28 ingested a chemical for its intoxicating or hallucinatory effects.

29 ((e) "Illegal drug" means a controlled substance under chapter
30 69.50 RCW for which the driver does not have a valid prescription or
31 that is not being consumed in accordance with the prescription
32 directions and warnings, or a legend drug under chapter 69.41 RCW for
33 which the driver does not have a valid prescription or that is not
34 being consumed in accordance with the prescription directions and
35 warnings.)

36 (3) Any act prohibited by this section that also constitutes a
37 crime under any other law of this state may be the basis of prosecution

1 under such other law notwithstanding that it may also be the basis for
2 prosecution under this section.

3 (4) A person convicted of negligent driving in the first degree who
4 has one or more prior offenses as defined in RCW 46.61.5055(14) within
5 seven years shall be required, under RCW 46.20.720, to install an
6 ignition interlock device on all vehicles operated by the person.

7 **NEW SECTION. Sec. 24.** (1) The legislature recognizes that traffic
8 deaths and serious injuries related to impaired driving and speeding
9 are preventable and cause a public safety problem in Washington state.
10 Such crashes have a significant bearing on overall law enforcement and
11 court caseloads. The legislature further recognizes the growing costs
12 associated with traffic safety education, enforcement, and advocacy
13 programs established by local governments and community-based
14 organizations.

15 (2) It is the legislature's intent by enacting section 25 of this
16 act to establish a penalty that will hold convicted motor vehicle
17 offenders accountable and help to offset the costs of effective city,
18 county, or community programs created to reduce traffic deaths and
19 serious injuries.

20 **NEW SECTION. Sec. 25.** A new section is added to chapter 46.64 RCW
21 to read as follows:

22 (1) All superior courts, and courts organized under Title 3 or 35
23 RCW, must impose a penalty assessment of one hundred dollars on any
24 person who is convicted for a violation of RCW 46.20.342, 46.20.750,
25 46.52.010, 46.52.020, 46.61.024, 46.61.500, 46.61.502, 46.61.503,
26 46.61.504, 46.61.520, 46.61.522, 46.61.5249, or 46.61.530. The penalty
27 assessment is in addition to, and does not supersede, any other
28 penalty, restitution, fines, or costs provided by law. The court may
29 not reduce, waive, or suspend the penalty assessment unless the court
30 finds the offender to be indigent. For purposes of this subsection,
31 "indigent" has the same meaning as in RCW 10.101.010.

32 (2)(a) The penalty assessment must be forwarded to the state
33 treasurer and deposited into the target zero account created under
34 section 26 of this act and must be used solely for the purposes of
35 funding efforts within the city or county using the following
36 programs:

1 (i) Traffic safety task forces that provide education, prevention,
2 enforcement programs, and advertising and other public awareness
3 techniques and campaigns that are designed to reduce motor vehicle-
4 related deaths and serious injuries and educate the public about the
5 laws and dangers of impaired driving; or

6 (ii) Effective strategies, public campaigns, and education designed
7 to reduce motor vehicle-related deaths and serious injuries due to
8 impaired driving, such as those found in the Washington state strategic
9 highway safety plan: Target Zero.

10 (b) If the city or county does not have the programs specified in
11 (a) of this subsection, the city or county may use the revenue from the
12 penalty assessment to establish or contract for such programs,
13 including recognized community-based traffic safety programs.

14 (c) Revenue from the penalty assessment must not be used for
15 indigent criminal defense.

16 (d) The penalty assessment is not subject to any state or local
17 remittance requirements under chapter 3.50, 3.62, 7.68, 10.82, or 35.21
18 RCW.

19 NEW SECTION. **Sec. 26.** A new section is added to chapter 43.59 RCW
20 to read as follows:

21 The target zero account is created in the state treasury. All
22 penalty assessments collected under section 25 of this act must be
23 deposited in the account. Moneys in the account may be spent only
24 after appropriation. Expenditures from the account must be used by the
25 Washington traffic safety commission as directed in section 25(2)(a) of
26 this act and to fund effective strategies and programs consistent with
27 the priorities specified in the Washington state strategic highway
28 safety plan: Target Zero.

29 **Sec. 27.** RCW 46.61.5058 and 2009 c 479 s 38 are each amended to
30 read as follows:

31 (1) Upon the arrest of a person or upon the filing of a complaint,
32 citation, or information in a court of competent jurisdiction, based
33 upon probable cause to believe that a person has violated RCW
34 46.20.740, 46.61.502, or 46.61.504 or any similar municipal ordinance,
35 if such person has a prior offense within seven years as defined in RCW
36 46.61.5055, and where the person has been provided written notice that

1 any transfer, sale, or encumbrance of such person's interest in the
2 vehicle over which that person was actually driving or had physical
3 control when the violation occurred, is unlawful pending either
4 acquittal, dismissal, sixty days after conviction, or other termination
5 of the charge, such person shall be prohibited from encumbering,
6 selling, or transferring his or her interest in such vehicle, except as
7 otherwise provided in (a), (b), and (c) of this subsection, until
8 either acquittal, dismissal, sixty days after conviction, or other
9 termination of the charge. The prohibition against transfer of title
10 shall not be stayed pending the determination of an appeal from the
11 conviction.

12 (a) A vehicle encumbered by a bona fide security interest may be
13 transferred to the secured party or to a person designated by the
14 secured party;

15 (b) A leased or rented vehicle may be transferred to the lessor,
16 rental agency, or to a person designated by the lessor or rental
17 agency; and

18 (c) A vehicle may be transferred to a third party or a vehicle
19 dealer who is a bona fide purchaser or may be subject to a bona fide
20 security interest in the vehicle unless it is established that (i) in
21 the case of a purchase by a third party or vehicle dealer, such party
22 or dealer had actual notice that the vehicle was subject to the
23 prohibition prior to the purchase, or (ii) in the case of a security
24 interest, the holder of the security interest had actual notice that
25 the vehicle was subject to the prohibition prior to the encumbrance of
26 title.

27 (2) On conviction for a violation of either RCW 46.20.740,
28 46.61.502, or 46.61.504 or any similar municipal ordinance where the
29 person convicted has a prior offense within seven years as defined in
30 RCW 46.61.5055, the motor vehicle the person was driving or over which
31 the person had actual physical control at the time of the offense, if
32 the person has a financial interest in the vehicle, (~~(is subject to
33 seizure and forfeiture pursuant to this section)~~) the court shall
34 consider at sentencing whether the vehicle shall be seized and
35 forfeited pursuant to this section if a seizure or forfeiture has not
36 yet occurred.

37 (3) A vehicle subject to forfeiture under this chapter may be
38 seized by a law enforcement officer of this state upon process issued

1 by a court of competent jurisdiction. Seizure of a vehicle may be made
2 without process if the vehicle subject to seizure has been the subject
3 of a prior judgment in favor of the state in a forfeiture proceeding
4 based upon this section.

5 (4) Seizure under subsection (3) of this section automatically
6 commences proceedings for forfeiture. The law enforcement agency under
7 whose authority the seizure was made shall cause notice of the seizure
8 and intended forfeiture of the seized vehicle to be served within
9 fifteen days after the seizure on the owner of the vehicle seized, on
10 the person in charge of the vehicle, and on any person having a known
11 right or interest in the vehicle, including a community property
12 interest. The notice of seizure may be served by any method authorized
13 by law or court rule, including but not limited to service by certified
14 mail with return receipt requested. Service by mail is complete upon
15 mailing within the fifteen-day period after the seizure. Notice of
16 seizure in the case of property subject to a security interest that has
17 been perfected on a certificate of title shall be made by service upon
18 the secured party or the secured party's assignee at the address shown
19 on the financing statement or the certificate of title.

20 (5) If no person notifies the seizing law enforcement agency in
21 writing of the person's claim of ownership or right to possession of
22 the seized vehicle within forty-five days of the seizure, the vehicle
23 is deemed forfeited.

24 (6) If a person notifies the seizing law enforcement agency in
25 writing of the person's claim of ownership or right to possession of
26 the seized vehicle within forty-five days of the seizure, the law
27 enforcement agency shall give the person or persons a reasonable
28 opportunity to be heard as to the claim or right. The hearing shall be
29 before the chief law enforcement officer of the seizing agency or the
30 chief law enforcement officer's designee, except where the seizing
31 agency is a state agency as defined in RCW 34.12.020, the hearing shall
32 be before the chief law enforcement officer of the seizing agency or an
33 administrative law judge appointed under chapter 34.12 RCW, except that
34 any person asserting a claim or right may remove the matter to a court
35 of competent jurisdiction. Removal may only be accomplished according
36 to the rules of civil procedure. The person seeking removal of the
37 matter must serve process against the state, county, political
38 subdivision, or municipality that operates the seizing agency, and any

1 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,
2 within forty-five days after the person seeking removal has notified
3 the seizing law enforcement agency of the person's claim of ownership
4 or right to possession. The court to which the matter is to be removed
5 shall be the district court when the aggregate value of the vehicle is
6 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
7 before the seizing agency and any appeal therefrom shall be under Title
8 34 RCW. In a court hearing between two or more claimants to the
9 vehicle involved, the prevailing party shall be entitled to a judgment
10 for costs and reasonable attorneys' fees. The burden of producing
11 evidence shall be upon the person claiming to be the legal owner or the
12 person claiming to have the lawful right to possession of the vehicle.
13 The seizing law enforcement agency shall promptly return the vehicle to
14 the claimant upon a determination by the administrative law judge or
15 court that the claimant is the present legal owner under this title
16 ((46 RCW)) or is lawfully entitled to possession of the vehicle.

17 (7) When a vehicle is forfeited under this chapter the seizing law
18 enforcement agency may sell the vehicle, retain it for official use, or
19 upon application by a law enforcement agency of this state release the
20 vehicle to that agency for the exclusive use of enforcing this title;
21 provided, however, that the agency shall first satisfy any bona fide
22 security interest to which the vehicle is subject under subsection
23 (1)(a) or (c) of this section.

24 (8) When a vehicle is forfeited, the seizing agency shall keep a
25 record indicating the identity of the prior owner, if known, a
26 description of the vehicle, the disposition of the vehicle, the value
27 of the vehicle at the time of seizure, and the amount of proceeds
28 realized from disposition of the vehicle.

29 (9) Each seizing agency shall retain records of forfeited vehicles
30 for at least seven years.

31 (10) Each seizing agency shall file a report including a copy of
32 the records of forfeited vehicles with the state treasurer each
33 calendar quarter.

34 (11) The quarterly report need not include a record of a forfeited
35 vehicle that is still being held for use as evidence during the
36 investigation or prosecution of a case or during the appeal from a
37 conviction.

1 (12) By January 31st of each year, each seizing agency shall remit
2 to the state treasurer an amount equal to ten percent of the net
3 proceeds of vehicles forfeited during the preceding calendar year.
4 Money remitted shall be deposited in the state general fund.

5 (13) The net proceeds of a forfeited vehicle is the value of the
6 forfeitable interest in the vehicle after deducting the cost of
7 satisfying a bona fide security interest to which the vehicle is
8 subject at the time of seizure; and in the case of a sold vehicle,
9 after deducting the cost of sale, including reasonable fees or
10 commissions paid to independent selling agents.

11 (14) The value of a sold forfeited vehicle is the sale price. The
12 value of a retained forfeited vehicle is the fair market value of the
13 vehicle at the time of seizure, determined when possible by reference
14 to an applicable commonly used index, such as the index used by the
15 department of licensing. A seizing agency may, but need not, use an
16 independent qualified appraiser to determine the value of retained
17 vehicles. If an appraiser is used, the value of the vehicle appraised
18 is net of the cost of the appraisal.

19 **Sec. 28.** RCW 46.61.502 and 2013 c 3 s 33 (Initiative Measure No.
20 502) are each amended to read as follows:

21 (1) A person is guilty of driving while under the influence of
22 intoxicating liquor, marijuana, or any drug if the person drives a
23 vehicle within this state:

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

27 (b) The person has, within two hours after driving, a THC
28 concentration of 5.00 or higher as shown by analysis of the person's
29 blood made under RCW 46.61.506; or

30 (c) While the person is under the influence of or affected by
31 intoxicating liquor, marijuana, or any drug; or

32 (d) While the person is under the combined influence of or affected
33 by intoxicating liquor, marijuana, and any drug.

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

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

11 (b) It is an affirmative defense to a violation of subsection
12 (1)(b) of this section, which the defendant must prove by a
13 preponderance of the evidence, that the defendant consumed a sufficient
14 quantity of marijuana after the time of driving and before the
15 administration of an analysis of the person's blood to cause the
16 defendant's THC concentration to be 5.00 or more within two hours after
17 driving. The court shall not admit evidence of this defense unless the
18 defendant notifies the prosecution prior to the omnibus or pretrial
19 hearing in the case of the defendant's intent to assert the affirmative
20 defense.

21 (4)(a) Analyses of blood or breath samples obtained more than two
22 hours after the alleged driving may be used as evidence that within two
23 hours of the alleged driving, a person had an alcohol concentration of
24 0.08 or more in violation of subsection (1)(a) of this section, and in
25 any case in which the analysis shows an alcohol concentration above
26 0.00 may be used as evidence that a person was under the influence of
27 or affected by intoxicating liquor or any drug in violation of
28 subsection (1)(c) or (d) of this section.

29 (b) Analyses of blood samples obtained more than two hours after
30 the alleged driving may be used as evidence that within two hours of
31 the alleged driving, a person had a THC concentration of 5.00 or more
32 in violation of subsection (1)(b) of this section, and in any case in
33 which the analysis shows a THC concentration above 0.00 may be used as
34 evidence that a person was under the influence of or affected by
35 marijuana in violation of subsection (1)(c) or (d) of this section.

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

1 (6) It is a class C felony punishable under chapter 9.94A RCW, or
2 chapter 13.40 RCW if the person is a juvenile, if:

3 (a) The person has ((four)) three or more prior offenses within ten
4 years as defined in RCW 46.61.5055; or

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

6 (i) Vehicular homicide while under the influence of intoxicating
7 liquor or any drug, RCW 46.61.520(1)(a);

8 (ii) Vehicular assault while under the influence of intoxicating
9 liquor or any drug, RCW 46.61.522(1)(b);

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

12 (iv) A violation of this subsection (6) or RCW 46.61.504(6).

13 **Sec. 29.** RCW 46.61.504 and 2013 c 3 s 35 (Initiative Measure No.
14 502) are each amended to read as follows:

15 (1) A person is guilty of being in actual physical control of a
16 motor vehicle while under the influence of intoxicating liquor or any
17 drug if the person has actual physical control of a vehicle within this
18 state:

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

23 (b) The person has, within two hours after being in actual physical
24 control of a vehicle, a THC concentration of 5.00 or higher as shown by
25 analysis of the person's blood made under RCW 46.61.506; or

26 (c) While the person is under the influence of or affected by
27 intoxicating liquor or any drug; or

28 (d) While the person is under the combined influence of or affected
29 by intoxicating liquor and any drug.

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

36 (3)(a) It is an affirmative defense to a violation of subsection
37 (1)(a) of this section which the defendant must prove by a

1 preponderance of the evidence that the defendant consumed a sufficient
2 quantity of alcohol after the time of being in actual physical control
3 of the vehicle and before the administration of an analysis of the
4 person's breath or blood to cause the defendant's alcohol concentration
5 to be 0.08 or more within two hours after being in such control. The
6 court shall not admit evidence of this defense unless the defendant
7 notifies the prosecution prior to the omnibus or pretrial hearing in
8 the case of the defendant's intent to assert the affirmative defense.

9 (b) It is an affirmative defense to a violation of subsection
10 (1)(b) of this section, which the defendant must prove by a
11 preponderance of the evidence, that the defendant consumed a sufficient
12 quantity of marijuana after the time of being in actual physical
13 control of the vehicle and before the administration of an analysis of
14 the person's blood to cause the defendant's THC concentration to be
15 5.00 or more within two hours after being in control of the vehicle.
16 The court shall not admit evidence of this defense unless the defendant
17 notifies the prosecution prior to the omnibus or pretrial hearing in
18 the case of the defendant's intent to assert the affirmative defense.

19 (4)(a) Analyses of blood or breath samples obtained more than two
20 hours after the alleged being in actual physical control of a vehicle
21 may be used as evidence that within two hours of the alleged being in
22 such control, a person had an alcohol concentration of 0.08 or more in
23 violation of subsection (1)(a) of this section, and in any case in
24 which the analysis shows an alcohol concentration above 0.00 may be
25 used as evidence that a person was under the influence of or affected
26 by intoxicating liquor or any drug in violation of subsection (1)(c) or
27 (d) of this section.

28 (b) Analyses of blood samples obtained more than two hours after
29 the alleged being in actual physical control of a vehicle may be used
30 as evidence that within two hours of the alleged being in control of
31 the vehicle, a person had a THC concentration of 5.00 or more in
32 violation of subsection (1)(b) of this section, and in any case in
33 which the analysis shows a THC concentration above 0.00 may be used as
34 evidence that a person was under the influence of or affected by
35 marijuana in violation of subsection (1)(c) or (d) of this section.

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

1 (6) It is a class C felony punishable under chapter 9.94A RCW, or
2 chapter 13.40 RCW if the person is a juvenile, if:

3 (a) The person has ((four)) three or more prior offenses within ten
4 years as defined in RCW 46.61.5055; or

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

6 (i) Vehicular homicide while under the influence of intoxicating
7 liquor or any drug, RCW 46.61.520(1)(a);

8 (ii) Vehicular assault while under the influence of intoxicating
9 liquor or any drug, RCW 46.61.522(1)(b);

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

12 (iv) A violation of this subsection (6) or RCW 46.61.502(6).

13 NEW SECTION. **Sec. 30.** (1) The Washington impaired driving work
14 group is established to study effective strategies to reducing vehicle
15 related deaths and serious injuries that are a result of impaired
16 driving incidents in Washington.

17 (2) Members of the work group shall consist of the following
18 members:

19 (a) One member from each of the two largest caucuses of the senate,
20 appointed by the president of the senate;

21 (b) One member from each of the two largest caucuses of the house
22 of representatives, appointed by the speaker of the house of
23 representatives;

24 (c) The chief of the Washington state patrol, or the chief's
25 designee;

26 (d) The director of the liquor control board, or the director's
27 designee;

28 (e) The director of the department of licensing, or the director's
29 designee;

30 (f) The secretary of the department of corrections, or the
31 secretary's designee;

32 (g) The secretary of the department of social and health services,
33 or the secretary's designee;

34 (h) One member representing the Washington traffic safety
35 commission;

36 (i) The executive director of the Washington association of
37 sheriffs and police chiefs, or the executive director's designee;

1 (j) One member representing the superior court judges' association;

2 (k) One member representing the district and municipal court
3 judges' association;

4 (l) One member representing the Washington state association of
5 counties;

6 (m) One member representing the Washington association of
7 prosecuting attorneys;

8 (n) One member representing the Washington defender's association
9 or the Washington association of criminal defense lawyers;

10 (o) One member representing the Washington state association of
11 drug court professionals;

12 (p) One member representing the ignition interlock industry;

13 (q) One member representing the Washington retail association;

14 (r) One member representing the Washington state association of
15 cities;

16 (s) One member representing treatment providers;

17 (t) One representative representing driving under the influence
18 victim impact panels; and

19 (u) Representatives, appointed by the governor, that shall include,
20 but are not limited to:

21 (i) City law enforcement;

22 (ii) County law enforcement;

23 (iii) Court administrators; and

24 (iv) Driving under the influence victims or family members of a
25 victim.

26 (3) The director of the Washington traffic safety commission or the
27 director's designee shall convene the initial meeting of the work
28 group.

29 (4) Members of the work group shall select the chair of the work
30 group.

31 (5) At a minimum, the work group shall research, review, and make
32 recommendations on the following:

33 (a) Providing effective strategies for reducing motor vehicle-
34 related deaths and serious injuries due to impaired driving;

35 (b) Considering the minimum number of previous impaired driving
36 convictions that must be counted before constituting and being
37 punishable as a felony offense;

- 1 (c) Increasing mandatory minimum penalties and fines for repeat
2 offenders;
- 3 (d) Promoting and monitoring the use of mandatory ignition
4 interlocks;
- 5 (e) The advantages and disadvantages of creating sobriety
6 checkpoints;
- 7 (f) Requiring mandatory arrests for a first offense for an impaired
8 driving offense;
- 9 (g) Increasing treatment and rehabilitation for repeat offenders;
- 10 (h) Reviewing the penalties for refusing to take a breath or blood
11 test for the purpose of determining the alcohol concentration or
12 presence of any drugs;
- 13 (i) Increasing funding for prevention, intervention, suppression,
14 and prosecution of impaired driving offenses;
- 15 (j) Prohibiting the sale of alcohol to offenders convicted of
16 repeat impaired driving offenses;
- 17 (k) Improving prosecution and encouraging prosecutors to
18 aggressively enforce impaired driving laws;
- 19 (l) Increasing the number of driving under the influence courts and
20 court-related services;
- 21 (m) Creating state and local impaired driving enforcement task
22 forces to increase the visibility of enforcement;
- 23 (n) Promoting education and prevention strategies; and
- 24 (o) Encouraging private sector collaboration.
- 25 (6) The work group shall compile its findings and recommendations
26 into a final report and provide its report to the legislature and
27 governor by December 1, 2013.
- 28 (7) The work group shall function within existing resources and no
29 specific budget may be provided to complete the study. The
30 participants of the study group are encouraged to donate their time to
31 offset any costs.
- 32 (8) This section expires January 1, 2014.

33 **Sec. 31.** RCW 46.20.385 and 2012 c 183 s 8 are each amended to read
34 as follows:

35 (1)(a) Beginning January 1, 2009, any person licensed under this
36 chapter who is convicted of a violation of RCW 46.61.502 or 46.61.504
37 or an equivalent local or out-of-state statute or ordinance, or a

1 violation of RCW 46.61.520(1)(a) or 46.61.522(1)(b), or who has had or
2 will have his or her license suspended, revoked, or denied under RCW
3 46.20.3101, or who is otherwise permitted under subsection (8) of this
4 section, may submit to the department an application for an ignition
5 interlock driver's license. The department, upon receipt of the
6 prescribed fee and upon determining that the petitioner is eligible to
7 receive the license, may issue an ignition interlock driver's license.

8 (b) A person may apply for an ignition interlock driver's license
9 anytime, including immediately after receiving the notices under RCW
10 46.20.308 or after his or her license is suspended, revoked, or denied.
11 A person receiving an ignition interlock driver's license waives his or
12 her right to a hearing or appeal under RCW 46.20.308.

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

16 (i) The department shall require the person to maintain the device
17 on all vehicles operated by the person and shall restrict the person to
18 operating only vehicles equipped with the device, for the remainder of
19 the period of suspension, revocation, or denial. Subject to the
20 provisions of RCW 46.20.720(3)(b)(ii), the installation of an ignition
21 interlock device is not necessary on vehicles owned, leased, or rented
22 by a person's employer and on those vehicles whose care and/or
23 maintenance is the temporary responsibility of the employer, and driven
24 at the direction of a person's employer as a requirement of employment
25 during working hours. The person must provide the department with a
26 declaration pursuant to RCW 9A.72.085 from his or her employer stating
27 that the person's employment requires the person to operate a vehicle
28 owned by the employer or other persons during working hours.
29 ((However, when the employer's vehicle is assigned exclusively to the
30 restricted driver and used solely for commuting to and from employment,
31 the employer exemption does not apply.))

32 (ii) Subject to any periodic renewal requirements established by
33 the department under this section and subject to any applicable
34 compliance requirements under this chapter or other law, an ignition
35 interlock driver's license granted upon a suspension or revocation
36 under RCW 46.61.5055 or 46.20.3101 extends through the remaining
37 portion of any concurrent or consecutive suspension or revocation that

1 may be imposed as the result of administrative action and criminal
2 conviction arising out of the same incident.

3 (iii) The time period during which the person is licensed under
4 this section shall apply on a day-for-day basis toward satisfying the
5 period of time the ignition interlock device restriction is required
6 under RCW 46.20.720 and 46.61.5055. Beginning with incidents occurring
7 on or after September 1, 2011, when calculating the period of time for
8 the restriction under RCW 46.20.720(3), the department must also give
9 the person a day-for-day credit for the time period, beginning from the
10 date of the incident, during which the person kept an ignition
11 interlock device installed on all vehicles the person operates. For
12 the purposes of this subsection (1)(c)(iii), the term "all vehicles"
13 does not include vehicles that would be subject to the employer
14 exception under RCW 46.20.720(3).

15 (2) An applicant for an ignition interlock driver's license who
16 qualifies under subsection (1) of this section is eligible to receive
17 a license only if the applicant files satisfactory proof of financial
18 responsibility under chapter 46.29 RCW.

19 (3) Upon receipt of evidence that a holder of an ignition interlock
20 driver's license granted under this subsection no longer has a
21 functioning ignition interlock device installed on all vehicles
22 operated by the driver, the director shall give written notice by
23 first-class mail to the driver that the ignition interlock driver's
24 license shall be canceled. If at any time before the cancellation goes
25 into effect the driver submits evidence that a functioning ignition
26 interlock device has been installed on all vehicles operated by the
27 driver, the cancellation shall be stayed. If the cancellation becomes
28 effective, the driver may obtain, at no additional charge, a new
29 ignition interlock driver's license upon submittal of evidence that a
30 functioning ignition interlock device has been installed on all
31 vehicles operated by the driver.

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

35 (5) The director shall cancel an ignition interlock driver's
36 license after receiving notice that the holder thereof has been
37 convicted of operating a motor vehicle in violation of its
38 restrictions, no longer meets the eligibility requirements, or has been

1 convicted of or found to have committed a separate offense or any other
2 act or omission that under this chapter would warrant suspension or
3 revocation of a regular driver's license. The department must give
4 notice of the cancellation as provided under RCW 46.20.245. A person
5 whose ignition interlock driver's license has been canceled under this
6 section may reapply for a new ignition interlock driver's license if he
7 or she is otherwise qualified under this section and pays the fee
8 required under RCW 46.20.380.

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

15 (b) The department shall deposit the proceeds of the twenty dollar
16 fee into the ignition interlock device revolving account. Expenditures
17 from the account may be used only to administer and operate the
18 ignition interlock device revolving account program. The department
19 shall adopt rules to provide monetary assistance according to greatest
20 need and when funds are available.

21 (7) The department shall adopt rules to implement ignition
22 interlock licensing. The department shall consult with the
23 administrative office of the courts, the state patrol, the Washington
24 association of sheriffs and police chiefs, ignition interlock
25 companies, and any other organization or entity the department deems
26 appropriate.

27 (8)(a) Any person licensed under this chapter who is convicted of
28 a violation of RCW 46.61.500 when the charge was originally filed as a
29 violation of RCW 46.61.502 or 46.61.504, or an equivalent local
30 ordinance, may submit to the department an application for an ignition
31 interlock driver's license under this section.

32 (b) A person who does not have any driver's license under this
33 chapter, but who would otherwise be eligible under this section to
34 apply for an ignition interlock license, may submit to the department
35 an application for an ignition interlock license. The department may
36 require the person to take any driver's licensing examination under
37 this chapter ((46.20 RCW)) and may require the person to also apply and

1 qualify for a temporary restricted driver's license under RCW
2 46.20.391.

3 **Sec. 32.** RCW 10.05.140 and 2011 c 293 s 8 are each amended to read
4 as follows:

5 As a condition of granting a deferred prosecution petition, the
6 court shall order that the petitioner shall not operate a motor vehicle
7 upon the public highways without a valid operator's license and proof
8 of liability insurance. The amount of liability insurance shall be
9 established by the court at not less than that established by RCW
10 46.29.490. As a condition of granting a deferred prosecution petition
11 on any alcohol-dependency based case, the court shall also order the
12 installation of an ignition interlock under RCW 46.20.720. The
13 required periods of use of the interlock shall be not less than the
14 periods provided for in RCW 46.20.720(3) ((a), (b), and (c))). As a
15 condition of granting a deferred prosecution petition, the court may
16 order the petitioner to make restitution and to pay costs as defined in
17 RCW 10.01.160. To help ensure continued sobriety and reduce the
18 likelihood of reoffense, the court may order reasonable conditions
19 during the period of the deferred prosecution including, but not
20 limited to, attendance at self-help recovery support groups for
21 alcoholism or drugs, complete abstinence from alcohol and all
22 nonprescribed mind-altering drugs, periodic urinalysis or breath
23 analysis, and maintaining law-abiding behavior. The court may
24 terminate the deferred prosecution program upon violation of the
25 deferred prosecution order.

26 NEW SECTION. **Sec. 33.** There is created 24/7 alcohol/drug
27 monitoring to be administered by the criminal justice training
28 commission in conjunction with the Washington association of sheriffs
29 and police chiefs. The monitoring shall coordinate efforts among
30 various local government entities for the purpose of implementing
31 alcohol and drug monitoring for offenders charged or convicted under
32 RCW 46.61.502, 46.61.504, or 46.61.5055.

33 NEW SECTION. **Sec. 34.** The court may condition any bond or
34 pretrial release upon participation in 24/7 alcohol/drug monitoring and
35 payment of associated costs and expenses, if available.

1 **NEW SECTION.** **Sec. 35.** The criminal justice training commission in
2 conjunction with the Washington association of sheriffs and police
3 chiefs may adopt policies for the administration of 24/7 alcohol/drug
4 monitoring to:

5 (1) Provide for procedures and apparatus for testing;

6 (2) Work in conjunction with counties and municipalities to
7 establish fees and costs for participation to be paid by the
8 participants, which may include an added twenty dollar assessment to
9 cover the cost of indigent offenders participating;

10 (3) Require the submission of reports and information by law
11 enforcement agencies within this state.

12 **NEW SECTION.** **Sec. 36.** Funds in the 24/7 alcohol/drug monitoring
13 revolving account created in section 39 of this act shall be
14 distributed as follows: Any daily user fee, indigent offender
15 assessment fee, installation fee, deactivation fee, enrollment fee, or
16 monitoring fee collected for the 24/7 alcohol/drug monitoring shall be
17 collected by the sheriff or chief, or an entity designated by the
18 sheriff or chief, and deposited with the county or city treasurer of
19 the proper county or city. Proceeds shall be applied and used only to
20 defray the recurring costs of 24/7 alcohol/drug monitoring and the
21 additional twenty dollar fee shall be transmitted to the criminal
22 justice training commission for deposit in the 24/7 alcohol/drug
23 monitoring revolving account under section 39 of this act to defray
24 24/7 alcohol/drug monitoring costs for indigent offenders.

25 **NEW SECTION.** **Sec. 37.** The court shall not waive or reduce fees or
26 associated costs charged for participation in the 24/7 alcohol/drug
27 monitoring.

28 **NEW SECTION.** **Sec. 38.** A new section is added to chapter 43.101
29 RCW to read as follows:

30 The 24/7 alcohol/drug monitoring revolving account program is
31 created within the criminal justice training commission to assist in
32 covering the monetary costs of purchasing, leasing, maintaining, and
33 using 24/7 alcohol/drug monitoring devices for indigent persons who are
34 required under RCW 46.61.5055 to participate in 24/7 alcohol/drug

1 monitoring. For purposes of this section, "indigent" has the same
2 meaning as in RCW 10.101.010.

3 **NEW SECTION.** **Sec. 39.** A new section is added to chapter 46.68 RCW
4 to read as follows:

5 The 24/7 alcohol/drug monitoring revolving account is created in
6 the state treasury. All receipts from the fee assessed under RCW
7 46.61.5055(15) must be deposited into the account. Moneys in the
8 account may be spent only after appropriation. Expenditures from the
9 account may be used only for administering and operating the 24/7
10 alcohol/drug monitoring revolving account program.

11 **Sec. 40.** RCW 4.24.545 and 2006 c 130 s 3 are each amended to read
12 as follows:

13 Local governments, their subdivisions and employees, the department
14 of corrections and its employees, and the Washington association of
15 sheriffs and police chiefs and its employees are immune from civil
16 liability for damages arising from incidents involving offenders who
17 are placed on electronic monitoring or who are participating in 24/7
18 alcohol/drug monitoring, unless it is shown that an employee acted with
19 gross negligence or bad faith.

20 **NEW SECTION.** **Sec. 41.** A new section is added to chapter 43.43 RCW
21 to read as follows:

22 (1) Any officer conducting field inspections of ignition interlock
23 devices under the ignition interlock program shall report violations by
24 program participants to the court.

25 (2) The Washington state patrol may not be held liable for any
26 damages resulting from any act or omission in conducting activities
27 under the ignition interlock program, other than acts or omissions
28 constituting gross negligence or willful or wanton misconduct.

29 **NEW SECTION.** **Sec. 42.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 43.** Sections 33 through 37 of this act are each
2 added to chapter 36.28A RCW.

3 NEW SECTION. **Sec. 44.** Sections 11, 28, and 29 of this act take
4 effect January 1, 2014.

5 NEW SECTION. **Sec. 45.** Section 10 of this act expires January 1,
6 2014.

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