
SECOND SUBSTITUTE HOUSE BILL 1614

State of Washington

65th Legislature

2017 Regular Session

By House Transportation (originally sponsored by Representatives Goodman, Klippert, Orwall, Hayes, Pellicciotti, Holy, Griffey, Pettigrew, Muri, and Haler)

READ FIRST TIME 02/24/17.

1 AN ACT Relating to impaired driving; amending RCW 46.20.385,
2 46.20.720, 46.61.506, 46.61.517, and 46.64.025; and reenacting and
3 amending RCW 9.96.060, 10.31.100, and 46.61.5055.

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

5 **Sec. 1.** RCW 9.96.060 and 2014 c 176 s 1 and 2014 c 109 s 1 are
6 each reenacted and amended to read as follows:

7 (1) Every person convicted of a misdemeanor or gross misdemeanor
8 offense who has completed all of the terms of the sentence for the
9 misdemeanor or gross misdemeanor offense may apply to the sentencing
10 court for a vacation of the applicant's record of conviction for the
11 offense. If the court finds the applicant meets the tests prescribed
12 in subsection (2) of this section, the court may in its discretion
13 vacate the record of conviction by: (a)(i) Permitting the applicant
14 to withdraw the applicant's plea of guilty and to enter a plea of not
15 guilty; or (ii) if the applicant has been convicted after a plea of
16 not guilty, the court setting aside the verdict of guilty; and (b)
17 the court dismissing the information, indictment, complaint, or
18 citation against the applicant and vacating the judgment and
19 sentence.

1 (2) An applicant may not have the record of conviction for a
2 misdemeanor or gross misdemeanor offense vacated if any one of the
3 following is present:

4 (a) There are any criminal charges against the applicant pending
5 in any court of this state or another state, or in any federal court;

6 (b) The offense was a violent offense as defined in RCW 9.94A.030
7 or an attempt to commit a violent offense;

8 (c) The offense was a violation of RCW 46.61.502 (driving while
9 under the influence), 46.61.504 (actual physical control while under
10 the influence), 9.91.020 (operating a railroad, etc. while
11 intoxicated), or the offense is considered a "prior offense" under
12 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
13 violation within ten years of the date of arrest for the prior
14 offense or less than ten years has elapsed since the date of the
15 arrest for the prior offense;

16 (d) The offense was any misdemeanor or gross misdemeanor
17 violation, including attempt, of chapter 9.68 RCW (obscenity and
18 pornography), chapter 9.68A RCW (sexual exploitation of children), or
19 chapter 9A.44 RCW (sex offenses);

20 (e) The applicant was convicted of a misdemeanor or gross
21 misdemeanor offense as defined in RCW 10.99.020, or the court
22 determines after a review of the court file that the offense was
23 committed by one family member or household member against another,
24 or the court, after considering the damage to person or property that
25 resulted in the conviction, any prior convictions for crimes defined
26 in RCW 10.99.020, or for comparable offenses in another state or in
27 federal court, and the totality of the records under review by the
28 court regarding the conviction being considered for vacation,
29 determines that the offense involved domestic violence, and any one
30 of the following factors exist:

31 (i) The applicant has not provided written notification of the
32 vacation petition to the prosecuting attorney's office that
33 prosecuted the offense for which vacation is sought, or has not
34 provided that notification to the court;

35 (ii) The applicant has previously had a conviction for domestic
36 violence. For purposes of this subsection, however, if the current
37 application is for more than one conviction that arose out of a
38 single incident, none of those convictions counts as a previous
39 conviction;

1 (iii) The applicant has signed an affidavit under penalty of
2 perjury affirming that the applicant has not previously had a
3 conviction for a domestic violence offense, and a criminal history
4 check reveals that the applicant has had such a conviction; or

5 (iv) Less than five years have elapsed since the person completed
6 the terms of the original conditions of the sentence, including any
7 financial obligations and successful completion of any treatment
8 ordered as a condition of sentencing;

9 (f) For any offense other than those described in (e) of this
10 subsection, less than three years have passed since the person
11 completed the terms of the sentence, including any financial
12 obligations;

13 (g) The offender has been convicted of a new crime in this state,
14 another state, or federal court since the date of conviction;

15 (h) The applicant has ever had the record of another conviction
16 vacated; or

17 (i) The applicant is currently restrained, or has been restrained
18 within five years prior to the vacation application, by a domestic
19 violence protection order, a no-contact order, an antiharassment
20 order, or a civil restraining order which restrains one party from
21 contacting the other party.

22 (3) Subject to RCW 9.96.070, every person convicted of
23 prostitution under RCW 9A.88.030 who committed the offense as a
24 result of being a victim of trafficking, RCW 9A.40.100, promoting
25 prostitution in the first degree, RCW 9A.88.070, promoting commercial
26 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons
27 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.
28 7101 et seq. may apply to the sentencing court for vacation of the
29 applicant's record of conviction for the prostitution offense. An
30 applicant may not have the record of conviction for prostitution
31 vacated if any one of the following is present:

32 (a) There are any criminal charges against the applicant pending
33 in any court of this state or another state, or in any federal court,
34 for any crime other than prostitution; or

35 (b) The offender has been convicted of another crime, except
36 prostitution, in this state, another state, or federal court since
37 the date of conviction.

38 (4) Every person convicted prior to January 1, 1975, of violating
39 any statute or rule regarding the regulation of fishing activities,
40 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,

1 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
2 who claimed to be exercising a treaty Indian fishing right, may apply
3 to the sentencing court for vacation of the applicant's record of the
4 misdemeanor, gross misdemeanor, or felony conviction for the offense.
5 If the person is deceased, a member of the person's family or an
6 official representative of the tribe of which the person was a member
7 may apply to the court on behalf of the deceased person.
8 Notwithstanding the requirements of RCW 9.94A.640, the court shall
9 vacate the record of conviction if:

10 (a) The applicant is a member of a tribe that may exercise treaty
11 Indian fishing rights at the location where the offense occurred; and

12 (b) The state has been enjoined from taking enforcement action of
13 the statute or rule to the extent that it interferes with a treaty
14 Indian fishing right as determined under *United States v. Washington*,
15 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
16 899 (D. Oregon 1969), and any posttrial orders of those courts, or
17 any other state supreme court or federal court decision.

18 (5) Once the court vacates a record of conviction under this
19 section, the person shall be released from all penalties and
20 disabilities resulting from the offense and the fact that the person
21 has been convicted of the offense shall not be included in the
22 person's criminal history for purposes of determining a sentence in
23 any subsequent conviction. For all purposes, including responding to
24 questions on employment or housing applications, a person whose
25 conviction has been vacated under this section may state that he or
26 she has never been convicted of that crime. Nothing in this section
27 affects or prevents the use of an offender's prior conviction in a
28 later criminal prosecution.

29 (6) All costs incurred by the court and probation services shall
30 be paid by the person making the motion to vacate the record unless a
31 determination is made pursuant to chapter 10.101 RCW that the person
32 making the motion is indigent, at the time the motion is brought.

33 (7) The clerk of the court in which the vacation order is entered
34 shall immediately transmit the order vacating the conviction to the
35 Washington state patrol identification section and to the local
36 police agency, if any, which holds criminal history information for
37 the person who is the subject of the conviction. The Washington state
38 patrol and any such local police agency shall immediately update
39 their records to reflect the vacation of the conviction, and shall
40 transmit the order vacating the conviction to the federal bureau of

1 investigation. A conviction that has been vacated under this section
2 may not be disseminated or disclosed by the state patrol or local law
3 enforcement agency to any person, except other criminal justice
4 enforcement agencies.

5 **Sec. 2.** RCW 10.31.100 and 2016 c 203 s 9 and 2016 c 113 s 1 are
6 each reenacted and amended to read as follows:

7 A police officer having probable cause to believe that a person
8 has committed or is committing a felony shall have the authority to
9 arrest the person without a warrant. A police officer may arrest a
10 person without a warrant for committing a misdemeanor or gross
11 misdemeanor only when the offense is committed in the presence of an
12 officer, except as provided in subsections (1) through (12) of this
13 section.

14 (1) Any police officer having probable cause to believe that a
15 person has committed or is committing a misdemeanor or gross
16 misdemeanor, involving physical harm or threats of harm to any person
17 or property or the unlawful taking of property or involving the use
18 or possession of cannabis, or involving the acquisition, possession,
19 or consumption of alcohol by a person under the age of twenty-one
20 years under RCW 66.44.270, or involving criminal trespass under RCW
21 9A.52.070 or 9A.52.080, shall have the authority to arrest the
22 person.

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

27 (a) An order has been issued of which the person has knowledge
28 under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09,
29 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the
30 person has violated the terms of the order restraining the person
31 from acts or threats of violence, or restraining the person from
32 going onto the grounds of or entering a residence, workplace, school,
33 or day care, or prohibiting the person from knowingly coming within,
34 or knowingly remaining within, a specified distance of a location or,
35 in the case of an order issued under RCW 26.44.063, imposing any
36 other restrictions or conditions upon the person; or

37 (b) A foreign protection order, as defined in RCW 26.52.010, has
38 been issued of which the person under restraint has knowledge and the
39 person under restraint has violated a provision of the foreign

1 protection order prohibiting the person under restraint from
2 contacting or communicating with another person, or excluding the
3 person under restraint from a residence, workplace, school, or day
4 care, or prohibiting the person from knowingly coming within, or
5 knowingly remaining within, a specified distance of a location, or a
6 violation of any provision for which the foreign protection order
7 specifically indicates that a violation will be a crime; or

8 (c) The person is eighteen years or older and within the
9 preceding four hours has assaulted a family or household member as
10 defined in RCW 10.99.020 and the officer believes: (i) A felonious
11 assault has occurred; (ii) an assault has occurred which has resulted
12 in bodily injury to the victim, whether the injury is observable by
13 the responding officer or not; or (iii) that any physical action has
14 occurred which was intended to cause another person reasonably to
15 fear imminent serious bodily injury or death. Bodily injury means
16 physical pain, illness, or an impairment of physical condition. When
17 the officer has probable cause to believe that family or household
18 members have assaulted each other, the officer is not required to
19 arrest both persons. The officer shall arrest the person whom the
20 officer believes to be the primary physical aggressor. In making this
21 determination, the officer shall make every reasonable effort to
22 consider: (A) The intent to protect victims of domestic violence
23 under RCW 10.99.010; (B) the comparative extent of injuries inflicted
24 or serious threats creating fear of physical injury; and (C) the
25 history of domestic violence of each person involved, including
26 whether the conduct was part of an ongoing pattern of abuse.

27 (3) A police officer shall, at the request of a parent or
28 guardian, arrest the sixteen or seventeen year old child of that
29 parent or guardian if the officer has probable cause to believe that
30 the child has assaulted a family or household member as defined in
31 RCW 10.99.020 in the preceding four hours. Nothing in this subsection
32 removes a police officer's existing authority provided in this
33 section to make an arrest.

34 (4) Any police officer having probable cause to believe that a
35 person has committed or is committing a violation of any of the
36 following traffic laws shall have the authority to arrest the person:

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

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

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

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

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

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

9 (g) RCW 46.61.5249, relating to operating a motor vehicle in a
10 negligent manner.

11 (5) A law enforcement officer investigating at the scene of a
12 motor vehicle accident may arrest the driver of a motor vehicle
13 involved in the accident if the officer has probable cause to believe
14 that the driver has committed in connection with the accident a
15 violation of any traffic law or regulation.

16 (6)(a) A law enforcement officer investigating at the scene of a
17 motor vessel accident may arrest the operator of a motor vessel
18 involved in the accident if the officer has probable cause to believe
19 that the operator has committed, in connection with the accident, a
20 criminal violation of chapter 79A.60 RCW.

21 (b) A law enforcement officer investigating at the scene of a
22 motor vessel accident may issue a citation for an infraction to the
23 operator of a motor vessel involved in the accident if the officer
24 has probable cause to believe that the operator has committed, in
25 connection with the accident, a violation of any boating safety law
26 of chapter 79A.60 RCW.

27 (7) Any police officer having probable cause to believe that a
28 person has committed or is committing a violation of RCW 79A.60.040
29 shall have the authority to arrest the person.

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

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

39 (10) A police officer may arrest and take into custody, pending
40 release on bail, personal recognizance, or court order, a person

1 without a warrant when the officer has probable cause to believe that
2 an order has been issued of which the person has knowledge under
3 chapter 10.14 RCW and the person has violated the terms of that
4 order.

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

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

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

15 (13) A law enforcement officer having probable cause to believe
16 that a person has committed a violation under RCW 77.15.160(4) may
17 issue a citation for an infraction to the person in connection with
18 the violation.

19 (14) A law enforcement officer having probable cause to believe
20 that a person has committed a criminal violation under RCW 77.15.809
21 or 77.15.811 may arrest the person in connection with the violation.

22 (15) Except as specifically provided in subsections (2), (4),
23 (5), and (8) of this section, nothing in this section extends or
24 otherwise affects the powers of arrest prescribed in Title 46 RCW.

25 (16) No police officer may be held criminally or civilly liable
26 for making an arrest pursuant to subsection (2) or (10) of this
27 section if the police officer acts in good faith and without malice.

28 (17)(a) Except as provided in (b) of this subsection, a police
29 officer shall arrest and keep in custody, until release by a judicial
30 officer on bail, personal recognizance, or court order, a person
31 without a warrant when the officer has probable cause to believe that
32 the person has violated RCW 46.61.502 or 46.61.504 or an equivalent
33 local ordinance and the police officer: (i) Has knowledge that the
34 person has a prior offense as defined in RCW 46.61.5055 within ten
35 years; or (ii) has knowledge, based on a review of the information
36 available to the officer at the time of arrest, that the person is
37 charged with or is awaiting arraignment for an offense that would
38 qualify as a prior offense as defined in RCW 46.61.5055 if it were a
39 conviction.

1 (b) A police officer is not required to keep in custody a person
2 under (a) of this subsection if the person requires immediate medical
3 attention and is admitted to a hospital.

4 (18) A juvenile detention facility shall book into detention any
5 person under age eighteen brought to that detention facility pursuant
6 to an arrest for assaulting a family or household member as defined
7 in RCW 10.99.020.

8 **Sec. 3.** RCW 46.20.385 and 2016 c 203 s 13 are each amended to
9 read as follows:

10 (1)(a) Any person licensed under this chapter or who has a valid
11 driver's license from another state, who is convicted of: (i) A
12 violation of RCW 46.61.502 or 46.61.504 or an equivalent local or
13 out-of-state statute or ordinance, or (ii) a violation of RCW
14 46.61.520(1)(a) or an equivalent local or out-of-state statute or
15 ordinance, or (iii) a conviction for a violation of RCW 46.61.520(1)
16 (b) or (c) if the conviction is the result of a charge that was
17 originally filed as a violation of RCW 46.61.520(1)(a), or (iv) RCW
18 46.61.522(1)(b) or an equivalent local or out-of-state statute or
19 ordinance, or (v) RCW 46.61.522(1) (a) or (c) if the conviction is
20 the result of a charge that was originally filed as a violation of
21 RCW 46.61.522(1)(b) committed while under the influence of
22 intoxicating liquor or any drug, or (vi) who has had or will have his
23 or her license suspended, revoked, or denied under RCW 46.20.3101, or
24 who is otherwise permitted under subsection (8) of this section, may
25 submit to the department an application for an ignition interlock
26 driver's license. The department, upon receipt of the prescribed fee
27 and upon determining that the petitioner is eligible to receive the
28 license, may issue an ignition interlock driver's license.

29 (b) A person may apply for an ignition interlock driver's license
30 anytime, including immediately after receiving the notices under RCW
31 46.20.308 or after his or her license is suspended, revoked, or
32 denied.

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

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

1 remainder of the period of suspension, revocation, or denial, unless
2 otherwise permitted under RCW 46.20.720(6).

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

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

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

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

31 (5) The director shall cancel an ignition interlock driver's
32 license after receiving notice that the holder thereof has been
33 convicted of operating a motor vehicle in violation of its
34 restrictions, no longer meets the eligibility requirements, or has
35 been convicted of or found to have committed a separate offense or
36 any other act or omission that under this chapter would warrant
37 suspension or revocation of a regular driver's license. The
38 department must give notice of the cancellation as provided under RCW
39 46.20.245. A person whose ignition interlock driver's license has
40 been canceled under this section may reapply for a new ignition

1 interlock driver's license if he or she is otherwise qualified under
2 this section and pays the fee required under RCW 46.20.380.

3 (6)(a) Unless costs are waived by the ignition interlock company
4 or the person is indigent under RCW 10.101.010, the applicant shall
5 pay the cost of installing, removing, and leasing the ignition
6 interlock device and shall pay an additional fee of twenty dollars
7 per month. Payments shall be made directly to the ignition interlock
8 company. The company shall remit the additional (~~twenty dollar~~) fee
9 to the department, except that the company may retain one dollar per
10 month of the additional fee to cover the expenses associated with
11 administering the fee.

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

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

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

29 (b) A person who does not have any driver's license under this
30 chapter, but who would otherwise be eligible under this section to
31 apply for an ignition interlock license, may submit to the department
32 an application for an ignition interlock license. The department may
33 require the person to take any driver's licensing examination under
34 this chapter and may require the person to also apply and qualify for
35 a temporary restricted driver's license under RCW 46.20.391.

36 **Sec. 4.** RCW 46.20.720 and 2016 c 203 s 14 are each amended to
37 read as follows:

1 (1) **Ignition interlock restriction.** The department shall require
2 that a person may drive only a motor vehicle equipped with a
3 functioning ignition interlock device:

4 (a) **Pretrial release.** Upon receipt of notice from a court that an
5 ignition interlock device restriction has been imposed under RCW
6 10.21.055;

7 (b) **Ignition interlock driver's license.** As required for issuance
8 of an ignition interlock driver's license under RCW 46.20.385;

9 (c) **Deferred prosecution.** Upon receipt of notice from a court
10 that the person is participating in a deferred prosecution program
11 under RCW 10.05.020 for a violation of:

12 (i) RCW 46.61.502 or 46.61.504 or an equivalent local ordinance;
13 or

14 (ii) RCW 46.61.5249 or 46.61.500 or an equivalent local ordinance
15 if the person would be required under RCW 46.61.5249(4) or
16 46.61.500(3) (a) or (b) to install an ignition interlock device on
17 all vehicles operated by the person in the event of a conviction;

18 (d) **Post conviction.** After any applicable period of suspension,
19 revocation, or denial of driving privileges:

20 (i) Due to a conviction of a violation of RCW 46.61.502 or
21 46.61.504 or an equivalent local or out-of-state statute or
22 ordinance; or

23 (ii) Due to a conviction of a violation of RCW 46.61.5249 or
24 46.61.500 or an equivalent local ordinance if the person is required
25 under RCW 46.61.5249(4) or 46.61.500(3) (a) or (b) to install an
26 ignition interlock device on all vehicles operated by the person; or

27 (e) **Court order.** Upon receipt of an order by a court having
28 jurisdiction that a person charged or convicted of any offense
29 involving the use, consumption, or possession of alcohol while
30 operating a motor vehicle may drive only a motor vehicle equipped
31 with a functioning ignition interlock. The court shall establish a
32 specific calibration setting at which the ignition interlock will
33 prevent the vehicle from being started. The court shall also
34 establish the period of time for which ignition interlock use will be
35 required.

36 (2) **Calibration.** Unless otherwise specified by the court for a
37 restriction imposed under subsection (1)(e) of this section, the
38 ignition interlock device shall be calibrated to prevent the motor
39 vehicle from being started when the breath sample provided has an
40 alcohol concentration of 0.025 or more.

1 (3) **Duration of restriction.** A restriction imposed under:

2 (a) Subsection (1)(a) of this section shall remain in effect
3 until:

4 (i) The court has authorized the removal of the device under RCW
5 10.21.055; or

6 (ii) The department has imposed a restriction under subsection
7 (1)(b), (c), or (d) of this section arising out of the same incident.

8 (b) Subsection (1)(b) of this section remains in effect during
9 the validity of any ignition interlock driver's license that has been
10 issued to the person.

11 (c) Subsection (1)(c)(i) or (d)(i) of this section shall be for
12 no less than:

13 (i) For a person who has not previously been restricted under
14 this subsection, a period of one year;

15 (ii) For a person who has previously been restricted under (c)(i)
16 of this subsection, a period of five years;

17 (iii) For a person who has previously been restricted under
18 (c)(ii) of this subsection, a period of ten years.

19 The restriction of a person who is convicted of a violation of
20 RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and who
21 committed the offense while a passenger under the age of sixteen was
22 in the vehicle shall be extended for an additional six-month period
23 as required by RCW 46.61.5055(6)(a).

24 (d) Subsection (1)(c)(ii) or (d)(ii) of this section shall be for
25 a period of no less than six months.

26 (e) Subsection (1)(e) of this section shall remain in effect for
27 the period of time specified by the court.

28 The period of restriction under (c) and (d) of this subsection
29 based on incidents occurring on or after June 9, 2016, must be tolled
30 for any period in which the person does not have an ignition
31 interlock device installed on a vehicle owned or operated by the
32 person unless the person receives a determination from the department
33 that the person is unable to operate an ignition interlock device due
34 to a physical disability. The department's determination that a
35 person is unable to operate an ignition interlock device must be
36 reasonable and be based upon good and substantial evidence. This
37 determination is subject to review by a court of competent
38 jurisdiction. The department may charge a person seeking a medical
39 exemption under this subsection a reasonable fee for the assessment.

1 (4) **Requirements for removal.** A restriction imposed under
2 subsection (1)(c) or (d) of this section shall remain in effect until
3 the department receives a declaration from the person's ignition
4 interlock device vendor, in a form provided or approved by the
5 department, certifying that there have been none of the following
6 incidents in the (~~four~~) one hundred eighty consecutive (~~months~~)
7 days prior to the date of release:

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

13 (b) Failure to take any random test unless a review of the
14 digital image confirms that the vehicle was not occupied by the
15 driver at the time of the missed test;

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

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

24 (5) **Day-for-day credit.** (a) The time period during which a person
25 has an ignition interlock device installed in order to meet the
26 requirements of subsection (1)(b) of this section shall apply on a
27 day-for-day basis toward satisfying the period of time the ignition
28 interlock device restriction is imposed under subsection (1)(c) or
29 (d) of this section arising out of the same incident.

30 (b) The department must also give the person a day-for-day credit
31 for any time period, beginning from the date of the incident, during
32 which the person kept an ignition interlock device installed on all
33 vehicles the person operates, other than those subject to the
34 employer exemption under subsection (6) of this section.

35 (c) If the day-for-day credit granted under this subsection
36 equals or exceeds the period of time the ignition interlock device
37 restriction is imposed under subsection (1)(c) or (d) of this section
38 arising out of the same incident, and the person has already met the
39 requirements for removal of the device under subsection (4) of this

1 section, the department may waive the requirement that a device be
2 installed or that the person again meet the requirements for removal.

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

13 (b) The employer exemption does not apply when the employer's
14 vehicle is assigned exclusively to the restricted driver and used
15 solely for commuting to and from employment.

16 (7) **Ignition interlock device revolving account.** In addition to
17 any other costs associated with the use of an ignition interlock
18 device imposed on the person restricted under this section, the
19 person shall pay an additional fee of twenty dollars per month.
20 Payments must be made directly to the ignition interlock company. The
21 company shall remit the additional (~~twenty dollar~~) fee to the
22 department to be deposited into the ignition interlock device
23 revolving account, except that the company may retain one dollar per
24 month of the additional fee to cover the expenses associated with
25 administering the fee. The department may waive the monthly fee if
26 the person is indigent under RCW 10.101.010.

27 (8) **Foreign jurisdiction.** For a person restricted under this
28 section who is residing outside of the state of Washington, the
29 department may accept verification of installation of an ignition
30 interlock device by an ignition interlock company authorized to do
31 business in the jurisdiction in which the person resides, provided
32 the device meets any applicable requirements of that jurisdiction.
33 The department may waive the monthly fee required by subsection (7)
34 of this section if collection of the fee would be impractical in the
35 case of a person residing in another jurisdiction.

36 **Sec. 5.** RCW 46.61.5055 and 2016 sp.s. c 29 s 530 and 2016 c 203
37 s 17 are each reenacted and amended to read as follows:

38 (1) **No prior offenses in seven years.** Except as provided in RCW
39 46.61.502(6) or 46.61.504(6), a person who is convicted of a

1 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
2 within seven years shall be punished as follows:

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

8 (i) By imprisonment for not less than one day nor more than three
9 hundred sixty-four days. Twenty-four consecutive hours of the
10 imprisonment may not be suspended unless the court finds that the
11 imposition of this mandatory minimum sentence would impose a
12 substantial risk to the offender's physical or mental well-being.
13 Whenever the mandatory minimum sentence is suspended, the court shall
14 state in writing the reason for granting the suspension and the facts
15 upon which the suspension is based. In lieu of the mandatory minimum
16 term of imprisonment required under this subsection (1)(a)(i), the
17 court may order not less than fifteen days of electronic home
18 monitoring or a ninety-day period of 24/7 sobriety program
19 monitoring. The court may consider the offender's pretrial 24/7
20 sobriety program monitoring as fulfilling a portion of posttrial
21 sentencing. The offender shall pay the cost of electronic home
22 monitoring. The county or municipality in which the penalty is being
23 imposed shall determine the cost. The court may also require the
24 offender's electronic home monitoring device or other separate
25 alcohol monitoring device to include an alcohol detection
26 breathalyzer, and the court may restrict the amount of alcohol the
27 offender may consume during the time the offender is on electronic
28 home monitoring; and

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

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

38 (i) By imprisonment for not less than two days nor more than
39 three hundred sixty-four days. Forty-eight consecutive hours of the
40 imprisonment may not be suspended unless the court finds that the

1 imposition of this mandatory minimum sentence would impose a
2 substantial risk to the offender's physical or mental well-being.
3 Whenever the mandatory minimum sentence is suspended, the court shall
4 state in writing the reason for granting the suspension and the facts
5 upon which the suspension is based. In lieu of the mandatory minimum
6 term of imprisonment required under this subsection (1)(b)(i), the
7 court may order not less than thirty days of electronic home
8 monitoring or a one hundred twenty day period of 24/7 sobriety
9 program monitoring. The court may consider the offender's pretrial
10 24/7 sobriety program testing as fulfilling a portion of posttrial
11 sentencing. The offender shall pay the cost of electronic home
12 monitoring. The county or municipality in which the penalty is being
13 imposed shall determine the cost. The court may also require the
14 offender's electronic home monitoring device to include an alcohol
15 detection breathalyzer or other separate alcohol monitoring device,
16 and the court may restrict the amount of alcohol the offender may
17 consume during the time the offender is on electronic home
18 monitoring; and

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

22 (2) **One prior offense in seven years.** Except as provided in RCW
23 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 one prior offense
25 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
28 whom for reasons other than the person's refusal to take a test
29 offered pursuant to RCW 46.20.308 there is no test result indicating
30 the person's alcohol concentration:

31 (i) By imprisonment for not less than thirty days nor more than
32 three hundred sixty-four days and sixty days of electronic home
33 monitoring. In lieu of the mandatory (~~minimum~~) term of (~~sixty~~
34 ~~days~~) imprisonment and electronic home monitoring under this
35 subsection (2)(a)(i), the court may order ((at least an additional
36 four days in jail or, if available in that county or city, a six-
37 month)) one hundred twenty days of electronic home monitoring or a
38 one hundred twenty-day period of 24/7 sobriety program monitoring
39 pursuant to RCW 36.28A.300 through 36.28A.390(~~, and~~). The court may
40 consider the offender's pretrial 24/7 sobriety program monitoring as

1 fulfilling a portion of posttrial sentencing. The court shall order
2 an expanded alcohol assessment and treatment, if deemed appropriate
3 by the assessment. The offender shall pay for the cost of the
4 electronic monitoring. The county or municipality where the penalty
5 is being imposed shall determine the cost. The court may also require
6 the offender's electronic home monitoring device include an alcohol
7 detection breathalyzer or other separate alcohol monitoring device,
8 and may restrict the amount of alcohol the offender may consume
9 during the time the offender is on electronic home monitoring. Thirty
10 days of imprisonment and sixty days of electronic home monitoring may
11 not be suspended unless the court finds that the imposition of this
12 mandatory minimum sentence would impose a substantial risk to the
13 offender's physical or mental well-being. Whenever the mandatory
14 minimum sentence is suspended, the court shall state in writing the
15 reason for granting the suspension and the facts upon which the
16 suspension is based; and

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

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

25 (i) By imprisonment for not less than forty-five days nor more
26 than three hundred sixty-four days and ninety days of electronic home
27 monitoring. In lieu of the mandatory minimum term of (~~ninety days~~)
28 imprisonment and electronic home monitoring under this subsection
29 (2)(b)(i), the court may order (~~at least an additional six days in~~
30 ~~jail or, if available in that county or city,~~) six months of
31 electronic home monitoring or a six-month period of 24/7 sobriety
32 program monitoring pursuant to RCW 36.28A.300 through 36.28A.390(~~and~~).
33 The court may consider the offender's pretrial 24/7 sobriety
34 program monitoring as fulfilling a portion of posttrial sentencing.
35 The court shall order an expanded alcohol assessment and treatment,
36 if deemed appropriate by the assessment. The offender shall pay for
37 the cost of the electronic monitoring. The county or municipality
38 where the penalty is being imposed shall determine the cost. The
39 court may also require the offender's electronic home monitoring
40 device include an alcohol detection breathalyzer or other separate

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

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

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

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

24 (i) By imprisonment for not less than ninety days nor more than
25 three hundred sixty-four days, if available in that county or city, a
26 six-month period of 24/7 sobriety program monitoring pursuant to RCW
27 36.28A.300 through 36.28A.390, and one hundred twenty days of
28 electronic home monitoring. In lieu of the mandatory minimum term of
29 one hundred twenty days of electronic home monitoring, the court may
30 order at least an additional eight days in jail. The court shall
31 order an expanded alcohol assessment and treatment, if deemed
32 appropriate by the assessment. The offender shall pay for the cost of
33 the electronic monitoring. The county or municipality where the
34 penalty is being imposed shall determine the cost. The court may also
35 require the offender's electronic home monitoring device include an
36 alcohol detection breathalyzer or other separate alcohol monitoring
37 device, and may restrict the amount of alcohol the offender may
38 consume during the time the offender is on electronic home
39 monitoring. Ninety days of imprisonment and one hundred twenty days
40 of electronic home monitoring may not be suspended unless the court

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

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

9 (b) **Penalty for alcohol concentration at least 0.15.** In the case
10 of a person whose alcohol concentration was at least 0.15, or for
11 whom by reason of 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) By imprisonment for not less than one hundred twenty days nor
15 more than three hundred sixty-four days, if available in that county
16 or city, a six-month period of 24/7 sobriety program monitoring
17 pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty
18 days of electronic home monitoring. In lieu of the mandatory minimum
19 term of one hundred fifty days of electronic home monitoring, the
20 court may order at least an additional ten days in jail. The offender
21 shall pay for the cost of the electronic monitoring. The court shall
22 order an expanded alcohol assessment and treatment, if deemed
23 appropriate by the assessment. The county or municipality where the
24 penalty is being imposed shall determine the cost. The court may also
25 require the offender's electronic home monitoring device include an
26 alcohol detection breathalyzer or other separate alcohol monitoring
27 device, and may restrict the amount of alcohol the offender may
28 consume during the time the offender is on electronic home
29 monitoring. One hundred twenty days of imprisonment and one hundred
30 fifty days of electronic home monitoring may not be suspended unless
31 the court finds that the imposition of this mandatory minimum
32 sentence would impose a substantial risk to the offender's physical
33 or mental well-being. Whenever the mandatory minimum sentence is
34 suspended, the court shall state in writing the reason for granting
35 the suspension and the facts upon which the suspension is based; and

36 (ii) By a fine of not less than one thousand five hundred dollars
37 nor more than five thousand dollars. One thousand five hundred
38 dollars of the fine may not be suspended unless the court finds the
39 offender to be indigent.

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

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

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

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

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

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

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

14 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall
15 require any person convicted of a violation of RCW 46.61.502 or
16 46.61.504 or an equivalent local ordinance to comply with the rules
17 and requirements of the department regarding the installation and use
18 of a functioning ignition interlock device installed on all motor
19 vehicles operated by the person.

20 (b) **Monitoring devices.** If the court orders that a person refrain
21 from consuming any alcohol, the court may order the person to submit
22 to alcohol monitoring through an alcohol detection breathalyzer
23 device, transdermal sensor device, or other technology designed to
24 detect alcohol in a person's system. The person shall pay for the
25 cost of the monitoring, unless the court specifies that the cost of
26 monitoring will be paid with funds that are available from an
27 alternative source identified by the court. The county or
28 municipality where the penalty is being imposed shall determine the
29 cost.

30 (c) **24/7 sobriety program monitoring.** In any county or city where
31 a 24/7 sobriety program is available and verified by the Washington
32 association of sheriffs and police chiefs, the court shall:

33 (i) Order the person to install and use a functioning ignition
34 interlock or other device in lieu of such period of 24/7 sobriety
35 program monitoring;

36 (ii) Order the person to a period of 24/7 sobriety program
37 monitoring pursuant to subsections (1) through (3) of this section;
38 or

39 (iii) Order the person to install and use a functioning ignition
40 interlock or other device in addition to a period of 24/7 sobriety

1 program monitoring pursuant to subsections (1) through (3) of this
2 section.

3 (6) **Penalty for having a minor passenger in vehicle.** If a person
4 who is convicted of a violation of RCW 46.61.502 or 46.61.504
5 committed the offense while a passenger under the age of sixteen was
6 in the vehicle, the court shall:

7 (a) Order the use of an ignition interlock or other device for an
8 additional six months;

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

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

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

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

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

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

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

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

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

10 (a) **Penalty for alcohol concentration less than 0.15.** If the
11 person's alcohol concentration was less than 0.15, or if for reasons
12 other than the person's refusal to take a test offered under RCW
13 46.20.308 there is no test result indicating the person's alcohol
14 concentration:

15 (i) Where there has been no prior offense within seven years, be
16 suspended or denied by the department for ninety days or until the
17 person is evaluated by an alcoholism agency or probation department
18 pursuant to RCW 46.20.311 and the person completes or is enrolled in
19 a ninety-day period of 24/7 sobriety program monitoring. In no
20 circumstances shall the license suspension be for fewer than two
21 days;

22 (ii) Where there has been one prior offense within seven years,
23 be revoked or denied by the department for two years or until the
24 person is evaluated by an alcoholism agency or probation department
25 pursuant to RCW 46.20.311 and the person completes or is enrolled in
26 a six-month period of 24/7 sobriety program monitoring. In no
27 circumstances shall the license suspension be for less than one year;
28 or

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

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

33 (i) Where there has been no prior offense within seven years, be
34 revoked or denied by the department for one year or until the person
35 is evaluated by an alcoholism agency or probation department pursuant
36 to RCW 46.20.311 and the person completes or is enrolled in a one
37 hundred twenty day period of 24/7 sobriety program monitoring. In no
38 circumstances shall the license revocation be for fewer than four
39 days;

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

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

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

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

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

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

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

19 Upon receipt of a notice from the court under RCW 36.28A.390 that
20 a participant has been removed from a 24/7 sobriety program, the
21 department must resume any suspension, revocation, or denial that had
22 been terminated early under this subsection due to participation in
23 the program, granting credit on a day-for-day basis for any portion
24 of a suspension, revocation, or denial already served under RCW
25 46.20.3101 or this section 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
29 court error. If so, the court may order that the person's license,
30 permit, or nonresident privilege shall not be revoked, suspended, or
31 denied for that offense. The court shall send notice of the finding
32 and order to the department and to the person. Upon receipt of the
33 notice from the court, the department shall not revoke, suspend, or
34 deny the license, permit, or nonresident privilege of the person for
35 that offense.

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

39 (10) **Probation of driving privilege.** After expiration of any
40 period of suspension, revocation, or denial of the offender's

1 license, permit, or privilege to drive required by this section, the
2 department shall place the offender's driving privilege in
3 probationary status pursuant to RCW 46.20.355.

4 (11) **Conditions of probation.** (a) In addition to any
5 nonsuspendable and nondeferrable jail sentence required by this
6 section, whenever the court imposes up to three hundred sixty-four
7 days in jail, the court shall also suspend but shall not defer a
8 period of confinement for a period not exceeding five years. The
9 court shall impose conditions of probation that include: (i) Not
10 driving a motor vehicle within this state without a valid license to
11 drive; (ii) not driving a motor vehicle within this state without
12 proof of liability insurance or other financial responsibility for
13 the future pursuant to RCW 46.30.020; (iii) not driving or being in
14 physical control of a motor vehicle within this state while having an
15 alcohol concentration of 0.08 or more or a THC concentration of 5.00
16 nanograms per milliliter of whole blood or higher, within two hours
17 after driving; (iv) not refusing to submit to a test of his or her
18 breath or blood to determine alcohol or drug concentration upon
19 request of a law enforcement officer who has reasonable grounds to
20 believe the person was driving or was in actual physical control of a
21 motor vehicle within this state while under the influence of
22 intoxicating liquor or drug; and (v) not driving a motor vehicle in
23 this state without a functioning ignition interlock device as
24 required by the department under RCW 46.20.720. The court may impose
25 conditions of probation that include nonrepetition, installation of
26 an ignition interlock device on the probationer's motor vehicle,
27 alcohol or drug treatment, supervised probation, or other conditions
28 that may be appropriate. The sentence may be imposed in whole or in
29 part upon violation of a condition of probation during the suspension
30 period.

31 (b) For each violation of mandatory conditions of probation under
32 (a)(i), (ii), (iii), (iv), or (v) of this subsection, the court shall
33 order the convicted person to be confined for thirty days, which
34 shall not be suspended or deferred.

35 (c) For each incident involving a violation of a mandatory
36 condition of probation imposed under this subsection, the license,
37 permit, or privilege to drive of the person shall be suspended by the
38 court for thirty days or, if such license, permit, or privilege to
39 drive already is suspended, revoked, or denied at the time the
40 finding of probation violation is made, the suspension, revocation,

1 or denial then in effect shall be extended by thirty days. The court
2 shall notify the department of any suspension, revocation, or denial
3 or any extension of a suspension, revocation, or denial imposed under
4 this subsection.

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

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

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

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

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

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

30 (13) **Extraordinary medical placement.** An offender serving a
31 sentence under this section, whether or not a mandatory minimum term
32 has expired, may be granted an extraordinary medical placement by the
33 jail administrator subject to the standards and limitations set forth
34 in RCW 9.94A.728(1)(c).

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

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

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

- 1 (ii) A conviction for a violation of RCW 46.61.504 or an
2 equivalent local ordinance;
- 3 (iii) A conviction for a violation of RCW 46.25.110 or an
4 equivalent local ordinance;
- 5 (iv) A conviction for a violation of RCW 79A.60.040(2) or an
6 equivalent local ordinance;
- 7 (v) A conviction for a violation of RCW 79A.60.040(1) or an
8 equivalent local ordinance committed in a reckless manner if the
9 conviction is the result of a charge that was originally filed as a
10 violation of RCW 79A.60.040(2) or an equivalent local ordinance;
- 11 (vi) A conviction for a violation of RCW 47.68.220 or an
12 equivalent local ordinance committed while under the influence of
13 intoxicating liquor or any drug;
- 14 (vii) A conviction for a violation of RCW 47.68.220 or an
15 equivalent local ordinance committed in a careless or reckless manner
16 if the conviction is the result of a charge that was originally filed
17 as a violation of RCW 47.68.220 or an equivalent local ordinance
18 while under the influence of intoxicating liquor or any drug;
- 19 (viii) A conviction for a violation of RCW 46.09.470(2) or an
20 equivalent local ordinance;
- 21 (ix) A conviction for a violation of RCW 46.10.490(2) or an
22 equivalent local ordinance;
- 23 (x) A conviction for a violation of RCW 46.61.520 committed while
24 under the influence of intoxicating liquor or any drug, or a
25 conviction for a violation of RCW 46.61.520 committed in a reckless
26 manner or with the disregard for the safety of others if the
27 conviction is the result of a charge that was originally filed as a
28 violation of RCW 46.61.520 committed while under the influence of
29 intoxicating liquor or any drug;
- 30 (xi) A conviction for a violation of RCW 46.61.522 committed
31 while under the influence of intoxicating liquor or any drug, or a
32 conviction for a violation of RCW 46.61.522 committed in a reckless
33 manner or with the disregard for the safety of others if the
34 conviction is the result of a charge that was originally filed as a
35 violation of RCW 46.61.522 committed while under the influence of
36 intoxicating liquor or any drug;
- 37 (xii) A conviction for a violation of RCW 46.61.5249, 46.61.500,
38 or 9A.36.050 or an equivalent local ordinance, if the conviction is
39 the result of a charge that was originally filed as a violation of

1 RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of
2 RCW 46.61.520 or 46.61.522;

3 (xiii) An out-of-state conviction for a violation that would have
4 been a violation of (a)(i), (ii), (x), (xi), or (xii) of this
5 subsection if committed in this state;

6 (xiv) A deferred prosecution under chapter 10.05 RCW granted in a
7 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
8 equivalent local ordinance;

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

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

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

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

31 (b) "Treatment" means substance use disorder treatment approved
32 by the department of social and health services;

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

36 (d) "Within ten years" means that the arrest for a prior offense
37 occurred within ten years before or after the arrest for the current
38 offense.

39 (15) All fines imposed by this section apply to adult offenders
40 only.

1 **Sec. 6.** RCW 46.61.506 and 2016 c 203 s 8 are each amended to
2 read as follows:

3 (1) Upon the trial of any civil or criminal action or proceeding
4 arising out of acts alleged to have been committed by any person
5 while driving or in actual physical control of a vehicle while under
6 the influence of intoxicating liquor or any drug, if the person's
7 alcohol concentration is less than 0.08 or the person's THC
8 concentration is less than 5.00, it is evidence that may be
9 considered with other competent evidence in determining whether the
10 person was under the influence of intoxicating liquor or any drug.

11 (2)(a) The breath analysis of the person's alcohol concentration
12 shall be based upon grams of alcohol per two hundred ten liters of
13 breath.

14 (b) The blood analysis of the person's THC concentration shall be
15 based upon nanograms per milliliter of whole blood.

16 (c) The foregoing provisions of this section shall not be
17 construed as limiting the introduction of any other competent
18 evidence bearing upon the question whether the person was under the
19 influence of intoxicating liquor or any drug.

20 (3) Analysis of the person's blood or breath to be considered
21 valid under the provisions of this section or RCW 46.61.502 or
22 46.61.504 shall have been performed according to methods approved by
23 the state toxicologist and by an individual possessing a valid permit
24 issued by the state toxicologist for this purpose. The state
25 toxicologist is directed to approve satisfactory techniques or
26 methods, to supervise the examination of individuals to ascertain
27 their qualifications and competence to conduct such analyses, and to
28 issue permits which shall be subject to termination or revocation at
29 the discretion of the state toxicologist.

30 (4)(a) A breath test performed by any instrument approved by the
31 state toxicologist shall be admissible at trial or in an
32 administrative proceeding if the prosecution or department produces
33 prima facie evidence of the following:

34 (i) The person who performed the test was authorized to perform
35 such test by the state toxicologist;

36 (ii) The person being tested did not vomit or have anything to
37 eat, drink, or smoke for at least fifteen minutes prior to
38 administration of the test;

39 (iii) The person being tested did not have any foreign
40 substances, not to include dental work or piercings, fixed or

1 removable, in his or her mouth at the beginning of the fifteen-minute
2 observation period;

3 (iv) Prior to the start of the test, the temperature of any
4 liquid simulator solution utilized as an external standard, as
5 measured by a thermometer approved of by the state toxicologist was
6 thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

7 (v) The internal standard test resulted in the message
8 "verified";

9 (vi) The two breath samples agree to within plus or minus ten
10 percent of their mean to be determined by the method approved by the
11 state toxicologist;

12 (vii) The result of the test of the liquid simulator solution
13 external standard or dry gas external standard result did lie
14 between .072 to .088 inclusive; and

15 (viii) All blank tests gave results of .000.

16 (b) For purposes of this section, "prima facie evidence" is
17 evidence of sufficient circumstances that would support a logical and
18 reasonable inference of the facts sought to be proved. In assessing
19 whether there is sufficient evidence of the foundational facts, the
20 court or administrative tribunal is to assume the truth of the
21 prosecution's or department's evidence and all reasonable inferences
22 from it in a light most favorable to the prosecution or department.

23 (c) Nothing in this section shall be deemed to prevent the
24 subject of the test from challenging the reliability or accuracy of
25 the test, the reliability or functioning of the instrument, or any
26 maintenance procedures. Such challenges, however, shall not preclude
27 the admissibility of the test once the prosecution or department has
28 made a prima facie showing of the requirements contained in (a) of
29 this subsection. Instead, such challenges may be considered by the
30 trier of fact in determining what weight to give to the test result.

31 (5) When a blood test is administered under the provisions of RCW
32 46.20.308, the withdrawal of blood for the purpose of determining its
33 alcoholic or drug content may be performed only by a physician
34 licensed under chapter 18.71 RCW; an osteopathic physician licensed
35 under chapter 18.57 RCW; a registered nurse, licensed practical
36 nurse, or advanced registered nurse practitioner licensed under
37 chapter 18.79 RCW; a physician assistant licensed under chapter
38 18.71A RCW; an osteopathic physician assistant licensed under chapter
39 18.57A RCW; (~~(an advanced emergency medical technician or paramedic
40 licensed under chapter 18.73 RCW))~~ a physician's trained advanced

1 emergency medical technician and paramedic certified under chapter
2 18.71 RCW, provided that performance of the withdrawal is consistent
3 with the protocols of the physician's trained advanced emergency
4 medical technician and paramedic's employing agency; until July 1,
5 2016, a health care assistant certified under chapter 18.135 RCW; or
6 a medical assistant-certified or medical assistant-phlebotomist
7 certified under chapter 18.360 RCW. Proof of qualification to draw
8 blood may be established through the department of health's provider
9 credential search. ((This)) When withdrawal of blood for the purpose
10 of determining its alcoholic or drug content is performed outside
11 Washington state, the withdrawal may be performed by any health care
12 provider lawfully authorized to perform a withdrawal for that purpose
13 in the state in which the withdrawal takes place. These limitations
14 shall not apply to the taking of breath specimens.

15 (6) The person tested may have a licensed or certified health
16 care provider listed in subsection (5) of this section, or a
17 qualified technician, chemist, or other qualified person of his or
18 her own choosing administer one or more tests in addition to any
19 administered at the direction of a law enforcement officer. The test
20 will be admissible if the person establishes the general
21 acceptability of the testing technique or method. The failure or
22 inability to obtain an additional test by a person shall not preclude
23 the admission of evidence relating to the test or tests taken at the
24 direction of a law enforcement officer.

25 (7) Upon the request of the person who shall submit to a test or
26 tests at the request of a law enforcement officer, full information
27 concerning the test or tests shall be made available to him or her or
28 his or her attorney.

29 **Sec. 7.** RCW 46.61.517 and 2001 c 142 s 1 are each amended to
30 read as follows:

31 The refusal of a person to submit to a test of the alcohol or
32 drug concentration in the person's ((blood or)) breath under RCW
33 46.20.308 is admissible into evidence at a subsequent criminal trial.
34 The refusal of a person to submit to a test of the person's blood is
35 admissible into evidence at a subsequent criminal trial when a search
36 warrant, or an exception to the search warrant, authorized the
37 seizure.

1 **Sec. 8.** RCW 46.64.025 and 2016 c 203 s 4 are each amended to
2 read as follows:

3 Whenever any person served with a traffic citation or provided
4 notice of a traffic-related criminal complaint willfully fails to
5 appear at a requested hearing for a moving violation or fails to
6 comply with the terms of a notice of traffic citation for a moving
7 violation or a traffic-related criminal complaint, the court in which
8 the defendant failed to appear shall promptly give notice of such
9 fact to the department of licensing. Whenever thereafter the case in
10 which the defendant failed to appear is adjudicated, the court
11 hearing the case shall promptly file with the department a
12 certificate showing that the case has been adjudicated. For the
13 purposes of this section, "moving violation" is defined by rule
14 pursuant to RCW 46.20.2891.

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