

2SHB 2742 - S COMM AMD  
By Committee on Judiciary

ADOPTED AND ENGROSSED 03/05/2010

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 46.20.385 and 2008 c 282 s 9 are each amended to read  
4 as follows:

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

17 (b) A person may apply for an ignition interlock driver's license  
18 anytime, including immediately after receiving the notices under RCW  
19 46.20.308 or after his or her license is suspended, revoked, or denied.  
20 A person receiving an ignition interlock driver's license waives his or  
21 her right to a hearing or appeal under RCW 46.20.308.

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

25 (i) The department shall require the person to maintain the device  
26 on all vehicles operated by the person and shall restrict the person to  
27 operating only vehicles equipped with the device, for the remainder of  
28 the period of suspension, revocation, or denial. The installation of  
29 an ignition interlock device is not necessary on vehicles owned,  
30 leased, or rented by a person's employer and on those vehicles whose

1 care and/or maintenance is the temporary responsibility of the  
2 employer, and driven at the direction of a person's employer as a  
3 requirement of employment during working hours. The person must  
4 provide the department with a declaration pursuant to RCW 9A.72.085  
5 from his or her employer stating that the person's employment requires  
6 the person to operate a vehicle owned by the employer or other persons  
7 during working hours.

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

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

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

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

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

29 (3) Upon receipt of evidence that a holder of an ignition interlock  
30 driver's license granted under this subsection no longer has a  
31 functioning ignition interlock device installed on all vehicles  
32 operated by the driver, the director shall give written notice by  
33 first-class mail to the driver that the ignition interlock driver's  
34 license shall be canceled. ~~((The effective date of cancellation shall~~  
35 ~~be fifteen days from the date of mailing the notice.))~~ If at any time  
36 before the cancellation goes into effect the driver submits evidence  
37 that a functioning ignition interlock device has been installed on all  
38 vehicles operated by the driver, the cancellation shall be stayed. If

1 the cancellation becomes effective, the driver may obtain, at no  
2 additional charge, a new ignition interlock driver's license upon  
3 submittal of evidence that a functioning ignition interlock device has  
4 been installed on all vehicles operated by the driver.

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

8 (5) The director shall cancel an ignition interlock driver's  
9 license (~~(upon receipt of)~~) after receiving notice that the holder  
10 thereof has been convicted of operating a motor vehicle in violation of  
11 its restrictions, no longer meets the eligibility requirements, or  
12 (~~(of)~~) has been convicted of or found to have committed a separate  
13 offense or any other act or omission that under this chapter would  
14 warrant suspension or revocation of a regular driver's license. The  
15 department must give notice of the cancellation (~~(is effective as of~~  
16 ~~the date of the conviction, and continues with the same force and~~  
17 ~~effect as any suspension or revocation under this title)~~) as provided  
18 under RCW 46.20.245. A person whose ignition interlock driver's  
19 license has been canceled under this section may reapply for a new  
20 ignition interlock driver's license if he or she is otherwise qualified  
21 under this section and pays the fee required under RCW 46.20.380.

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

28 (b) The department shall deposit the proceeds of the twenty-dollar  
29 fee into the ignition interlock device revolving account. Expenditures  
30 from the account may be used only to administer and operate the  
31 ignition interlock device revolving account program. The department  
32 shall adopt rules to provide monetary assistance according to greatest  
33 need and when funds are available.

34 (7) The department shall adopt rules to implement ignition  
35 interlock licensing. The department shall consult with the  
36 administrative office of the courts, the state patrol, the Washington  
37 association of sheriffs and police chiefs, ignition interlock

1 companies, and any other organization or entity the department deems  
2 appropriate.

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

5 (1) Any person licensed under this chapter who is convicted of an  
6 offense relating to motor vehicles for which suspension or revocation  
7 of the driver's license is mandatory, other than vehicular homicide,  
8 vehicular assault, driving while under the influence of intoxicating  
9 liquor or any drug, or being in actual physical control of a motor  
10 vehicle while under the influence of intoxicating liquor or any drug,  
11 may submit to the department an application for a temporary restricted  
12 driver's license. The department, upon receipt of the prescribed fee  
13 and upon determining that the petitioner is eligible to receive the  
14 license, may issue a temporary restricted driver's license and may set  
15 definite restrictions as provided in RCW 46.20.394.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (d) Upon receipt of evidence that a holder of an occupational  
25 driver's license granted under this subsection is no longer enrolled in  
26 an apprenticeship or on-the-job training program, the director shall  
27 give written notice by first-class mail to the driver that the  
28 occupational driver's license shall be canceled. (~~The effective date  
29 of cancellation shall be fifteen days from the date of mailing the  
30 notice.~~) If at any time before the cancellation goes into effect the  
31 driver submits evidence of continued enrollment in the program, the  
32 cancellation shall be stayed. If the cancellation becomes effective,  
33 the driver may obtain, at no additional charge, a new occupational  
34 driver's license upon submittal of evidence of enrollment in another  
35 program that meets the criteria set forth in this subsection; and

36 (e) The department shall not issue an occupational driver's license  
37 under (b)(iv) of this subsection if the applicant is able to receive

1 transit services sufficient to allow for the applicant's participation  
2 in the programs referenced under (b)(iv) of this subsection.

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

6 (5) The director shall cancel an occupational or temporary  
7 restricted driver's license (~~(upon receipt of)~~) after receiving notice  
8 that the holder thereof has been convicted of operating a motor vehicle  
9 in violation of its restrictions, no longer meets the eligibility  
10 requirements, or (~~(of)~~) has been convicted of or found to have  
11 committed a separate offense or any other act or omission that under  
12 this chapter (~~(46.20 RCW)~~) would warrant suspension or revocation of a  
13 regular driver's license. The department must give notice of the  
14 cancellation (~~(is effective as of the date of the conviction, and~~  
15 ~~continues with the same force and effect as any suspension or~~  
16 ~~revocation under this title)~~) as provided under RCW 46.20.245. A  
17 person whose occupational or temporary restricted driver's license has  
18 been canceled under this section may reapply for a new occupational or  
19 temporary restricted driver's license if he or she is otherwise  
20 qualified under this section and pays the fee required under RCW  
21 46.20.380.

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

24 (1) The court may order that after a period of suspension,  
25 revocation, or denial of driving privileges, and for up to as long as  
26 the court has jurisdiction, any person convicted of any offense  
27 involving the use, consumption, or possession of alcohol while  
28 operating a motor vehicle may drive only a motor vehicle equipped with  
29 a functioning ignition interlock. The court shall establish a specific  
30 calibration setting at which the interlock will prevent the vehicle  
31 from being started. The court shall also establish the period of time  
32 for which interlock use will be required.

33 (2) Under RCW 46.61.5055(~~(, 10.05.020, or section 18 of this act)~~)  
34 and subject to the exceptions listed in that statute, the court shall  
35 order any person convicted of (~~(an alcohol-related)~~) a violation of RCW  
36 46.61.502 or 46.61.504 or an equivalent local ordinance (~~(or~~  
37 ~~participating in a deferred prosecution program under RCW 10.05.020 or~~

1 ~~section 18 of this act for an alcohol-related violation of RCW~~  
2 ~~46.61.502 or 46.61.504 or an equivalent local ordinance))~~ to apply for  
3 an ignition interlock driver's license from the department under RCW  
4 46.20.385 and to have a functioning ignition interlock device installed  
5 on all motor vehicles operated by the person.

6 (3) The department shall require that, after any applicable period  
7 of suspension, revocation, or denial of driving privileges, a person  
8 may drive only a motor vehicle equipped with a functioning ignition  
9 interlock device if the person is convicted of (~~an alcohol-related~~)  
10 a violation of RCW 46.61.502 or 46.61.504 or an equivalent local or  
11 out-of-state statute or ordinance.

12 The department may waive the requirement for the use of such a  
13 device if it concludes that such devices are not reasonably available  
14 in the local area. The installation of an ignition interlock device is  
15 not necessary on vehicles owned, leased, or rented by a person's  
16 employer and on those vehicles whose care and/or maintenance is the  
17 temporary responsibility of the employer, and driven at the direction  
18 of a person's employer as a requirement of employment during working  
19 hours. The person must provide the department with a declaration  
20 pursuant to RCW 9A.72.085 from his or her employer stating that the  
21 person's employment requires the person to operate a vehicle owned by  
22 the employer or other persons during working hours.

23 The ignition interlock device shall be calibrated to prevent the  
24 motor vehicle from being started when the breath sample provided has an  
25 alcohol concentration of 0.025 or more. Subject to the provisions of  
26 subsection (4) of this section, the period of time of the restriction  
27 will be (~~as follows~~) no less than:

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

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

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

34 (4) A restriction imposed under subsection (3) of this section  
35 shall remain in effect until the department receives a declaration from  
36 the person's ignition interlock device vendor, in a form provided or  
37 approved by the department, certifying that there have been none of the

1 following incidents in the four consecutive months prior to the date of  
2 release:

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

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

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

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

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

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

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

36 (ii) By a fine of not less than three hundred fifty dollars nor



1 more than five thousand dollars. Three hundred fifty dollars of the  
2 fine may not be suspended or deferred unless the court finds the  
3 offender to be indigent; or

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

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

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

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

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

36 (i) By imprisonment for not less than thirty days nor more than one  
37 year and sixty days of electronic home monitoring. The offender shall  
38 pay for the cost of the electronic monitoring. The county or

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

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

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

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

36 (ii) By a fine of not less than seven hundred fifty dollars nor  
37 more than five thousand dollars. Seven hundred fifty dollars of the

1 fine may not be suspended or deferred unless the court finds the  
2 offender to be indigent.

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

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

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

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

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

35 (i) By imprisonment for not less than one hundred twenty days nor  
36 more than one year and one hundred fifty days of electronic home  
37 monitoring. The offender shall pay for the cost of the electronic  
38 monitoring. The county or municipality where the penalty is being

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

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

17 (4) A person who is convicted of a violation of RCW 46.61.502 or  
18 46.61.504 shall be punished under chapter 9.94A RCW if: (a) The person  
19 has four or more prior offenses within ten years; or (b) the person has  
20 ever previously been convicted of: (i) A violation of RCW 46.61.520  
21 committed while under the influence of intoxicating liquor or any drug;  
22 (ii) a violation of RCW 46.61.522 committed while under the influence  
23 of intoxicating liquor or any drug; or (iii) an out-of-state offense  
24 comparable to the offense specified in (b)(i) or (ii) of this  
25 subsection.

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

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

1 RCW 9A.72.085 from his or her employer stating that the person's  
2 employment requires the person to operate a vehicle owned by the  
3 employer or other persons during working hours.

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

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

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

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

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

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

26 (f) If the court orders that a person (~~obtain~~) refrain from  
27 consuming any alcohol and requires the person to apply for an ignition  
28 interlock driver's license (~~and operate only vehicles equipped with a~~  
29 functioning ignition interlock device is waived by the court), and the  
30 person states that he or she does not operate a motor vehicle or the  
31 person is ineligible to obtain an ignition interlock driver's license,  
32 the court shall order the person to submit to alcohol monitoring  
33 through an alcohol detection breathalyzer device, transdermal sensor  
34 device, or other technology designed to detect alcohol in a person's  
35 system. The person shall pay for the cost of the monitoring. The  
36 county or municipality where the penalty is being imposed shall  
37 determine the cost.

1           (~~(f)~~) (g) The period of time for which ignition interlock use or  
2 alcohol monitoring is required will be as follows:

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

5           (ii) For a person who has previously been restricted under (~~(f)~~)  
6 (g)(i) of this subsection, a period of five years;

7           (iii) For a person who has previously been restricted under (~~(f)~~)  
8 (g)(ii) of this subsection, a period of ten years.

9           (6) If a person who is convicted of a violation of RCW 46.61.502 or  
10 46.61.504 committed the offense while a passenger under the age of  
11 sixteen was in the vehicle, the court shall:

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

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

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

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

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

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

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

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

36           (i) Where there has been no prior offense within seven years, be  
37 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) If the person's alcohol concentration was at least 0.15:

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

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

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

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

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

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

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

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

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

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

32 (11)(a) In addition to any nonsuspendable and nondeferrable jail  
33 sentence required by this section, whenever the court imposes less than  
34 one year in jail, the court shall also suspend but shall not defer a  
35 period of confinement for a period not exceeding five years. The court  
36 shall impose conditions of probation that include: (i) Not driving a  
37 motor vehicle within this state without a valid license to drive and  
38 proof of financial responsibility for the future; (ii) not driving a

1 motor vehicle within this state while having an alcohol concentration  
2 of 0.08 or more within two hours after driving; and (iii) not refusing  
3 to submit to a test of his or her breath or blood to determine alcohol  
4 concentration upon request of a law enforcement officer who has  
5 reasonable grounds to believe the person was driving or was in actual  
6 physical control of a motor vehicle within this state while under the  
7 influence of intoxicating liquor. The court may impose conditions of  
8 probation that include nonrepetition, installation of an ignition  
9 interlock device on the probationer's motor vehicle, alcohol or drug  
10 treatment, supervised probation, or other conditions that may be  
11 appropriate. The sentence may be imposed in whole or in part upon  
12 violation of a condition of probation during the suspension period.

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

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

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

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

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

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

35 Whenever the mandatory minimum term of electronic home monitoring  
36 is waived, the court shall state in writing the reason for granting the  
37 waiver and the facts upon which the waiver is based, and shall impose



1 an alternative sentence with similar punitive consequences. The  
2 alternative sentence may include, but is not limited to, additional  
3 jail time, work crew, or work camp.

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

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

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

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

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

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

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

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

24 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
25 9A.36.050 or an equivalent local ordinance, if the conviction is the  
26 result of a charge that was originally filed as a violation of RCW  
27 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
28 46.61.520 or 46.61.522;

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

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

35 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
36 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
37 ordinance, if the charge under which the deferred prosecution was

1 granted was originally filed as a violation of RCW 46.61.502 or  
2 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
3 46.61.522;

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

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

11 (c) "Within ten years" means that the arrest for a prior offense  
12 occurred within ten years ((of)) before or after the arrest for the  
13 current offense.

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

16 If a person is required, as part of the person's judgment and  
17 sentence, to install an ignition interlock device on all motor vehicles  
18 operated by the person and the person is under the jurisdiction of the  
19 municipality or county probation or supervision department, the  
20 probation or supervision department must verify the installation of the  
21 ignition interlock device or devices. The municipality or county  
22 probation or supervision department satisfies the requirement to verify  
23 the installation or installations if the municipality or county  
24 probation or supervision department receives written verification by  
25 one or more companies doing business in the state that it has installed  
26 the required device on a vehicle owned or operated by the person. The  
27 municipality or county shall have no further obligation to supervise  
28 the use of the ignition interlock device or devices by the person and  
29 shall not be civilly liable for any injuries or damages caused by the  
30 person for failing to use an ignition interlock device or for driving  
31 under the influence of intoxicating liquor or any drug or being in  
32 actual physical control of a motor vehicle under the influence of  
33 intoxicating liquor or any drug.

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

36 (1) Any person convicted for violation of any restriction of an

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

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

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

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

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

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

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

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

9 (ii) A previous conviction under this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (a) For a conviction of driving while suspended or revoked in the  
38 first degree, as provided by subsection (1)(a) of this section, extend

1 the period of administrative revocation imposed under chapter 46.65 RCW  
2 for an additional period of one year from and after the date the person  
3 would otherwise have been entitled to apply for a new license or have  
4 his or her driving privilege restored; or

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

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

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

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

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

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

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

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

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

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



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

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

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

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

- 32           (1) Prior deferred prosecution has been granted to the defendant;
- 33           (2) Failure of the court to obtain proof of insurance or a  
34 treatment plan conforming to the requirements of this chapter;
- 35           (3) Failure of the court to comply with the requirements of RCW  
36 10.05.100;

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

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

9 NEW SECTION. **Sec. 12.** This act takes effect January 1, 2011."

**2SHB 2742** - S COMM AMD  
By Committee on Judiciary

**ADOPTED AND ENGROSSED 03/05/2010**

10 On page 1, line 2 of the title, after "drugs;" strike the remainder  
11 of the title and insert "amending RCW 46.20.385, 46.20.391, 46.20.720,  
12 46.61.5055, 46.20.410, 46.20.342, 46.20.740, 10.05.020, 10.05.090, and  
13 10.05.160; adding a new section to chapter 46.61 RCW; prescribing  
14 penalties; and providing an effective date."

--- END ---