

E2SHB 1789 - S COMM AMD
By Committee on Judiciary

OUT OF ORDER 04/08/2011

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

3 "Sec. 1. RCW 46.20.385 and 2010 c 269 s 1 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 a violation of RCW 46.61.502 or 46.61.504
7 or an equivalent local or out-of-state statute or ordinance, or a
8 violation of RCW 46.61.520(1)(a) or 46.61.522(1)(b), or who has had or
9 will have his or her license suspended, revoked, or denied under RCW
10 46.20.3101, may submit to the department an application for an ignition
11 interlock driver's license. The department, upon receipt of the
12 prescribed fee and upon determining that the petitioner is eligible to
13 receive the license, may issue an ignition interlock driver's license.

14 (b) A person may apply for an ignition interlock driver's license
15 anytime, including immediately after receiving the notices under RCW
16 46.20.308 or after his or her license is suspended, revoked, or denied.
17 A person receiving an ignition interlock driver's license waives his or
18 her right to a hearing or appeal under RCW 46.20.308.

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

22 (i) The department shall require the person to maintain the device
23 on all vehicles operated by the person and shall restrict the person to
24 operating only vehicles equipped with the device, for the remainder of
25 the period of suspension, revocation, or denial. The installation of
26 an ignition interlock device is not necessary on vehicles owned,
27 leased, or rented by a person's employer and on those vehicles whose
28 care and/or maintenance is the temporary responsibility of the
29 employer, and driven at the direction of a person's employer as a
30 requirement of employment during working hours. The person must

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

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

13 (iii) The time period during which the person is licensed under
14 this section shall apply on a day-for-day basis toward satisfying the
15 period of time the ignition interlock device restriction is required
16 under RCW 46.20.720 and 46.61.5055. Beginning with incidents occurring
17 on or after the effective date of this section, when calculating the
18 period of time for the restriction under RCW 46.20.720(3), the
19 department must also give the person a day-for-day credit for the time
20 period, beginning from the date of the incident, during which the
21 person kept an ignition interlock device installed on all vehicles the
22 person operates. For the purposes of this subsection (1)(c)(iii), the
23 term "all vehicles" does not include vehicles that would be subject to
24 the employer exception under RCW 46.20.720(3).

25 (2) An applicant for an ignition interlock driver's license who
26 qualifies under subsection (1) of this section is eligible to receive
27 a license only if 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. If at any time before the cancellation goes
35 into effect the driver submits evidence that a functioning ignition
36 interlock device has been installed on all vehicles operated by the
37 driver, the cancellation shall be stayed. If the cancellation becomes
38 effective, the driver may obtain, at no additional charge, a new

1 ignition interlock driver's license upon submittal of evidence that a
2 functioning ignition interlock device has been installed on all
3 vehicles operated by the driver.

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

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

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

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

31 (7) The department shall adopt rules to implement ignition
32 interlock licensing. The department shall consult with the
33 administrative office of the courts, the state patrol, the Washington
34 association of sheriffs and police chiefs, ignition interlock
35 companies, and any other organization or entity the department deems
36 appropriate.

1 **Sec. 2.** RCW 46.61.502 and 2008 c 282 s 20 are each amended to read
2 as follows:

3 (1) A person is guilty of driving while under the influence of
4 intoxicating liquor or any drug if the person drives a vehicle within
5 this state:

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

9 (b) While the person is under the influence of or affected by
10 intoxicating liquor or any drug; or

11 (c) While the person is under the combined influence of or affected
12 by intoxicating liquor and any drug.

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

17 (3) It is an affirmative defense to a violation of subsection
18 (1)(a) of this section which the defendant must prove by a
19 preponderance of the evidence that the defendant consumed a sufficient
20 quantity of alcohol after the time of driving and before the
21 administration of an analysis of the person's breath or blood to cause
22 the defendant's alcohol concentration to be 0.08 or more within two
23 hours after driving. The court shall not admit evidence of this
24 defense unless the defendant notifies the prosecution prior to the
25 omnibus or pretrial hearing in the case of the defendant's intent to
26 assert the affirmative defense.

27 (4) Analyses of blood or breath samples obtained more than two
28 hours after the alleged driving may be used as evidence that within two
29 hours of the alleged driving, a person had an alcohol concentration of
30 0.08 or more in violation of subsection (1)(a) of this section, and in
31 any case in which the analysis shows an alcohol concentration above
32 0.00 may be used as evidence that a person was under the influence of
33 or affected by intoxicating liquor or any drug in violation of
34 subsection (1)(b) or (c) of this section.

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

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

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

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

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

6 (ii) Vehicular assault while under the influence of intoxicating
7 liquor or any drug, RCW 46.61.522(1)(b)(~~7-07~~);

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

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

11 **Sec. 3.** RCW 46.61.504 and 2008 c 282 s 21 are each amended to read
12 as follows:

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

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

21 (b) While the person is under the influence of or affected by
22 intoxicating liquor or any drug; or

23 (c) While the person is under the combined influence of or affected
24 by intoxicating liquor and any drug.

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

31 (3) It is an affirmative defense to a violation of subsection
32 (1)(a) of this section which the defendant must prove by a
33 preponderance of the evidence that the defendant consumed a sufficient
34 quantity of alcohol after the time of being in actual physical control
35 of the vehicle and before the administration of an analysis of the
36 person's breath or blood to cause the defendant's alcohol concentration
37 to be 0.08 or more within two hours after being in such control. The

1 court shall not admit evidence of this defense unless the defendant
2 notifies the prosecution prior to the omnibus or pretrial hearing in
3 the case of the defendant's intent to assert the affirmative defense.

4 (4) Analyses of blood or breath samples obtained more than two
5 hours after the alleged being in actual physical control of a vehicle
6 may be used as evidence that within two hours of the alleged being in
7 such control, a person had an alcohol concentration of 0.08 or more in
8 violation of subsection (1)(a) of this section, and in any case in
9 which the analysis shows an alcohol concentration above 0.00 may be
10 used as evidence that a person was under the influence of or affected
11 by intoxicating liquor or any drug in violation of subsection (1)(b) or
12 (c) of this section.

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

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

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

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

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

22 (ii) Vehicular assault while under the influence of intoxicating
23 liquor or any drug, RCW 46.61.522(1)(b)((~~7-07~~));

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

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

27 **Sec. 4.** RCW 46.61.500 and 1990 c 291 s 1 are each amended to read
28 as follows:

29 (1) Any person who drives any vehicle in willful or wanton
30 disregard for the safety of persons or property is guilty of reckless
31 driving. Violation of the provisions of this section is a gross
32 misdemeanor punishable by imprisonment of not more than one year and by
33 a fine of not more than five thousand dollars.

34 (2) The license or permit to drive or any nonresident privilege of
35 any person convicted of reckless driving shall be suspended by the
36 department for not less than thirty days.

1 (3)(a) Except as provided under (b) of this subsection, a person
2 convicted of reckless driving who has one or more prior offenses as
3 defined in RCW 46.61.5055(14) within seven years shall be required,
4 under RCW 46.20.720, to install an ignition interlock device on all
5 vehicles operated by the person if the conviction is the result of a
6 charge that was originally filed as a violation of RCW 46.61.502,
7 46.61.504, or an equivalent local ordinance.

8 (b) A person convicted of reckless driving shall be required, under
9 RCW 46.20.720, to install an ignition interlock device on all vehicles
10 operated by the person if the conviction is the result of a charge that
11 was originally filed as a violation of RCW 46.61.520 committed while
12 under the influence of intoxicating liquor or any drug or RCW 46.61.522
13 committed while under the influence of intoxicating liquor or any drug.

14 **Sec. 5.** RCW 46.61.5249 and 1997 c 66 s 4 are each amended to read
15 as follows:

16 (1)(a) A person is guilty of negligent driving in the first degree
17 if he or she operates a motor vehicle in a manner that is both
18 negligent and endangers or is likely to endanger any person or
19 property, and exhibits the effects of having consumed liquor or an
20 illegal drug.

21 (b) It is an affirmative defense to negligent driving in the first
22 degree by means of exhibiting the effects of having consumed an illegal
23 drug that must be proved by the defendant by a preponderance of the
24 evidence, that the driver has a valid prescription for the drug
25 consumed, and has been consuming it according to the prescription
26 directions and warnings.

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

28 (2) For the purposes of this section:

29 (a) "Negligent" means the failure to exercise ordinary care, and is
30 the doing of some act that a reasonably careful person would not do
31 under the same or similar circumstances or the failure to do something
32 that a reasonably careful person would do under the same or similar
33 circumstances.

34 (b) "Exhibiting the effects of having consumed liquor" means that
35 a person has the odor of liquor on his or her breath, or that by
36 speech, manner, appearance, behavior, lack of coordination, or
37 otherwise exhibits that he or she has consumed liquor, and either:

1 (i) Is in possession of or in close proximity to a container that
2 has or recently had liquor in it; or

3 (ii) Is shown by other evidence to have recently consumed liquor.

4 (c) "Exhibiting the effects of having consumed an illegal drug"
5 means that a person by speech, manner, appearance, behavior, lack of
6 coordination, or otherwise exhibits that he or she has consumed an
7 illegal drug and either:

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

9 (ii) Is shown by other evidence to have recently consumed an
10 illegal drug.

11 (d) "Illegal drug" means a controlled substance under chapter 69.50
12 RCW for which the driver does not have a valid prescription or that is
13 not being consumed in accordance with the prescription directions and
14 warnings, or a legend drug under chapter 69.41 RCW for which the driver
15 does not have a valid prescription or that is not being consumed in
16 accordance with the prescription directions and warnings.

17 (3) Any act prohibited by this section that also constitutes a
18 crime under any other law of this state may be the basis of prosecution
19 under such other law notwithstanding that it may also be the basis for
20 prosecution under this section.

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

25 **Sec. 6.** RCW 46.20.720 and 2010 c 269 s 3 are each amended to read
26 as follows:

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

36 (2) Under RCW 46.61.5055 and subject to the exceptions listed in
37 that statute, the court shall order any person convicted of a violation

1 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply
2 for an ignition interlock driver's license from the department under
3 RCW 46.20.385 and to have a functioning ignition interlock device
4 installed on all motor vehicles operated by the person. The court
5 shall order any person participating in a deferred prosecution program
6 under RCW 10.05.020 for a violation of RCW 46.61.502 or 46.61.504 or an
7 equivalent local ordinance to have a functioning ignition interlock
8 device installed on all motor vehicles operated by the person.

9 (3) The department shall require that, after any applicable period
10 of suspension, revocation, or denial of driving privileges, a person
11 may drive only a motor vehicle equipped with a functioning ignition
12 interlock device if the person is convicted of a violation of RCW
13 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute
14 or ordinance. The department shall require that a person may drive
15 only a motor vehicle equipped with a functioning ignition interlock
16 device if the person is convicted of a violation of RCW 46.61.5249 or
17 46.61.500 and is required under RCW 46.61.5249(4) or 46.61.500(3) (a)
18 or (b) to install an ignition interlock device on all vehicles operated
19 by the person.

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

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

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

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

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

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

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

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

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

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

21 **Sec. 7.** RCW 46.61.5055 and 2010 c 269 s 4 are each amended to read
22 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

32 (i) By imprisonment for not less than forty-five days nor more than
33 one year and ninety days of electronic home monitoring. The offender
34 shall pay for the cost of the electronic monitoring. The county or
35 municipality where the penalty is being imposed shall determine the
36 cost. The court may also require the offender's electronic home
37 monitoring device include an alcohol detection breathalyzer, and may
38 restrict the amount of alcohol the offender may consume during the time

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

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

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

17 (a) In the case of a person whose alcohol concentration was less
18 than 0.15, or for whom for reasons other than the person's refusal to
19 take a 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 ninety days nor more than one
22 year and one hundred twenty days of electronic home monitoring. The
23 offender shall pay for the cost of the electronic monitoring. The
24 county or municipality where the penalty is being imposed shall
25 determine the cost. The court may also require the offender's
26 electronic home monitoring device include an alcohol detection
27 breathalyzer, and may restrict the amount of alcohol the offender may
28 consume during the time the offender is on electronic home monitoring.
29 Ninety days of imprisonment and one hundred twenty days of electronic
30 home monitoring may not be suspended or deferred unless the court finds
31 that the imposition of this mandatory minimum sentence would impose a
32 substantial risk to the offender's physical or mental well-being.
33 Whenever the mandatory minimum sentence is suspended or deferred, the
34 court shall state in writing the reason for granting the suspension or
35 deferral and the facts upon which the suspension or deferral is based;
36 and

37 (ii) By a fine of not less than one thousand dollars nor more than

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

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

28 (4) A person who is convicted of a violation of RCW 46.61.502 or
29 46.61.504 shall be punished under chapter 9.94A RCW if:

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

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

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

34 (ii) A violation of RCW 46.61.522 committed while under the
35 influence of intoxicating liquor or any drug; (~~(or)~~)

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

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

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

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

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

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

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

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

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

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

36 (f) If the court orders that a person refrain from consuming any
37 alcohol and requires the person to apply for an ignition interlock
38 driver's license, and the person states that he or she does not operate

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

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

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

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

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

18 (h) Beginning with incidents occurring on or after the effective
19 date of this section, when calculating the period of time for the
20 restriction under RCW 46.20.720(3), the department must also give the
21 person a day-for-day credit for the time period, beginning from the
22 date of the incident, during which the person kept an ignition
23 interlock device installed on all vehicles the person operates. For
24 the purposes of this subsection (5)(h), the term "all vehicles" does
25 not include vehicles that would be subject to the employer exception
26 under RCW 46.20.720(3).

27 (6) If a person who is convicted of a violation of RCW 46.61.502 or
28 46.61.504 committed the offense while a passenger under the age of
29 sixteen was in the vehicle, the court shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 drive already is suspended, revoked, or denied at the time the finding
2 of probation violation is made, the suspension, revocation, or denial
3 then in effect shall be extended by thirty days. The court shall
4 notify the department of any suspension, revocation, or denial or any
5 extension of a suspension, revocation, or denial imposed under this
6 subsection.

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

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

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

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

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

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

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

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

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

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

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

37 (iii) A conviction for a violation of RCW 46.61.520 committed while
38 under the influence of intoxicating liquor or any drug, or a conviction

1 for a violation of RCW 46.61.520 committed in a reckless manner or with
2 the disregard for the safety of others if the conviction is the result
3 of a charge that was originally filed as a violation of RCW 46.61.520
4 committed while under the influence of intoxicating liquor or any drug;

5 (iv) A conviction for a violation of RCW 46.61.522 committed while
6 under the influence of intoxicating liquor or any drug, or a conviction
7 for a violation of RCW 46.61.522 committed in a reckless manner or with
8 the disregard for the safety of others if the conviction is the result
9 of a charge that was originally filed as a violation of RCW 46.61.522
10 committed while under the influence of intoxicating liquor or any drug;

11 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
12 9A.36.050 or an equivalent local ordinance, if the conviction is the
13 result of a charge that was originally filed as a violation of RCW
14 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
15 46.61.520 or 46.61.522;

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

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

22 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
23 prosecution for a violation of RCW 46.61.5249, or an equivalent local
24 ordinance, if the charge under which the deferred prosecution was
25 granted was originally filed as a violation of RCW 46.61.502 or
26 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
27 46.61.522;

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

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

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

1 **Sec. 8.** RCW 10.05.140 and 2004 c 95 s 1 are each amended to read
2 as follows:

3 As a condition of granting a deferred prosecution petition, the
4 court shall order that the petitioner shall not operate a motor vehicle
5 upon the public highways without a valid operator's license and proof
6 of liability insurance. The amount of liability insurance shall be
7 established by the court at not less than that established by RCW
8 46.29.490. As a condition of granting a deferred prosecution petition
9 on any alcohol-dependency based case, the court shall also order the
10 installation of an ignition interlock under RCW 46.20.720. The
11 required periods of use of the interlock shall be not less than the
12 periods provided for in RCW 46.20.720(~~((+2+))~~)(3) (a), (b), and (c). As
13 a condition of granting a deferred prosecution petition, the court may
14 order the petitioner to make restitution and to pay costs as defined in
15 RCW 10.01.160. To help ensure continued sobriety and reduce the
16 likelihood of reoffense, the court may order reasonable conditions
17 during the period of the deferred prosecution including, but not
18 limited to, attendance at self-help recovery support groups for
19 alcoholism or drugs, complete abstinence from alcohol and all
20 nonprescribed mind-altering drugs, periodic urinalysis or breath
21 analysis, and maintaining law-abiding behavior. The court may
22 terminate the deferred prosecution program upon violation of the
23 deferred prosecution order.

24 **Sec. 9.** RCW 9.94A.533 and 2009 c 141 s 2 are each amended to read
25 as follows:

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

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

34 (3) The following additional times shall be added to the standard
35 sentence range for felony crimes committed after July 23, 1995, if the
36 offender or an accomplice was armed with a firearm as defined in RCW
37 9.41.010 and the offender is being sentenced for one of the crimes

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

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

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

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

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

30 (e) Notwithstanding any other provision of law, all firearm
31 enhancements under this section are mandatory, shall be served in total
32 confinement, and shall run consecutively to all other sentencing
33 provisions, including other firearm or deadly weapon enhancements, for
34 all offenses sentenced under this chapter. However, whether or not a
35 mandatory minimum term has expired, an offender serving a sentence
36 under this subsection may be granted an extraordinary medical placement
37 when authorized under RCW 9.94A.728(~~(+4)~~)(3);

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

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

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

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

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

37 (c) Six months for any felony defined under any law as a class C

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

3 (d) If the offender is being sentenced under (a), (b), and/or (c)
4 of this subsection for any deadly weapon enhancements and the offender
5 has previously been sentenced for any deadly weapon enhancements after
6 July 23, 1995, under (a), (b), and/or (c) of this subsection or
7 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
8 weapon enhancements under this subsection shall be twice the amount of
9 the enhancement listed;

10 (e) Notwithstanding any other provision of law, all deadly weapon
11 enhancements under this section are mandatory, shall be served in total
12 confinement, and shall run consecutively to all other sentencing
13 provisions, including other firearm or deadly weapon enhancements, for
14 all offenses sentenced under this chapter. However, whether or not a
15 mandatory minimum term has expired, an offender serving a sentence
16 under this subsection may be granted an extraordinary medical placement
17 when authorized under RCW 9.94A.728(~~(+4)~~)(3);

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

23 (g) If the standard sentence range under this section exceeds the
24 statutory maximum sentence for the offense, the statutory maximum
25 sentence shall be the presumptive sentence unless the offender is a
26 persistent offender. If the addition of a deadly weapon enhancement
27 increases the sentence so that it would exceed the statutory maximum
28 for the offense, the portion of the sentence representing the
29 enhancement may not be reduced.

30 (5) The following additional times shall be added to the standard
31 sentence range if the offender or an accomplice committed the offense
32 while in a county jail or state correctional facility and the offender
33 is being sentenced for one of the crimes listed in this subsection. If
34 the offender or an accomplice committed one of the crimes listed in
35 this subsection while in a county jail or state correctional facility,
36 and the offender is being sentenced for an anticipatory offense under
37 chapter 9A.28 RCW to commit one of the crimes listed in this

1 subsection, the following additional times shall be added to the
2 standard sentence range determined under subsection (2) of this
3 section:

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

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

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

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

12 (6) An additional twenty-four months shall be added to the standard
13 sentence range for any ranked offense involving a violation of chapter
14 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
15 (~~9.94A.605~~) 9.94A.827. All enhancements under this subsection shall
16 run consecutively to all other sentencing provisions, for all offenses
17 sentenced under this chapter.

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

25 (8)(a) The following additional times shall be added to the
26 standard sentence range for felony crimes committed on or after July 1,
27 2006, if the offense was committed with sexual motivation, as that term
28 is defined in RCW 9.94A.030. If the offender is being sentenced for
29 more than one offense, the sexual motivation enhancement must be added
30 to the total period of total confinement for all offenses, regardless
31 of which underlying offense is subject to a sexual motivation
32 enhancement. If the offender committed the offense with sexual
33 motivation and the offender is being sentenced for an anticipatory
34 offense under chapter 9A.28 RCW, the following additional times shall
35 be added to the standard sentence range determined under subsection (2)
36 of this section based on the felony crime of conviction as classified
37 under RCW 9A.28.020:

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

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

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

9 (iv) If the offender is being sentenced for any sexual motivation
10 enhancements under (i), (ii), and/or (iii) of this subsection and the
11 offender has previously been sentenced for any sexual motivation
12 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
13 this subsection, all sexual motivation enhancements under this
14 subsection shall be twice the amount of the enhancement listed;

15 (b) Notwithstanding any other provision of law, all sexual
16 motivation enhancements under this subsection are mandatory, shall be
17 served in total confinement, and shall run consecutively to all other
18 sentencing provisions, including other sexual motivation enhancements,
19 for all offenses sentenced under this chapter. However, whether or not
20 a mandatory minimum term has expired, an offender serving a sentence
21 under this subsection may be granted an extraordinary medical placement
22 when authorized under RCW 9.94A.728(~~(+4)~~)(3);

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

25 (d) If the standard sentence range under this subsection exceeds
26 the statutory maximum sentence for the offense, the statutory maximum
27 sentence shall be the presumptive sentence unless the offender is a
28 persistent offender. If the addition of a sexual motivation
29 enhancement increases the sentence so that it would exceed the
30 statutory maximum for the offense, the portion of the sentence
31 representing the enhancement may not be reduced;

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

35 (f) Nothing in this subsection prevents a sentencing court from
36 imposing a sentence outside the standard sentence range pursuant to RCW
37 9.94A.535.

1 (9) An additional one-year enhancement shall be added to the
2 standard sentence range for the felony crimes of RCW 9A.44.073,
3 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
4 or after July 22, 2007, if the offender engaged, agreed, or offered to
5 engage the victim in the sexual conduct in return for a fee. If the
6 offender is being sentenced for more than one offense, the one-year
7 enhancement must be added to the total period of total confinement for
8 all offenses, regardless of which underlying offense is subject to the
9 enhancement. If the offender is being sentenced for an anticipatory
10 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
11 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
12 solicited another, or conspired to engage, agree, or offer to engage
13 the victim in the sexual conduct in return for a fee, an additional
14 one-year enhancement shall be added to the standard sentence range
15 determined under subsection (2) of this section. For purposes of this
16 subsection, "sexual conduct" means sexual intercourse or sexual
17 contact, both as defined in chapter 9A.44 RCW.

18 (10)(a) For a person age eighteen or older convicted of any
19 criminal street gang-related felony offense for which the person
20 compensated, threatened, or solicited a minor in order to involve the
21 minor in the commission of the felony offense, the standard sentence
22 range is determined by locating the sentencing grid sentence range
23 defined by the appropriate offender score and the seriousness level of
24 the completed crime, and multiplying the range by one hundred twenty-
25 five percent. If the standard sentence range under this subsection
26 exceeds the statutory maximum sentence for the offense, the statutory
27 maximum sentence is the presumptive sentence unless the offender is a
28 persistent offender.

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

32 (c) The increased penalty specified in (a) of this subsection is
33 unavailable in the event that the prosecution gives notice that it will
34 seek an exceptional sentence based on an aggravating factor under RCW
35 9.94A.535.

36 (11) An additional twelve months and one day shall be added to the
37 standard sentence range for a conviction of attempting to elude a

1 police vehicle as defined by RCW 46.61.024, if the conviction included
2 a finding by special allegation of endangering one or more persons
3 under RCW 9.94A.834.

4 (12) An additional twelve months shall be added to the standard
5 sentence range for an offense that is also a violation of RCW
6 9.94A.831."

E2SHB 1789 - S COMM AMD
By Committee on Judiciary

OUT OF ORDER 04/08/2011

7 On page 1, line 2 of the title, after "drugs;" strike the remainder
8 of the title and insert "amending RCW 46.20.385, 46.61.502, 46.61.504,
9 46.61.500, 46.61.5249, 46.20.720, 46.61.5055, 10.05.140, and 9.94A.533;
10 and prescribing penalties."

--- END ---