

2SHB 2443 - S COMM AMD  
By Committee on Judiciary

OUT OF ORDER 03/08/2012

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

3 "Sec. 1. RCW 2.28.175 and 2011 c 293 s 10 are each amended to read  
4 as follows:

5 (1) Counties may establish and operate DUI courts. Municipalities  
6 may enter into cooperative agreements with counties that have DUI  
7 courts to provide DUI court services.

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

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

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

20 (ii) Match, on a dollar-for-dollar basis, state moneys allocated  
21 for DUI court programs with local cash or in-kind resources. Moneys  
22 allocated by the state must be used to supplement, not supplant, other  
23 federal, state, and local funds for DUI court operations and associated  
24 services. However, until June 30, 2014, no match is required for state  
25 moneys expended for the administrative and overhead costs associated  
26 with the operation of a DUI court established as of January 1, 2011.

27 (b) Any (~~county~~) jurisdiction that establishes a DUI court  
28 pursuant to this section shall establish minimum requirements for the  
29 participation of offenders in the program. The DUI court may adopt

1 local requirements that are more stringent than the minimum. The  
2 minimum requirements are:

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

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

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

11 (A) That is a sex offense;

12 (B) That is a serious violent offense;

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

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

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

17 **Sec. 2.** RCW 9.94A.475 and 2002 c 290 s 15 are each amended to read  
18 as follows:

19 Any and all recommended sentencing agreements or plea agreements  
20 and the sentences for any and all felony crimes shall be made and  
21 retained as public records if the felony crime involves:

22 (1) Any violent offense as defined in this chapter;

23 (2) Any most serious offense as defined in this chapter;

24 (3) Any felony with a deadly weapon special verdict under RCW  
25 (~~9.94A.602~~) 9.94A.825;

26 (4) Any felony with any deadly weapon enhancements under RCW  
27 9.94A.533 (3) or (4), or both; (~~and/or~~)

28 (5) The felony crimes of possession of a machine gun, possessing a  
29 stolen firearm, drive-by shooting, theft of a firearm, unlawful  
30 possession of a firearm in the first or second degree, and/or use of a  
31 machine gun in a felony; or

32 (6) The felony crime of driving a motor vehicle while under the  
33 influence of intoxicating liquor or any drug as defined in RCW  
34 46.61.502, and felony physical control of a motor vehicle while under  
35 the influence of intoxicating liquor or any drug as defined in RCW  
36 46.61.504.

1       **Sec. 3.** RCW 9.94A.640 and 2006 c 73 s 8 are each amended to read  
2 as follows:

3       (1) Every offender who has been discharged under RCW 9.94A.637 may  
4 apply to the sentencing court for a vacation of the offender's record  
5 of conviction. If the court finds the offender meets the tests  
6 prescribed in subsection (2) of this section, the court may clear the  
7 record of conviction by: (a) Permitting the offender to withdraw the  
8 offender's plea of guilty and to enter a plea of not guilty; or (b) if  
9 the offender has been convicted after a plea of not guilty, by the  
10 court setting aside the verdict of guilty; and (c) by the court  
11 dismissing the information or indictment against the offender.

12       (2) An offender may not have the record of conviction cleared if:  
13 (a) There are any criminal charges against the offender pending in any  
14 court of this state or another state, or in any federal court; (b) the  
15 offense was a violent offense as defined in RCW 9.94A.030; (c) the  
16 offense was a crime against persons as defined in RCW 43.43.830; (d)  
17 the offender has been convicted of a new crime in this state, another  
18 state, or federal court since the date of the offender's discharge  
19 under RCW 9.94A.637; (e) the offense is a class B felony and less than  
20 ten years have passed since the date the applicant was discharged under  
21 RCW 9.94A.637; (f) the offense was a class C felony, other than a class  
22 C felony described in RCW 46.61.502(6) or 46.61.504(6), and less than  
23 five years have passed since the date the applicant was discharged  
24 under RCW 9.94A.637; or (g) the offense was a class C felony described  
25 in RCW 46.61.502(6) or 46.61.504(6) (~~and less than ten years have~~  
26 ~~passed since the applicant was discharged under RCW 9.94A.637)).~~

27       (3) Once the court vacates a record of conviction under subsection  
28 (1) of this section, the fact that the offender has been convicted of  
29 the offense shall not be included in the offender's criminal history  
30 for purposes of determining a sentence in any subsequent conviction,  
31 and the offender shall be released from all penalties and disabilities  
32 resulting from the offense. For all purposes, including responding to  
33 questions on employment applications, an offender whose conviction has  
34 been vacated may state that the offender has never been convicted of  
35 that crime. Nothing in this section affects or prevents the use of an  
36 offender's prior conviction in a later criminal prosecution.

1       **Sec. 4.** RCW 9.95.210 and 2011 1st sp.s. c 40 s 7 are each amended  
2 to read as follows:

3       (1)(a) Except as provided in (b) of this subsection in granting  
4 probation, the superior court may suspend the imposition or the  
5 execution of the sentence and may direct that the suspension may  
6 continue upon such conditions and for such time as it shall designate,  
7 not exceeding the maximum term of sentence or two years, whichever is  
8 longer.

9       (b) For a defendant sentenced under RCW 46.61.5055, the superior  
10 court may suspend the imposition or the execution of the sentence and  
11 may direct that the suspension continue upon such conditions and for  
12 such time as the court shall designate, not to exceed five years. The  
13 court shall have continuing jurisdiction and authority to suspend the  
14 execution of all or any part of the sentence upon stated terms,  
15 including installment payment of fines. A defendant who has been  
16 sentenced, and who then fails to appear for any hearing to address the  
17 defendant's compliance with the terms of probation when ordered to do  
18 so by the court shall have the term of probation tolled until such time  
19 as the defendant makes his or her presence known to the court on the  
20 record. Any time before entering an order terminating probation, the  
21 court may modify or revoke its order suspending the imposition or  
22 execution of the sentence if the defendant violates or fails to carry  
23 out any of the conditions of the suspended sentence.

24       (2) In the order granting probation and as a condition thereof, the  
25 superior court may in its discretion imprison the defendant in the  
26 county jail for a period not exceeding one year and may fine the  
27 defendant any sum not exceeding the statutory limit for the offense  
28 committed, and court costs. As a condition of probation, the superior  
29 court shall require the payment of the penalty assessment required by  
30 RCW 7.68.035. The superior court may also require the defendant to  
31 make such monetary payments, on such terms as it deems appropriate  
32 under the circumstances, as are necessary: (a) To comply with any  
33 order of the court for the payment of family support; (b) to make  
34 restitution to any person or persons who may have suffered loss or  
35 damage by reason of the commission of the crime in question or when the  
36 offender pleads guilty to a lesser offense or fewer offenses and agrees  
37 with the prosecutor's recommendation that the offender be required to  
38 pay restitution to a victim of an offense or offenses which are not

1 prosecuted pursuant to a plea agreement; (c) to pay such fine as may be  
2 imposed and court costs, including reimbursement of the state for costs  
3 of extradition if return to this state by extradition was required; (d)  
4 following consideration of the financial condition of the person  
5 subject to possible electronic monitoring, to pay for the costs of  
6 electronic monitoring if that monitoring was required by the court as  
7 a condition of release from custody or as a condition of probation; (e)  
8 to contribute to a county or interlocal drug fund; and (f) to make  
9 restitution to a public agency for the costs of an emergency response  
10 under RCW 38.52.430, and may require bonds for the faithful observance  
11 of any and all conditions imposed in the probation.

12 (3) The superior court shall order restitution in all cases where  
13 the victim is entitled to benefits under the crime victims'  
14 compensation act, chapter 7.68 RCW. If the superior court does not  
15 order restitution and the victim of the crime has been determined to be  
16 entitled to benefits under the crime victims' compensation act, the  
17 department of labor and industries, as administrator of the crime  
18 victims' compensation program, may petition the superior court within  
19 one year of imposition of the sentence for entry of a restitution  
20 order. Upon receipt of a petition from the department of labor and  
21 industries, the superior court shall hold a restitution hearing and  
22 shall enter a restitution order.

23 (4) In granting probation, the superior court may order the  
24 probationer to report to the secretary of corrections or such officer  
25 as the secretary may designate and as a condition of the probation to  
26 follow the instructions of the secretary. If the county legislative  
27 authority has elected to assume responsibility for the supervision of  
28 superior court misdemeanor probationers within its jurisdiction, the  
29 superior court misdemeanor probationer shall report to a probation  
30 officer employed or contracted for by the county. In cases where a  
31 superior court misdemeanor probationer is sentenced in one county, but  
32 resides within another county, there must be provisions for the  
33 probationer to report to the agency having supervision responsibility  
34 for the probationer's county of residence.

35 (5) If the probationer has been ordered to make restitution and the  
36 superior court has ordered supervision, the officer supervising the  
37 probationer shall make a reasonable effort to ascertain whether  
38 restitution has been made. If the superior court has ordered

1 supervision and restitution has not been made as ordered, the officer  
2 shall inform the prosecutor of that violation of the terms of probation  
3 not less than three months prior to the termination of the probation  
4 period. The secretary of corrections will promulgate rules and  
5 regulations for the conduct of the person during the term of probation.  
6 For defendants found guilty in district court, like functions as the  
7 secretary performs in regard to probation may be performed by probation  
8 officers employed for that purpose by the county legislative authority  
9 of the county wherein the court is located.

10 (6) The provisions of RCW 9.94A.501 and 9.94A.5011 apply to  
11 sentences imposed under this section.

12 **Sec. 5.** RCW 9.96.060 and 2001 c 140 s 1 are each amended to read  
13 as follows:

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

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

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

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

33 (c) The offense was a violation of RCW 46.61.502 (driving while  
34 under the influence), 46.61.504 (actual physical control while under  
35 the influence), (~~or~~) 9.91.020 (operating a railroad, etc. while  
36 intoxicated), or the offense is considered a "prior offense" under RCW

1 46.61.5055 and the applicant has had a subsequent alcohol or drug  
2 violation within ten years of the date of arrest for the prior offense;

3 (d) The offense was any misdemeanor or gross misdemeanor violation,  
4 including attempt, of chapter 9.68 RCW (obscenity and pornography),  
5 chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44  
6 RCW (sex offenses);

7 (e) The applicant was convicted of a misdemeanor or gross  
8 misdemeanor offense as defined in RCW 10.99.020, or the court  
9 determines after a review of the court file that the offense was  
10 committed by one family member or household member against another, or  
11 the court, after considering the damage to person or property that  
12 resulted in the conviction, any prior convictions for crimes defined in  
13 RCW 10.99.020, or for comparable offenses in another state or in  
14 federal court, and the totality of the records under review by the  
15 court regarding the conviction being considered for vacation,  
16 determines that the offense involved domestic violence, and any one of  
17 the following factors exist:

18 (i) The applicant has not provided written notification of the  
19 vacation petition to the prosecuting attorney's office that prosecuted  
20 the offense for which vacation is sought, or has not provided that  
21 notification to the court;

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

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

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

34 (f) For any offense other than those described in (e) of this  
35 subsection, less than three years have passed since the person  
36 completed the terms of the sentence, including any financial  
37 obligations;

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

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

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

10 (3) Once the court vacates a record of conviction under subsection  
11 (1) of this section, the person shall be released from all penalties  
12 and disabilities resulting from the offense and the fact that the  
13 person has been convicted of the offense shall not be included in the  
14 person's criminal history for purposes of determining a sentence in any  
15 subsequent conviction. For all purposes, including responding to  
16 questions on employment or housing applications, a person whose  
17 conviction has been vacated under subsection (1) of this section may  
18 state that he or she has never been convicted of that crime. Nothing  
19 in this section affects or prevents the use of an offender's prior  
20 conviction in a later criminal prosecution.

21 (4) All costs incurred by the court and probation services shall be  
22 paid by the person making the motion to vacate the record unless a  
23 determination is made pursuant to chapter 10.101 RCW that the person  
24 making the motion is indigent, at the time the motion is brought.

25 (5) The clerk of the court in which the vacation order is entered  
26 shall immediately transmit the order vacating the conviction to the  
27 Washington state patrol identification section and to the local police  
28 agency, if any, which holds criminal history information for the person  
29 who is the subject of the conviction. The Washington state patrol and  
30 any such local police agency shall immediately update their records to  
31 reflect the vacation of the conviction, and shall transmit the order  
32 vacating the conviction to the federal bureau of investigation. A  
33 conviction that has been vacated under this section may not be  
34 disseminated or disclosed by the state patrol or local law enforcement  
35 agency to any person, except other criminal justice enforcement  
36 agencies.



1       **Sec. 6.** RCW 38.52.430 and 1993 c 251 s 2 are each amended to read  
2 as follows:

3       A person whose intoxication causes an incident resulting in an  
4 appropriate emergency response, and who, in connection with the  
5 incident, has been found guilty of or has had their prosecution  
6 deferred for (1) driving while under the influence of intoxicating  
7 liquor or any drug, RCW 46.61.502; (2) operating an aircraft under the  
8 influence of intoxicants or drugs, RCW 47.68.220; (3) use of a vessel  
9 while under the influence of alcohol or drugs, RCW (~~88.12.100~~)  
10 79A.60.040; (4) vehicular homicide while under the influence of  
11 intoxicating liquor or any drug, RCW 46.61.520(1)(a); or (5) vehicular  
12 assault while under the influence of intoxicating liquor or any drug,  
13 RCW 46.61.522(1)(b), is liable for the expense of an emergency response  
14 by a public agency to the incident.

15       The expense of an emergency response is a charge against the person  
16 liable for expenses under this section. The charge constitutes a debt  
17 of that person and is collectible by the public agency incurring those  
18 costs in the same manner as in the case of an obligation under a  
19 contract, expressed or implied. Following a conviction of an offense  
20 listed in this section, and prior to sentencing, the prosecution may  
21 present to the court information setting forth the expenses incurred by  
22 the public agency for its emergency response to the incident. Upon a  
23 finding by the court that the expenses are reasonable, the court shall  
24 order the defendant to reimburse the public agency. The cost  
25 reimbursement shall be included in the sentencing order as an  
26 additional monetary obligation of the defendant and may not be  
27 substituted for any other fine or cost required or allowed by statute.  
28 The court may establish a payment schedule for the payment of the cost  
29 reimbursement, separate from any payment schedule imposed for other  
30 finances and costs.

31       In no event shall a person's liability under this section for the  
32 expense of an emergency response exceed (~~one~~) two thousand five  
33 hundred dollars for a particular incident.

34       If more than one public agency makes a claim for payment from an  
35 individual for an emergency response to a single incident under the  
36 provisions of this section, and the sum of the claims exceeds the  
37 amount recovered, the division of the amount recovered shall be

1 determined by an interlocal agreement consistent with the requirements  
2 of chapter 39.34 RCW.

3 **Sec. 7.** RCW 46.20.308 and 2008 c 282 s 2 are each amended to read  
4 as follows:

5 (1) Any person who operates a motor vehicle within this state is  
6 deemed to have given consent, subject to the provisions of RCW  
7 46.61.506, to a test or tests of his or her breath or blood for the  
8 purpose of determining the alcohol concentration or presence of any  
9 drug in his or her breath or blood if arrested for any offense where,  
10 at the time of the arrest, the arresting officer has reasonable grounds  
11 to believe the person had been driving or was in actual physical  
12 control of a motor vehicle while under the influence of intoxicating  
13 liquor or any drug or was in violation of RCW 46.61.503. Neither  
14 consent nor this section precludes a police officer from obtaining a  
15 search warrant for a person's breath or blood.

16 (2) The test or tests of breath shall be administered at the  
17 direction of a law enforcement officer having reasonable grounds to  
18 believe the person to have been driving or in actual physical control  
19 of a motor vehicle within this state while under the influence of  
20 intoxicating liquor or any drug or the person to have been driving or  
21 in actual physical control of a motor vehicle while having alcohol in  
22 a concentration in violation of RCW 46.61.503 in his or her system and  
23 being under the age of twenty-one. However, in those instances where  
24 the person is incapable due to physical injury, physical incapacity, or  
25 other physical limitation, of providing a breath sample or where the  
26 person is being treated in a hospital, clinic, doctor's office,  
27 emergency medical vehicle, ambulance, or other similar facility or  
28 where the officer has reasonable grounds to believe that the person is  
29 under the influence of a drug, a blood test shall be administered by a  
30 qualified person as provided in RCW 46.61.506(5). The officer shall  
31 inform the person of his or her right to refuse the breath or blood  
32 test, and of his or her right to have additional tests administered by  
33 any qualified person of his or her choosing as provided in RCW  
34 46.61.506. The officer shall warn the driver, in substantially the  
35 following language, that:

36 (a) If the driver refuses to take the test, the driver's license,

1 permit, or privilege to drive will be revoked or denied for at least  
2 one year; and

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

5 (c) If the driver submits to the test and the test is administered,  
6 the driver's license, permit, or privilege to drive will be suspended,  
7 revoked, or denied for at least ninety days if the driver is age  
8 twenty-one or over and the test indicates the alcohol concentration of  
9 the driver's breath or blood is 0.08 or more, or if the driver is under  
10 age twenty-one and the test indicates the alcohol concentration of the  
11 driver's breath or blood is 0.02 or more, or if the driver is under age  
12 twenty-one and the driver is in violation of RCW 46.61.502 or  
13 46.61.504; and

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

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

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

36 (5) If, following his or her arrest and receipt of warnings under  
37 subsection (2) of this section, the person arrested refuses upon the

1 request of a law enforcement officer to submit to a test or tests of  
2 his or her breath or blood, no test shall be given except as authorized  
3 under subsection (3) or (4) of this section.

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

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

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

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

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

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

37 (i) That the officer had reasonable grounds to believe the arrested  
38 person had been driving or was in actual physical control of a motor

1 vehicle within this state while under the influence of intoxicating  
2 liquor or drugs, or both, or was under the age of twenty-one years and  
3 had been driving or was in actual physical control of a motor vehicle  
4 while having an alcohol concentration in violation of RCW 46.61.503;

5 (ii) That after receipt of the warnings required by subsection (2)  
6 of this section the person refused to submit to a test of his or her  
7 blood or breath, or a test was administered and the results indicated  
8 that the alcohol concentration of the person's breath or blood was 0.08  
9 or more if the person is age twenty-one or over, or was 0.02 or more if  
10 the person is under the age of twenty-one; and

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

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

22 (8) A person receiving notification under subsection (6)(b) of this  
23 section may, within twenty days after the notice has been given,  
24 request in writing a formal hearing before the department. The person  
25 shall pay a fee of two hundred dollars as part of the request. If the  
26 request is mailed, it must be postmarked within twenty days after  
27 receipt of the notification. Upon timely receipt of such a request for  
28 a formal hearing, including receipt of the required two hundred dollar  
29 fee, the department shall afford the person an opportunity for a  
30 hearing. The department may waive the required two hundred dollar fee  
31 if the person is an indigent as defined in RCW 10.101.010. Except as  
32 otherwise provided in this section, the hearing is subject to and shall  
33 be scheduled and conducted in accordance with RCW 46.20.329 and  
34 46.20.332. The hearing shall be conducted in the county of the arrest,  
35 except that all or part of the hearing may, at the discretion of the  
36 department, be conducted by telephone or other electronic means. The  
37 hearing shall be held within sixty days following the arrest or  
38 following the date notice has been given in the event notice is given

1 by the department following a blood test, unless otherwise agreed to by  
2 the department and the person, in which case the action by the  
3 department shall be stayed, and any valid temporary license marked  
4 under subsection (6)(c) of this section extended, if the person is  
5 otherwise eligible for licensing. For the purposes of this section,  
6 the scope of the hearing shall cover the issues of whether a law  
7 enforcement officer had reasonable grounds to believe the person had  
8 been driving or was in actual physical control of a motor vehicle  
9 within this state while under the influence of intoxicating liquor or  
10 any drug or had been driving or was in actual physical control of a  
11 motor vehicle within this state while having alcohol in his or her  
12 system in a concentration of 0.02 or more if the person was under the  
13 age of twenty-one, whether the person was placed under arrest, and (a)  
14 whether the person refused to submit to the test or tests upon request  
15 of the officer after having been informed that such refusal would  
16 result in the revocation of the person's license, permit, or privilege  
17 to drive, or (b) if a test or tests were administered, whether the  
18 applicable requirements of this section were satisfied before the  
19 administration of the test or tests, whether the person submitted to  
20 the test or tests, or whether a test was administered without express  
21 consent as permitted under this section, and whether the test or tests  
22 indicated that the alcohol concentration of the person's breath or  
23 blood was 0.08 or more if the person was age twenty-one or over at the  
24 time of the arrest, or 0.02 or more if the person was under the age of  
25 twenty-one at the time of the arrest. The sworn report or report under  
26 a declaration authorized by RCW 9A.72.085 submitted by a law  
27 enforcement officer is prima facie evidence that the officer had  
28 reasonable grounds to believe the person had been driving or was in  
29 actual physical control of a motor vehicle within this state while  
30 under the influence of intoxicating liquor or drugs, or both, or the  
31 person had been driving or was in actual physical control of a motor  
32 vehicle within this state while having alcohol in his or her system in  
33 a concentration of 0.02 or more and was under the age of twenty-one and  
34 that the officer complied with the requirements of this section.

35 A hearing officer shall conduct the hearing, may issue subpoenas  
36 for the attendance of witnesses and the production of documents, and  
37 shall administer oaths to witnesses. The hearing officer shall not  
38 issue a subpoena for the attendance of a witness at the request of the

1 person unless the request is accompanied by the fee required by RCW  
2 5.56.010 for a witness in district court. The sworn report or report  
3 under a declaration authorized by RCW 9A.72.085 of the law enforcement  
4 officer and any other evidence accompanying the report shall be  
5 admissible without further evidentiary foundation and the  
6 certifications authorized by the criminal rules for courts of limited  
7 jurisdiction shall be admissible without further evidentiary  
8 foundation. The person may be represented by counsel, may question  
9 witnesses, may present evidence, and may testify. The department shall  
10 order that the suspension, revocation, or denial either be rescinded or  
11 sustained.

12 (9) If the suspension, revocation, or denial is sustained after  
13 such a hearing, the person whose license, privilege, or permit is  
14 suspended, revoked, or denied has the right to file a petition in the  
15 superior court of the county of arrest to review the final order of  
16 revocation by the department in the same manner as an appeal from a  
17 decision of a court of limited jurisdiction. Notice of appeal must be  
18 filed within thirty days after the date the final order is served or  
19 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ  
20 1.1, or other statutes or rules referencing de novo review, the appeal  
21 shall be limited to a review of the record of the administrative  
22 hearing. The appellant must pay the costs associated with obtaining  
23 the record of the hearing before the hearing officer. The filing of  
24 the appeal does not stay the effective date of the suspension,  
25 revocation, or denial. A petition filed under this subsection must  
26 include the petitioner's grounds for requesting review. Upon granting  
27 petitioner's request for review, the court shall review the  
28 department's final order of suspension, revocation, or denial as  
29 expeditiously as possible. The review must be limited to a  
30 determination of whether the department has committed any errors of  
31 law. The superior court shall accept those factual determinations  
32 supported by substantial evidence in the record: (a) That were  
33 expressly made by the department; or (b) that may reasonably be  
34 inferred from the final order of the department. The superior court  
35 may reverse, affirm, or modify the decision of the department or remand  
36 the case back to the department for further proceedings. The decision  
37 of the superior court must be in writing and filed in the clerk's  
38 office with the other papers in the case. The court shall state the

1 reasons for the decision. If judicial relief is sought for a stay or  
2 other temporary remedy from the department's action, the court shall  
3 not grant such relief unless the court finds that the appellant is  
4 likely to prevail in the appeal and that without a stay the appellant  
5 will suffer irreparable injury. If the court stays the suspension,  
6 revocation, or denial it may impose conditions on such stay.

7 (10)(a) If a person whose driver's license, permit, or privilege to  
8 drive has been or will be suspended, revoked, or denied under  
9 subsection (7) of this section, other than as a result of a breath or  
10 blood test refusal, and who has not committed an offense for which he  
11 or she was granted a deferred prosecution under chapter 10.05 RCW,  
12 petitions a court for a deferred prosecution on criminal charges  
13 arising out of the arrest for which action has been or will be taken  
14 under subsection (7) of this section, or notifies the department of  
15 licensing of the intent to seek such a deferred prosecution, then the  
16 license suspension or revocation shall be stayed pending entry of the  
17 deferred prosecution. The stay shall not be longer than one hundred  
18 fifty days after the date charges are filed, or two years after the  
19 date of the arrest, whichever time period is shorter. If the court  
20 stays the suspension, revocation, or denial, it may impose conditions  
21 on such stay. If the person is otherwise eligible for licensing, the  
22 department shall issue a temporary license, or extend any valid  
23 temporary license marked under subsection (6) of this section, for the  
24 period of the stay. If a deferred prosecution treatment plan is not  
25 recommended in the report made under RCW 10.05.050, or if treatment is  
26 rejected by the court, or if the person declines to accept an offered  
27 treatment plan, or if the person violates any condition imposed by the  
28 court, then the court shall immediately direct the department to cancel  
29 the stay and any temporary marked license or extension of a temporary  
30 license issued under this subsection.

31 (b) A suspension, revocation, or denial imposed under this section,  
32 other than as a result of a breath or blood test refusal, shall be  
33 stayed if the person is accepted for deferred prosecution as provided  
34 in chapter 10.05 RCW for the incident upon which the suspension,  
35 revocation, or denial is based. If the deferred prosecution is  
36 terminated, the stay shall be lifted and the suspension, revocation, or  
37 denial reinstated. If the deferred prosecution is completed, the stay  
38 shall be lifted and the suspension, revocation, or denial canceled.



1 (c) The provisions of (b) of this subsection relating to a stay of  
2 a suspension, revocation, or denial and the cancellation of any  
3 suspension, revocation, or denial do not apply to the suspension,  
4 revocation, denial, or disqualification of a person's commercial  
5 driver's license or privilege to operate a commercial motor vehicle.

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

12 **Sec. 8.** RCW 46.20.385 and 2011 c 293 s 1 are each amended to read  
13 as follows:

14 (1)(a) Beginning January 1, 2009, any person licensed under this  
15 chapter who is convicted of a violation of RCW 46.61.502 or 46.61.504  
16 or an equivalent local or out-of-state statute or ordinance, or a  
17 violation of RCW 46.61.520(1)(a) or 46.61.522(1)(b), or who has had or  
18 will have his or her license suspended, revoked, or denied under RCW  
19 46.20.3101, or who is otherwise permitted under subsection (8) of this  
20 section, may submit to the department an application for an ignition  
21 interlock driver's license. The department, upon receipt of the  
22 prescribed fee and upon determining that the petitioner is eligible to  
23 receive the license, may issue an ignition interlock driver's license.

24 (b) A person may apply for an ignition interlock driver's license  
25 anytime, including immediately after receiving the notices under RCW  
26 46.20.308 or after his or her license is suspended, revoked, or denied.  
27 A person receiving an ignition interlock driver's license waives his or  
28 her right to a hearing or appeal under RCW 46.20.308.

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

32 (i) The department shall require the person to maintain the device  
33 on all vehicles operated by the person and shall restrict the person to  
34 operating only vehicles equipped with the device, for the remainder of  
35 the period of suspension, revocation, or denial. The installation of  
36 an ignition interlock device is not necessary on vehicles owned,  
37 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. However, when the employer's vehicle is assigned  
8 exclusively to the restricted driver and used solely for commuting to  
9 and from employment, the employer exemption does not apply.

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

18 (iii) The time period during which the person is licensed under  
19 this section shall apply on a day-for-day basis toward satisfying the  
20 period of time the ignition interlock device restriction is required  
21 under RCW 46.20.720 and 46.61.5055. Beginning with incidents occurring  
22 on or after September 1, 2011, when calculating the period of time for  
23 the restriction under RCW 46.20.720(3), the department must also give  
24 the person a day-for-day credit for the time period, beginning from the  
25 date of the incident, during which the person kept an ignition  
26 interlock device installed on all vehicles the person operates. For  
27 the purposes of this subsection (1)(c)(iii), the term "all vehicles"  
28 does not include vehicles that would be subject to the employer  
29 exception under RCW 46.20.720(3).

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

34 (3) Upon receipt of evidence that a holder of an ignition interlock  
35 driver's license granted under this subsection no longer has a  
36 functioning ignition interlock device installed on all vehicles  
37 operated by the driver, the director shall give written notice by  
38 first-class mail to the driver that the ignition interlock driver's

1 license shall be canceled. If at any time before the cancellation goes  
2 into effect the driver submits evidence that a functioning ignition  
3 interlock device has been installed on all vehicles operated by the  
4 driver, the cancellation shall be stayed. If the cancellation becomes  
5 effective, the driver may obtain, at no additional charge, a new  
6 ignition interlock driver's license upon submittal of evidence that a  
7 functioning ignition interlock device has been installed on all  
8 vehicles operated by the driver.

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

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

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

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

36 (7) The department shall adopt rules to implement ignition  
37 interlock licensing. The department shall consult with the  
38 administrative office of the courts, the state patrol, the Washington

1 association of sheriffs and police chiefs, ignition interlock  
2 companies, and any other organization or entity the department deems  
3 appropriate.

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

9 (b) A person who does not have any driver's license under this  
10 chapter, but who would otherwise be eligible under this section to  
11 apply for an ignition interlock license, may submit to the department  
12 an application for an ignition interlock license. The department may  
13 require the person to take any driver's licensing examination under  
14 chapter 46.20 RCW and may require the person to also apply and qualify  
15 for a temporary restricted driver's license under RCW 46.20.391.

16 **Sec. 9.** RCW 46.20.720 and 2011 c 293 s 6 are each amended to read  
17 as follows:

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

27 (2) Under RCW 46.61.5055 and subject to the exceptions listed in  
28 that statute, the court shall order any person convicted of a violation  
29 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to  
30 ~~((apply for an ignition interlock driver's license from the department~~  
31 ~~under RCW 46.20.385 and to have)) comply with the rules and  
32 requirements of the department regarding the installation and use of a  
33 functioning ignition interlock device installed on all motor vehicles  
34 operated by the person. The court shall order any person participating  
35 in a deferred prosecution program under RCW 10.05.020 for a violation  
36 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to have~~

1 a functioning ignition interlock device installed on all motor vehicles  
2 operated by the person.

3 (3) The department shall require that, after any applicable period  
4 of suspension, revocation, or denial of driving privileges, a person  
5 may drive only a motor vehicle equipped with a functioning ignition  
6 interlock device if the person is convicted of a violation of RCW  
7 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute  
8 or ordinance. The department shall require that a person may drive  
9 only a motor vehicle equipped with a functioning ignition interlock  
10 device if the person is convicted of a violation of RCW 46.61.5249 or  
11 46.61.500 and is required under RCW 46.61.5249(4) or 46.61.500(3) (a)  
12 or (b) to install an ignition interlock device on all vehicles operated  
13 by the person.

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

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

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

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

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

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

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

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

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

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

17 (6) In addition to any other costs associated with the use of an  
18 ignition interlock device imposed on the person restricted under this  
19 section, the person shall pay an additional fee of twenty dollars per  
20 month. Payments must be made directly to the ignition interlock  
21 company. The company shall remit the additional twenty dollar fee to  
22 the department to be deposited into the ignition interlock device  
23 revolving account.

24 **Sec. 10.** RCW 46.20.745 and 2008 c 282 s 10 are each amended to  
25 read as follows:

26 (1) The ignition interlock device revolving account program is  
27 created within the department to assist in covering the monetary costs  
28 of installing, removing, and leasing an ignition interlock device, and  
29 applicable licensing, for indigent persons who are required under RCW  
30 46.20.385, 46.20.720, and 46.61.5055 to install an ignition interlock  
31 device in all vehicles owned or operated by the person. For purposes  
32 of this subsection, "indigent" has the same meaning as in RCW  
33 10.101.010, as determined by the department.

34 (2) A pilot program is created within the ignition interlock device  
35 revolving account program for the purpose of monitoring compliance by  
36 persons required to use ignition interlock devices and by ignition  
37 interlock companies and vendors.

1 (3) The department, the state patrol, and the Washington traffic  
2 safety commission shall coordinate to establish a compliance pilot  
3 program that will target at least one county from eastern Washington  
4 and one county from western Washington, as determined by the  
5 department, state patrol, and Washington traffic safety commission.

6 (4) At a minimum, the compliance pilot program shall:

7 (a) Review the number of ignition interlock devices that are  
8 required to be installed in the targeted county and the number of  
9 ignition interlock devices actually installed;

10 (b) Work to identify those persons who are not complying with  
11 ignition interlock requirements or are repeatedly violating ignition  
12 interlock requirements; and

13 (c) Identify ways to track compliance and reduce noncompliance.

14 (5) As part of monitoring compliance, the Washington traffic safety  
15 commission shall also track recidivism for violations of RCW 46.61.502  
16 and 46.61.504 by persons required to have an ignition interlock  
17 driver's license under RCW 46.20.385 and 46.20.720.

18 **Sec. 11.** RCW 46.61.500 and 2011 c 293 s 4 and 2011 c 96 s 34 are  
19 each reenacted and amended to read as follows:

20 (1) Any person who drives any vehicle in willful or wanton  
21 disregard for the safety of persons or property is guilty of reckless  
22 driving. Violation of the provisions of this section is a gross  
23 misdemeanor punishable by imprisonment for up to three hundred sixty-  
24 four days and by a fine of not more than five thousand dollars.

25 (2)(a) Subject to (b) of this subsection, the license or permit to  
26 drive or any nonresident privilege of any person convicted of reckless  
27 driving shall be suspended by the department for not less than thirty  
28 days.

29 (b) When a reckless driving conviction is a result of a charge that  
30 was originally filed as a violation of RCW 46.61.502 or 46.61.504, or  
31 an equivalent local ordinance, the department shall grant credit on a  
32 day-for-day basis for any portion of a suspension, revocation, or  
33 denial already served under an administrative action arising out of the  
34 same incident. During any period of suspension, revocation, or denial  
35 due to a conviction for reckless driving as the result of a charge  
36 originally filed as a violation of RCW 46.61.502 or 46.61.504, any  
37 person who has obtained an ignition interlock driver's license under

1 RCW 46.20.385 may continue to drive a motor vehicle pursuant to the  
2 provision of the ignition interlock driver's license without obtaining  
3 a separate temporary restricted driver's license under RCW 46.20.391.

4 (3)(a) Except as provided under (b) of this subsection, a person  
5 convicted of reckless driving who has one or more prior offenses as  
6 defined in RCW 46.61.5055(14) within seven years shall be required,  
7 under RCW 46.20.720, to install an ignition interlock device on all  
8 vehicles operated by the person if the conviction is the result of a  
9 charge that was originally filed as a violation of RCW 46.61.502,  
10 46.61.504, or an equivalent local ordinance.

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

17 **Sec. 12.** RCW 46.61.5055 and 2011 c 293 s 7 and 2011 c 96 s 35 are  
18 each reenacted and amended to read as follows:

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

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

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



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

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

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

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

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

36 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
37 person who is convicted of a violation of RCW 46.61.502 or 46.61.504

1 and who has one prior offense within seven years shall be punished as  
2 follows:

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

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

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

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

33 (i) By imprisonment for not less than forty-five days nor more than  
34 three hundred sixty-four days and ninety days of electronic home  
35 monitoring. In lieu of the mandatory minimum term of ninety days  
36 electronic home monitoring, the court may order at least an additional  
37 six days in jail. The offender shall pay for the cost of the  
38 electronic monitoring. The county or municipality where the penalty is

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

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

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

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

25 (i) By imprisonment for not less than ninety days nor more than  
26 three hundred sixty-four days and one hundred twenty days of electronic  
27 home monitoring. In lieu of the mandatory minimum term of one hundred  
28 twenty days of electronic home monitoring, the court may order at least  
29 an additional eight days in jail. The offender shall pay for the cost  
30 of the electronic monitoring. The county or municipality where the  
31 penalty is being imposed shall determine the cost. The court may also  
32 require the offender's electronic home monitoring device include an  
33 alcohol detection breathalyzer, and may restrict the amount of alcohol  
34 the offender may consume during the time the offender is on electronic  
35 home monitoring. Ninety days of imprisonment and one hundred twenty  
36 days of electronic home monitoring may not be suspended or deferred  
37 unless the court finds that the imposition of this mandatory minimum  
38 sentence would impose a substantial risk to the offender's physical or

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

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

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

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

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

35 (4) A person who is convicted of a violation of RCW 46.61.502 or  
36 46.61.504 shall be punished under chapter 9.94A RCW if:

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

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

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

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

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

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

8 (5)(a) The court shall require any person convicted of a violation  
9 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to  
10 (~~apply for an ignition interlock driver's license from the department~~  
11 ~~and to have~~) comply with the rules and requirements of the department  
12 regarding the installation and use of a functioning ignition interlock  
13 device installed on all motor vehicles operated by the person.

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

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

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

29 (i) ~~The person lives out of state and the devices are not~~  
30 ~~reasonably available in the person's local area;~~

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

32 (iii) ~~The person is not eligible to receive an ignition interlock~~  
33 ~~driver's license under RCW 46.20.385 because the person is not a~~  
34 ~~resident of Washington, is a habitual traffic offender, has already~~  
35 ~~applied for or is already in possession of an ignition interlock~~  
36 ~~driver's license, has never had a driver's license, has been certified~~  
37 ~~under chapter 74.20A RCW as noncompliant with a child support order, or~~

1 ~~is subject to any other condition or circumstance that makes the person~~  
2 ~~ineligible to obtain an ignition interlock driver's license.~~

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

7 ~~(f)) If the court orders that a person refrain from consuming any~~  
8 ~~alcohol ((and requires the person to apply for an ignition interlock~~  
9 ~~driver's license, and the person states that he or she does not operate~~  
10 ~~a motor vehicle or the person is ineligible to obtain an ignition~~  
11 ~~interlock driver's license)), the court ((shall)) may order the person~~  
12 ~~to submit to alcohol monitoring through an alcohol detection~~  
13 ~~breathalyzer device, transdermal sensor device, or other technology~~  
14 ~~designed to detect alcohol in a person's system. ((Alcohol monitoring~~  
15 ~~ordered under this subsection must be for the period of the mandatory~~  
16 ~~license suspension or revocation.)) The person shall pay for the cost~~  
17 ~~of the monitoring, unless the court specifies that the cost of~~  
18 ~~monitoring will be paid with funds that are available from an~~  
19 ~~alternative source identified by the court. The county or municipality~~  
20 ~~where the penalty is being imposed shall determine the cost.~~

21 ~~((g) The period of time for which ignition interlock use is~~  
22 ~~required will be as follows:~~

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

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

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

29 ~~(h) Beginning with incidents occurring on or after September 1,~~  
30 ~~2011, when calculating the period of time for the restriction under RCW~~  
31 ~~46.20.720(3), the department must also give the person a day for day~~  
32 ~~credit for the time period, beginning from the date of the incident,~~  
33 ~~during which the person kept an ignition interlock device installed on~~  
34 ~~all vehicles the person operates. For the purposes of this subsection~~  
35 ~~(5)(h), the term "all vehicles" does not include vehicles that would be~~  
36 ~~subject to the employer exception under RCW 46.20.720(3).))~~

37 (6) If a person who is convicted of a violation of RCW 46.61.502 or

1 46.61.504 committed the offense while a passenger under the age of  
2 sixteen was in the vehicle, the court shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 and (iii) not refusing to submit to a test of his or her breath or  
33 blood to determine alcohol concentration upon request of a law  
34 enforcement officer who has reasonable grounds to believe the person

35 was driving or was in actual physical control of a motor vehicle within  
36 this state while under the influence of intoxicating liquor. The court

37 may impose conditions of probation that include nonrepetition,  
38 installation of an ignition interlock device on the probationer's motor



1 vehicle, alcohol or drug treatment, supervised probation, or other  
2 conditions that may be appropriate. The sentence may be imposed in  
3 whole or in part upon violation of a condition of probation during the  
4 suspension period.

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

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

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

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

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

24 (c) The court determines that there is reason to believe that the  
25 offender would violate the conditions of the electronic home monitoring  
26 penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (b) "Within seven years" means that the arrest for a prior offense  
14 occurred within seven years before or after the arrest for the current  
15 offense; and

16 (c) "Within ten years" means that the arrest for a prior offense  
17 occurred within ten years before or after the arrest for the current  
18 offense.

19 **Sec. 13.** RCW 46.61.5249 and 2011 c 293 s 5 are each amended to  
20 read as follows:

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

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

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

35 (2) For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

33 (3) Any act prohibited by this section that also constitutes a  
34 crime under any other law of this state may be the basis of prosecution  
35 under such other law notwithstanding that it may also be the basis for  
36 prosecution under this section.

37 (4) A person convicted of negligent driving in the first degree who

1 has one or more prior offenses as defined in RCW 46.61.5055(14) within  
2 seven years shall be required, under RCW 46.20.720, to install an  
3 ignition interlock device on all vehicles operated by the person.

4 **Sec. 14.** RCW 46.61.540 and 1975 1st ex.s. c 287 s 5 are each  
5 amended to read as follows:

6 The word "drugs", as used in RCW 46.61.500 through 46.61.535, shall  
7 include but not be limited to those drugs and substances regulated by  
8 chapters 69.41 and 69.50 RCW and any chemical inhaled or ingested for  
9 its intoxicating or hallucinatory effects.

10 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.43 RCW  
11 to read as follows:

12 (1) As part of the state patrol's authority to provide standards  
13 for certification, installation, repair, maintenance, monitoring,  
14 inspection, and removal of ignition interlock devices, the state patrol  
15 shall by rule establish a fee schedule and collect fees from ignition  
16 interlock manufacturers, technicians, providers, and persons required  
17 under RCW 46.20.385, 46.20.720, and 46.61.5055 to install an ignition  
18 interlock device in all vehicles owned or operated by the person.

19 (2) Fees collected under this section must be deposited into the  
20 highway safety account to be used solely to fund the Washington state  
21 patrol impaired driving section projects.

22 **Sec. 16.** RCW 43.43.395 and 2010 c 268 s 2 are each amended to read  
23 as follows:

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

34 (2)(a) When a certified service provider or individual installer of  
35 ignition interlock devices is found to be out of compliance, the

1 installation privileges of that certified service provider or  
2 individual installer may be suspended or revoked until the certified  
3 service provider or individual installer comes into compliance. During  
4 any suspension or revocation period, the certified service provider or  
5 individual installer is responsible for notifying affected customers of  
6 any changes in their service agreement.

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

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

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

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

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

37 "Two samples of (model name), manufactured by (manufacturer)  
38 were tested by (laboratory) certified by the Internal Organization of

1 Standardization. They do meet or exceed all specifications listed in  
2 the Federal Register, Volume 71, Number 31 (57 FR 11772), Breath  
3 Alcohol Ignition Interlock Devices (BAIID), NHTSA 2005-23470."; and

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

**2SHB 2443** - S COMM AMD  
By Committee on Judiciary

**OUT OF ORDER 03/08/2012**

6 On page 1, line 2 of the title, after "impaired;" strike the  
7 remainder of the title and insert "amending RCW 2.28.175, 9.94A.475,  
8 9.94A.640, 9.95.210, 9.96.060, 38.52.430, 46.20.308, 46.20.385,  
9 46.20.720, 46.20.745, 46.61.5249, 46.61.540, and 43.43.395; reenacting  
10 and amending RCW 46.61.500 and 46.61.5055; adding a new section to  
11 chapter 43.43 RCW; and prescribing penalties."

EFFECT: (1) Municipalities may enter into cooperative agreements  
for DUI courts.

(2) The defendant may be ordered to pay up to \$2,500 for the  
emergency response reimbursement instead of up to \$5,000.

--- END ---