

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5912

63rd Legislature
2013 2nd Special Session

Passed by the Senate June 26, 2013
YEAS 46 NAYS 0

President of the Senate

Passed by the House June 27, 2013
YEAS 92 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5912** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5912

Passed Legislature - 2013 2nd Special Session

State of Washington 63rd Legislature 2013 2nd Special Session

By Senate Ways & Means (originally sponsored by Senators Padden, Kline, and Conway; by request of Governor Inslee)

READ FIRST TIME 06/03/13.

1 AN ACT Relating to driving under the influence of intoxicating
2 liquor or drugs; amending RCW 2.28.175, 3.66.067, 3.66.068, 3.50.320,
3 3.50.330, 35.20.255, 9.94A.525, 43.43.395, 46.25.090, 46.25.110,
4 46.25.120, 46.68.340, 9.94A.501, 46.61.5249, 46.20.270, 46.61.5058,
5 46.20.720, 46.20.385, 10.05.140, and 4.24.545; reenacting and amending
6 RCW 46.61.5055, 10.31.100, 46.20.308, and 9.94A.535; adding a new
7 section to chapter 10.21 RCW; adding new sections to chapter 36.28A
8 RCW; adding a new section to chapter 43.43 RCW; creating new sections;
9 prescribing penalties; making appropriations; providing an effective
10 date; and providing expiration dates.

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

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

14 (1) When any person charged with or arrested for a violation of RCW
15 46.61.502, 46.61.504, 46.61.520, or 46.61.522, in which the person has
16 a prior offense as defined in RCW 46.61.5055 and the current offense
17 involves alcohol, is released from custody before arraignment or trial
18 on bail or personal recognizance, the court authorizing the release
19 shall require, as a condition of release, that person to (a) have a

1 functioning ignition interlock device installed on all motor vehicles
2 operated by the person, with proof of installation filed with the court
3 by the person or the certified interlock provider within five business
4 days of the date of release from custody or as soon thereafter as
5 determined by the court based on availability within the jurisdiction;
6 or (b) comply with 24/7 sobriety program monitoring, as defined in
7 section 26 of this act; or both.

8 (2) Upon acquittal or dismissal of all pending or current charges
9 relating to a violation of RCW 46.61.502, 46.61.504, 46.61.520, or
10 46.61.522, or equivalent local ordinance, the court shall authorize
11 removal of the ignition interlock device and lift any requirement to
12 comply with electronic alcohol/drug monitoring imposed under subsection
13 (1) of this section. Nothing in this section limits the authority of
14 the court or department under RCW 46.20.720.

15 **Sec. 2.** RCW 2.28.175 and 2013 c 257 s 6 are each amended to read
16 as follows:

17 (1) Jurisdictions and municipalities may establish and operate DUI
18 courts. Municipalities may enter into cooperative agreements with
19 counties or other municipalities that have DUI courts to provide DUI
20 court services.

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

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

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

33 (ii) Match, on a dollar-for-dollar basis, state moneys allocated
34 for DUI court programs with local cash or in-kind resources. Moneys
35 allocated by the state must be used to supplement, not supplant, other
36 federal, state, and local funds for DUI court operations and associated

1 services. However, until June 30, 2014, no match is required for state
2 moneys expended for the administrative and overhead costs associated
3 with the operation of a DUI court established as of January 1, 2011.

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

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

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

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

17 (A) That is a sex offense;

18 (B) That is a serious violent offense;

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

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

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

23 **Sec. 3.** RCW 3.66.067 and 2001 c 94 s 1 are each amended to read as
24 follows:

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

1 **Sec. 4.** RCW 3.66.068 and 2010 c 274 s 405 are each amended to read
2 as follows:

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

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

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

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

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

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

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

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

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

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

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

31 After a conviction, the court may impose sentence by suspending all
32 or a portion of the defendant's sentence or by deferring the sentence
33 of the defendant and may place the defendant on probation for a period
34 of no longer than two years and prescribe the conditions thereof. A
35 defendant who has been sentenced, or whose sentence has been deferred,
36 and who then fails to appear for any hearing to address the defendant's
37 compliance with the terms of probation when ordered to do so by the

1 court, shall have the term of probation tolled until such time as the
2 defendant makes his or her presence known to the court on the record.
3 During the time of the deferral, the court may, for good cause shown,
4 permit a defendant to withdraw the plea of guilty, permit the defendant
5 to enter a plea of not guilty, and dismiss the charges. A court shall
6 not defer sentence for an offense sentenced under RCW 46.61.5055.

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

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

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

14 (b) Two years after imposition of sentence for all other
15 offenses(~~(, the)~~).

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

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

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

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

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

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

33 (5) Any time before entering an order terminating probation, the
34 court may modify or revoke its order suspending or deferring the
35 imposition or execution of the sentence.

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

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

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

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

32 (i) Notify the department of corrections of the defendant's
33 request;

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

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

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

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

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

7 (c) If the probationer is returned to the state at the request of
8 the receiving state under rules of the interstate compact for adult
9 offender supervision, the department of corrections is responsible for
10 the cost of returning the probationer.

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

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

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

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

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

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

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

30 (b) Class B prior felony convictions other than sex offenses shall
31 not be included in the offender score, if since the last date of
32 release from confinement (including full-time residential treatment)
33 pursuant to a felony conviction, if any, or entry of judgment and
34 sentence, the offender had spent ten consecutive years in the community
35 without committing any crime that subsequently results in a conviction.

36 (c) Except as provided in (e) of this subsection, class C prior
37 felony convictions other than sex offenses shall not be included in the

1 offender score if, since the last date of release from confinement
2 (including full-time residential treatment) pursuant to a felony
3 conviction, if any, or entry of judgment and sentence, the offender had
4 spent five consecutive years in the community without committing any
5 crime that subsequently results in a conviction.

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

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

32 (f) Prior convictions for a repetitive domestic violence offense,
33 as defined in RCW 9.94A.030, shall not be included in the offender
34 score if, since the last date of release from confinement or entry of
35 judgment and sentence, the offender had spent ten consecutive years in
36 the community without committing any crime that subsequently results in
37 a conviction.

1 (g) This subsection applies to both adult and juvenile prior
2 convictions.

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

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

15 (5)(a) In the case of multiple prior convictions, for the purpose
16 of computing the offender score, count all convictions separately,
17 except:

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

32 (ii) In the case of multiple prior convictions for offenses
33 committed before July 1, 1986, for the purpose of computing the
34 offender score, count all adult convictions served concurrently as one
35 offense, and count all juvenile convictions entered on the same date as
36 one offense. Use the conviction for the offense that yields the
37 highest offender score.

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

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

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

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

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

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

34 (11) If the present conviction is for a felony traffic offense
35 count two points for each adult or juvenile prior conviction for
36 Vehicular Homicide or Vehicular Assault; for each felony offense count
37 one point for each adult and 1/2 point for each juvenile prior
38 conviction; for each serious traffic offense, other than those used for

1 an enhancement pursuant to RCW 46.61.520(2), count one point for each
2 adult and 1/2 point for each juvenile prior conviction; count one point
3 for each adult and 1/2 point for each juvenile prior conviction for
4 operation of a vessel while under the influence of intoxicating liquor
5 or any drug.

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

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

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

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

34 (16) If the present conviction is for Burglary 2 or residential
35 burglary, count priors as in subsection (7) of this section; however,
36 count two points for each adult and juvenile prior Burglary 1
37 conviction, two points for each adult prior Burglary 2 or residential

1 burglary conviction, and one point for each juvenile prior Burglary 2
2 or residential burglary conviction.

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

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

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

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

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

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

1 offense, a domestic violence Kidnapping 1 offense, a domestic violence
2 Kidnapping 2 offense, a domestic violence unlawful imprisonment
3 offense, a domestic violence Robbery 1 offense, a domestic violence
4 Robbery 2 offense, a domestic violence Assault 1 offense, a domestic
5 violence Assault 2 offense, a domestic violence Assault 3 offense, a
6 domestic violence Arson 1 offense, or a domestic violence Arson 2
7 offense;

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

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

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

27 **Sec. 9.** RCW 43.43.395 and 2012 c 183 s 16 are each amended to read
28 as follows:

29 (1) The state patrol shall by rule provide standards for the
30 certification, installation, repair, maintenance, monitoring,
31 inspection, and removal of ignition interlock devices, as defined under
32 RCW 46.04.215, and equipment as outlined under this section, and may
33 inspect the records and equipment of manufacturers and vendors during
34 regular business hours for compliance with statutes and rules and may
35 suspend or revoke certification for any noncompliance. (~~The state
36 patrol may only inspect ignition interlock devices in the vehicles of~~

1 ~~customers for proper installation and functioning when installation is~~
2 ~~being done at the vendors' place of business.))~~

3 (2)(a) When a certified service provider or individual installer of
4 ignition interlock devices is found to be out of compliance, the
5 installation privileges of that certified service provider or
6 individual installer may be suspended or revoked until the certified
7 service provider or individual installer comes into compliance. During
8 any suspension or revocation period, the certified service provider or
9 individual installer is responsible for notifying affected customers of
10 any changes in their service agreement.

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

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

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

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

34 (i) Meet or exceed the minimum test standards according to rules
35 adopted by the state patrol. Only a notarized statement from a
36 laboratory that is certified by the international organization of
37 standardization and is capable of performing the tests specified will

1 be accepted as proof of meeting or exceeding the standards. The
2 notarized statement must include the name and signature of the person
3 in charge of the tests under the (~~following statement:~~

4 ~~"Two samples of (model name), manufactured by (manufacturer)~~
5 ~~were tested by (laboratory) certified by the Internal Organization of~~
6 ~~Standardization. They do meet or exceed all specifications listed in~~
7 ~~the Federal Register, Volume 71, Number 31 (57 FR 11772), Breath~~
8 ~~Alcohol Ignition Interlock Devices (BAIID), NHTSA 2005-23470.")~~
9 certification statement. The state patrol must adopt by rule the
10 required language of the certification statement that must, at a
11 minimum, outline that the testing meets or exceeds all specifications
12 listed in the federal register adopted in rule by the state patrol; and

13
14 (ii) Be maintained in accordance with the rules and standards
15 adopted by the state patrol.

16 **Sec. 10.** RCW 46.25.090 and 2011 c 227 s 4 are each amended to read
17 as follows:

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

23 (a) Driving a motor vehicle under the influence of alcohol or any
24 drug;

25 (b) Driving a commercial motor vehicle while the alcohol
26 concentration in the person's system is 0.04 or more or any measurable
27 amount of THC concentration, or driving a noncommercial motor vehicle
28 while the alcohol concentration in the person's system is 0.08 or more,
29 or is 0.02 or more if the person is under age twenty-one, or with a THC
30 concentration of 5.00 nanograms per milliliter of whole blood or more,
31 or a THC concentration above 0.00 if the person is under the age of
32 twenty-one, as determined by any testing methods approved by law in
33 this state or any other state or jurisdiction;

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

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

37 (e) Refusing to submit to a test or tests to determine the driver's

1 alcohol concentration or the presence of any drug while driving a motor
2 vehicle;

3 (f) Driving a commercial motor vehicle when, as a result of prior
4 violations committed while operating a commercial motor vehicle, the
5 driver's commercial driver's license is revoked, suspended, or
6 canceled, or the driver is disqualified from operating a commercial
7 motor vehicle;

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

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

14 (2) A person is disqualified for life if it has been determined
15 that the person has committed or has been convicted of two or more
16 violations of any of the offenses specified in subsection (1) of this
17 section, or any combination of those offenses, arising from two or more
18 separate incidents.

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

23 (4) A person is disqualified from driving a commercial motor
24 vehicle for life who uses a motor vehicle in the commission of a felony
25 involving the manufacture, distribution, or dispensing of a controlled
26 substance, as defined by chapter 69.50 RCW, or possession with intent
27 to manufacture, distribute, or dispense a controlled substance, as
28 defined by chapter 69.50 RCW.

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

31 (i) Not less than sixty days if:

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

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

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

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

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

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

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

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

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

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

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

23 (d) Not less than one hundred eighty days nor more than two years
24 if the person is convicted of or is found to have committed a first
25 violation of an out-of-service order while transporting hazardous
26 materials, or while operating motor vehicles designed to transport
27 sixteen or more passengers, including the driver. A person is
28 disqualified for a period of not less than three years nor more than
29 five years if, during a ten-year period, the person is convicted of or
30 is found to have committed subsequent violations of out-of-service
31 orders, in separate incidents, while transporting hazardous materials,
32 or while operating motor vehicles designed to transport sixteen or more
33 passengers, including the driver.

34 (7) A person is disqualified from driving a commercial motor
35 vehicle if a report has been received by the department under RCW
36 46.25.125 that the person has received a verified positive drug test or
37 positive alcohol confirmation test as part of the testing program
38 conducted under 49 C.F.R. 40. A disqualification under this subsection

1 remains in effect until the person undergoes a drug and alcohol
2 assessment by a substance abuse professional meeting the requirements
3 of 49 C.F.R. 40, and the person presents evidence of satisfactory
4 participation in or successful completion of a drug or alcohol
5 treatment and/or education program as recommended by the substance
6 abuse professional, and until the person has met the requirements of
7 RCW 46.25.100. The substance abuse professional shall forward a
8 diagnostic evaluation and treatment recommendation to the department of
9 licensing for use in determining the person's eligibility for driving
10 a commercial motor vehicle. Persons who are disqualified under this
11 subsection more than twice in a five-year period are disqualified for
12 life.

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

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

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

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

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

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

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

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

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

36 (ii) Not less than one hundred twenty days if the driver is
37 convicted of or is found to have committed a second railroad-highway

1 grade crossing violation in separate incidents within a three-year
2 period;

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

6 (9) A person is disqualified from driving a commercial motor
7 vehicle for not more than one year if a report has been received by the
8 department from the federal motor carrier safety administration that
9 the person's driving has been determined to constitute an imminent
10 hazard as defined by 49 C.F.R. 383.5. A person who is simultaneously
11 disqualified from driving a commercial motor vehicle under this
12 subsection and under other provisions of this chapter, or under 49
13 C.F.R. 383.52, shall serve those disqualification periods concurrently.

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

18 **Sec. 11.** RCW 46.25.110 and 1989 c 178 s 13 are each amended to
19 read as follows:

20 (1) Notwithstanding any other provision of Title 46 RCW, a person
21 may not drive, operate, or be in physical control of a commercial motor
22 vehicle while having alcohol or THC in his or her system.

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

29 **Sec. 12.** RCW 46.25.120 and 2006 c 327 s 5 are each amended to read
30 as follows:

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

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

6 (3) The law enforcement officer requesting the test under
7 subsection (1) of this section shall warn the person requested to
8 submit to the test that a refusal to submit will result in that person
9 being disqualified from operating a commercial motor vehicle under RCW
10 46.25.090.

11 (4) If the person refuses testing, or submits to a test that
12 discloses an alcohol concentration of 0.04 or more or any measurable
13 amount of THC concentration, the law enforcement officer shall submit
14 a sworn report to the department certifying that the test was requested
15 pursuant to subsection (1) of this section and that the person refused
16 to submit to testing, or submitted to a test that disclosed an alcohol
17 concentration of 0.04 or more or any measurable amount of THC
18 concentration.

19 (5) Upon receipt of the sworn report of a law enforcement officer
20 under subsection (4) of this section, the department shall disqualify
21 the driver from driving a commercial motor vehicle under RCW 46.25.090,
22 subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The
23 hearing shall be conducted in the county of the arrest. For the
24 purposes of this section, the hearing shall cover the issues of whether
25 a law enforcement officer had reasonable grounds to believe the person
26 had been driving or was in actual physical control of a commercial
27 motor vehicle within this state while having alcohol in the person's
28 system or while under the influence of any drug, whether the person
29 refused to submit to the test or tests upon request of the officer
30 after having been informed that the refusal would result in the
31 disqualification of the person from driving a commercial motor vehicle,
32 and, if the test was administered, whether the results indicated an
33 alcohol concentration of 0.04 percent or more or any measurable amount
34 of THC concentration. The department shall order that the
35 disqualification of the person either be rescinded or sustained. Any
36 decision by the department disqualifying a person from driving a
37 commercial motor vehicle is stayed and does not take effect while a
38 formal hearing is pending under this section or during the pendency of

1 a subsequent appeal to superior court so long as there is no conviction
2 for a moving violation or no finding that the person has committed a
3 traffic infraction that is a moving violation during the pendency of
4 the hearing and appeal. If the disqualification of the person is
5 sustained after the hearing, the person who is disqualified may file a
6 petition in the superior court of the county of arrest to review the
7 final order of disqualification by the department in the manner
8 provided in RCW 46.20.334.

9 (6) If a motor carrier or employer who is required to have a
10 testing program under 49 C.F.R. 382 knows that a commercial driver in
11 his or her employ has refused to submit to testing under this section
12 and has not been disqualified from driving a commercial motor vehicle,
13 the employer may notify law enforcement or his or her medical review
14 officer or breath alcohol technician that the driver has refused to
15 submit to the required testing.

16 (7) The hearing provisions of this section do not apply to those
17 persons disqualified from driving a commercial motor vehicle under RCW
18 46.25.090(7).

19 **Sec. 13.** RCW 46.61.5055 and 2012 c 183 s 12, 2012 c 42 s 2, and
20 2012 c 28 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

36 (ii) By a fine of not less than five hundred dollars nor more than
37 five thousand dollars. Five hundred dollars of the fine may not be

1 suspended (~~or deferred~~) unless the court finds the offender to be
2 indigent.

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

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

11 (i) By imprisonment for not less than thirty days nor more than
12 three hundred sixty-four days and sixty days of electronic home
13 monitoring. In lieu of the mandatory minimum term of sixty days
14 electronic home monitoring, the court may order at least an additional
15 four days in jail or, if available in that county or city, a six-month
16 period of 24/7 sobriety program monitoring pursuant to sections 23
17 through 32 of this act, and the court shall order an expanded alcohol
18 assessment and treatment, if deemed appropriate by the assessment. The
19 offender shall pay for the cost of the electronic monitoring. The
20 county or municipality where the penalty is being imposed shall
21 determine the cost. The court may also require the offender's
22 electronic home monitoring device include an alcohol detection
23 breathalyzer or other separate alcohol monitoring device, and may
24 restrict the amount of alcohol the offender may consume during the time
25 the offender is on electronic home monitoring. Thirty days of
26 imprisonment and sixty days of electronic home monitoring may not be
27 suspended (~~or deferred~~) unless the court finds that the imposition of
28 this mandatory minimum sentence would impose a substantial risk to the
29 offender's physical or mental well-being. Whenever the mandatory
30 minimum sentence is suspended (~~or deferred~~), the court shall state in
31 writing the reason for granting the suspension (~~or deferral~~) and the
32 facts upon which the suspension (~~or deferral~~) is based; and

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

37 (b) In the case of a person whose alcohol concentration was at

1 least 0.15, or for whom by reason of the person's refusal to take a
2 test offered pursuant to RCW 46.20.308 there is no test result
3 indicating the person's alcohol concentration:

4 (i) By imprisonment for not less than forty-five days nor more than
5 three hundred sixty-four days and ninety days of electronic home
6 monitoring. In lieu of the mandatory minimum term of ninety days
7 electronic home monitoring, the court may order at least an additional
8 six days in jail or, if available in that county or city, a six-month
9 period of 24/7 sobriety program monitoring pursuant to sections 23
10 through 32 of this act, and the court shall order an expanded alcohol
11 assessment and treatment, if deemed appropriate by the assessment. The
12 offender shall pay for the cost of the electronic monitoring. The
13 county or municipality where the penalty is being imposed shall
14 determine the cost. The court may also require the offender's
15 electronic home monitoring device include an alcohol detection
16 breathalyzer or other separate alcohol monitoring device, and may
17 restrict the amount of alcohol the offender may consume during the time
18 the offender is on electronic home monitoring. Forty-five days of
19 imprisonment and ninety days of electronic home monitoring may not be
20 suspended (~~or deferred~~) unless the court finds that the imposition of
21 this mandatory minimum sentence would impose a substantial risk to the
22 offender's physical or mental well-being. Whenever the mandatory
23 minimum sentence is suspended (~~or deferred~~), the court shall state in
24 writing the reason for granting the suspension (~~or deferral~~) and the
25 facts upon which the suspension (~~or deferral~~) is based; and

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

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

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

1 (i) By imprisonment for not less than ninety days nor more than
2 three hundred sixty-four days, if available in that county or city, a
3 six-month period of 24/7 sobriety program monitoring pursuant to
4 sections 23 through 32 of this act, and one hundred twenty days of
5 electronic home monitoring. In lieu of the mandatory minimum term of
6 one hundred twenty days of electronic home monitoring, the court may
7 order at least an additional eight days in jail. The court shall order
8 an expanded alcohol assessment and treatment, if deemed appropriate by
9 the assessment. The offender shall pay for the cost of the electronic
10 monitoring. The county or municipality where the penalty is being
11 imposed shall determine the cost. The court may also require the
12 offender's electronic home monitoring device include an alcohol
13 detection breathalyzer or other separate alcohol monitoring device, and
14 may restrict the amount of alcohol the offender may consume during the
15 time the offender is on electronic home monitoring. Ninety days of
16 imprisonment and one hundred twenty days of electronic home monitoring
17 may not be suspended (~~or deferred~~) unless the court finds that the
18 imposition of this mandatory minimum sentence would impose a
19 substantial risk to the offender's physical or mental well-being.
20 Whenever the mandatory minimum sentence is suspended (~~or deferred~~),
21 the court shall state in writing the reason for granting the suspension
22 (~~or deferral~~) and the facts upon which the suspension (~~or deferral~~)
23 is based; and

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

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

32 (i) By imprisonment for not less than one hundred twenty days nor
33 more than three hundred sixty-four days, if available in that county or
34 city, a six-month period of 24/7 sobriety program monitoring pursuant
35 to sections 23 through 32 of this act, and one hundred fifty days of
36 electronic home monitoring. In lieu of the mandatory minimum term of
37 one hundred fifty days of electronic home monitoring, the court may
38 order at least an additional ten days in jail. The offender shall pay

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

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

21 (4) A person who is convicted of a violation of RCW 46.61.502 or
22 46.61.504 shall be punished under chapter 9.94A RCW if:

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

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

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

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

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

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

32 (5)(a) The court shall require any person convicted of a violation
33 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to
34 comply with the rules and requirements of the department regarding the
35 installation and use of a functioning ignition interlock device
36 installed on all motor vehicles operated by the person.

37 (b) If the court orders that a person refrain from consuming any
38 alcohol, the court may order the person to submit to alcohol monitoring

1 through an alcohol detection breathalyzer device, transdermal sensor
2 device, or other technology designed to detect alcohol in a person's
3 system. The person shall pay for the cost of the monitoring, unless
4 the court specifies that the cost of monitoring will be paid with funds
5 that are available from an alternative source identified by the court.
6 The county or municipality where the penalty is being imposed shall
7 determine the cost.

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

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

13 (b) In any case in which the person has no prior offenses within
14 seven years, and except as provided in RCW 46.61.502(6) or
15 46.61.504(6), order ~~((a penalty by))~~ an additional twenty-four hours of
16 imprisonment and a fine of not less than one thousand dollars and not
17 more than five thousand dollars. One thousand dollars of the fine may
18 not be suspended ~~((or deferred))~~ unless the court finds the offender to
19 be indigent;

20 (c) In any case in which the person has one prior offense within
21 seven years, and except as provided in RCW 46.61.502(6) or
22 46.61.504(6), order ~~((a penalty by))~~ an additional five days of
23 imprisonment and a fine of not less than two thousand dollars and not
24 more than five thousand dollars. One thousand dollars of the fine may
25 not be suspended ~~((or deferred))~~ unless the court finds the offender to
26 be indigent;

27 (d) In any case in which the person has two or three prior offenses
28 within seven years, and except as provided in RCW 46.61.502(6) or
29 46.61.504(6), order ~~((a penalty by))~~ an additional ten days of
30 imprisonment and a fine of not less than three thousand dollars and not
31 more than ten thousand dollars. One thousand dollars of the fine may
32 not be suspended ~~((or deferred))~~ unless the court finds the offender to
33 be indigent.

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

37 (a) Whether the person's driving at the time of the offense was

1 responsible for injury or damage to another or another's property;
2 ((and))

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

5 (c) Whether the driver was driving in the opposite direction of the
6 normal flow of traffic on a multiple lane highway, as defined by RCW
7 46.04.350, with a posted speed limit of forty-five miles per hour or
8 greater; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (i) Not driving a motor vehicle within this state without a valid
31 license to drive and proof of liability insurance or other financial
32 responsibility for the future pursuant to RCW 46.30.020; (ii) not
33 driving or being in physical control of a motor vehicle within this
34 state while having an alcohol concentration of 0.08 or more or a THC
35 concentration of 5.00 nanograms per milliliter of whole blood or
36 higher, within two hours after driving; and (iii) not refusing to
37 submit to a test of his or her breath or blood to determine alcohol or
38 drug concentration upon request of a law enforcement officer who has

1 reasonable grounds to believe the person was driving or was in actual
2 physical control of a motor vehicle within this state while under the
3 influence of intoxicating liquor or drug. The court may impose
4 conditions of probation that include nonrepetition, installation of an
5 ignition interlock device on the probationer's motor vehicle, alcohol
6 or drug treatment, supervised probation, or other conditions that may
7 be appropriate. The sentence may be imposed in whole or in part upon
8 violation of a condition of probation during the suspension period.

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

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

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

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

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

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

35 Whenever the mandatory minimum term of electronic home monitoring
36 is waived, the court shall state in writing the reason for granting the
37 waiver and the facts upon which the waiver is based, and shall impose
38 an alternative sentence with similar punitive consequences. The

1 alternative sentence may include, but is not limited to, use of an
2 ignition interlock device, the 24/7 sobriety program monitoring,
3 additional jail time, work crew, or work camp.

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

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

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

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

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

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

20 (iii) A conviction for a violation of RCW 46.61.520 committed while
21 under the influence of intoxicating liquor or any drug, or a conviction
22 for a violation of RCW 46.61.520 committed in a reckless manner or with
23 the disregard for the safety of others if the conviction is the result
24 of a charge that was originally filed as a violation of RCW 46.61.520
25 committed while under the influence of intoxicating liquor or any drug;

26 (iv) A conviction for a violation of RCW 46.61.522 committed while
27 under the influence of intoxicating liquor or any drug, or a conviction
28 for a violation of RCW 46.61.522 committed in a reckless manner or with
29 the disregard for the safety of others if the conviction is the result
30 of a charge that was originally filed as a violation of RCW 46.61.522
31 committed while under the influence of intoxicating liquor or any drug;

32 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
33 9A.36.050 or an equivalent local ordinance, if the conviction is the
34 result of a charge that was originally filed as a violation of RCW
35 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
36 46.61.520 or 46.61.522;

37 (vi) An out-of-state conviction for a violation that would have

1 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this
2 subsection if committed in this state;

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

6 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
7 prosecution for a violation of RCW 46.61.5249, or an equivalent local
8 ordinance, if the charge under which the deferred prosecution was
9 granted was originally filed as a violation of RCW 46.61.502 or
10 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
11 46.61.522; ~~((e))~~

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

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

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

28 (b) "Treatment" means alcohol or drug treatment approved by the
29 department of social and health services;

30 (c) "Within seven years" means that the arrest for a prior offense
31 occurred within seven years before or after the arrest for the current
32 offense; and

33 ~~((e))~~ (d) "Within ten years" means that the arrest for a prior
34 offense occurred within ten years before or after the arrest for the
35 current offense.

36 **Sec. 14.** RCW 46.68.340 and 2008 c 282 s 3 are each amended to read
37 as follows:

1 The ignition interlock device revolving account is created in the
2 state treasury. All receipts from the fee assessed under RCW
3 46.20.385(6) must be deposited into the account. Moneys in the account
4 may be spent only after appropriation. Expenditures from the account
5 may be used (~~only~~) for administering and operating the ignition
6 interlock device revolving account program and implementing effective
7 strategies to reduce motor vehicle-related deaths and serious injuries,
8 such as those found in the Washington state strategic highway safety
9 plan: Target Zero.

10 **Sec. 15.** RCW 9.94A.501 and 2011 1st sp.s. c 40 s 2 are each
11 amended to read as follows:

12 (1) The department shall supervise the following offenders who are
13 sentenced to probation in superior court, pursuant to RCW 9.92.060,
14 9.95.204, or 9.95.210:

15 (a) Offenders convicted of:

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

17 (ii) Custodial sexual misconduct second degree;

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

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

20 (b) Offenders who have:

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

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

27 (2) Misdemeanor and gross misdemeanor offenders supervised by the
28 department pursuant to this section shall be placed on community
29 custody.

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

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

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

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

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

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

11 (e) Has a current conviction for a domestic violence felony offense
12 where domestic violence has been plead and proven after August 1, 2011,
13 and a prior conviction for a repetitive domestic violence offense or
14 domestic violence felony offense where domestic violence has been plead
15 and proven after August 1, 2011;

16 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or
17 9.94A.670; (~~(or)~~)

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

19 (h) Was convicted and sentenced under RCW 46.61.520 (vehicular
20 homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6) (felony
21 DUI), or RCW 46.61.504(6) (felony physical control).

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

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

29 **Sec. 16.** RCW 46.61.5249 and 2012 c 183 s 13 are each amended to
30 read as follows:

31 (1)(a) A person is guilty of negligent driving in the first degree
32 if he or she operates a motor vehicle in a manner that is both
33 negligent and endangers or is likely to endanger any person or
34 property, and exhibits the effects of having consumed liquor or
35 marijuana or (~~(an illegal)~~) any drug or exhibits the effects of having
36 inhaled or ingested any chemical, whether or not a legal substance, for
37 its intoxicating or hallucinatory effects.

1 (b) It is an affirmative defense to negligent driving in the first
2 degree by means of exhibiting the effects of having consumed (~~an~~
3 ~~illegal~~) any drug that must be proved by the defendant by a
4 preponderance of the evidence, that the driver has a valid prescription
5 for the drug consumed, and has been consuming it according to the
6 prescription directions and warnings.

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

8 (2) For the purposes of this section:

9 (a) "Negligent" means the failure to exercise ordinary care, and is
10 the doing of some act that a reasonably careful person would not do
11 under the same or similar circumstances or the failure to do something
12 that a reasonably careful person would do under the same or similar
13 circumstances.

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

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

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

23 (~~(c) ("Exhibiting the effects of having consumed an illegal drug"~~
24 ~~means that a person by speech, manner, appearance, behavior, lack of~~
25 ~~coordination, or otherwise exhibits that he or she has consumed an~~
26 ~~illegal drug and either:~~

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

28 ~~(ii) Is shown by other evidence to have recently consumed an~~
29 ~~illegal drug.~~

30 (~~d~~)) "Exhibiting the effects of having inhaled or ingested any
31 chemical, whether or not a legal substance, for its intoxicating or
32 hallucinatory effects" means that a person by speech, manner,
33 appearance, behavior, or lack of coordination or otherwise exhibits
34 that he or she has inhaled or ingested a chemical and either:

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

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

1 ~~((e) "Illegal drug" means a controlled substance under chapter~~
2 ~~69.50 RCW for which the driver does not have a valid prescription or~~
3 ~~that is not being consumed in accordance with the prescription~~
4 ~~directions and warnings, or a legend drug under chapter 69.41 RCW for~~
5 ~~which the driver does not have a valid prescription or that is not~~
6 ~~being consumed in accordance with the prescription directions and~~
7 ~~warnings.))~~

8 (3) Any act prohibited by this section that also constitutes a
9 crime under any other law of this state may be the basis of prosecution
10 under such other law notwithstanding that it may also be the basis for
11 prosecution under this section.

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

16 **Sec. 17.** RCW 46.20.270 and 2010 c 249 s 11 are each amended to
17 read as follows:

18 ~~(1) ((Whenever any person is convicted of any offense for which~~
19 ~~this title makes mandatory the withholding of the driving privilege of~~
20 ~~such person by the department, the court in which such conviction is~~
21 ~~had shall forthwith mark the person's Washington state driver's license~~
22 ~~or permit to drive, if any, in a manner authorized by the department.~~
23 ~~A valid driver's license or permit to drive marked under this~~
24 ~~subsection shall remain in effect until the person's driving privilege~~
25 ~~is withheld by the department pursuant to notice given under RCW~~
26 ~~46.20.245, unless the license or permit expires or otherwise becomes~~
27 ~~invalid prior to the effective date of this action. Perfection of~~
28 ~~notice of appeal shall stay the execution of sentence including the~~
29 ~~withholding of the driving privilege.~~

30 ~~(2))~~ Every court having jurisdiction over offenses committed under
31 this chapter, or any other act of this state or municipal ordinance
32 adopted by a local authority regulating the operation of motor vehicles
33 on highways, or any federal authority having jurisdiction over offenses
34 substantially the same as those set forth in this title which occur on
35 federal installations within this state, shall immediately forward to
36 the department a forfeiture of bail or collateral deposited to secure
37 the defendant's appearance in court, a payment of a fine, penalty, or

1 court cost, a plea of guilty or nolo contendere or a finding of guilt,
2 or a finding that any person has committed a traffic infraction an
3 abstract of the court record in the form prescribed by rule of the
4 supreme court, showing the conviction of any person or the finding that
5 any person has committed a traffic infraction in said court for a
6 violation of any said laws other than regulations governing standing,
7 stopping, parking, and pedestrian offenses.

8 ((+3)) (2) Every state agency or municipality having jurisdiction
9 over offenses committed under this chapter, or under any other act of
10 this state or municipal ordinance adopted by a state or local authority
11 regulating the operation of motor vehicles on highways, may forward to
12 the department within ten days of failure to respond, failure to pay a
13 penalty, failure to appear at a hearing to contest the determination
14 that a violation of any statute, ordinance, or regulation relating to
15 standing, stopping, parking, or civil penalties issued under RCW
16 46.63.160 has been committed, or failure to appear at a hearing to
17 explain mitigating circumstances, an abstract of the citation record in
18 the form prescribed by rule of the department, showing the finding by
19 such municipality that two or more violations of laws governing
20 standing, stopping, and parking or one or more civil penalties issued
21 under RCW 46.63.160 have been committed and indicating the nature of
22 the defendant's failure to act. Such violations or infractions may not
23 have occurred while the vehicle is stolen from the registered owner or
24 is leased or rented under a bona fide commercial vehicle lease or
25 rental agreement between a lessor engaged in the business of leasing
26 vehicles and a lessee who is not the vehicle's registered owner. The
27 department may enter into agreements of reciprocity with the duly
28 authorized representatives of the states for reporting to each other
29 violations of laws governing standing, stopping, and parking.

30 ((+4)) (3) For the purposes of this title and except as defined in
31 RCW 46.25.010, "conviction" means a final conviction in a state or
32 municipal court or by any federal authority having jurisdiction over
33 offenses substantially the same as those set forth in this title which
34 occur on federal installations in this state, an unvacated forfeiture
35 of bail or collateral deposited to secure a defendant's appearance in
36 court, the payment of a fine or court cost, a plea of guilty or nolo
37 contendere, or a finding of guilt on a traffic law violation charge,

1 regardless of whether the imposition of sentence or sanctions are
2 deferred or the penalty is suspended, but not including entry into a
3 deferred prosecution agreement under chapter 10.05 RCW.

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

6 (5) For the purposes of this title, "finding that a traffic
7 infraction has been committed" means a failure to respond to a notice
8 of infraction or a determination made by a court pursuant to this
9 chapter. Payment of a monetary penalty made pursuant to RCW
10 46.63.070(2) is deemed equivalent to such a finding.

11 **Sec. 18.** RCW 46.61.5058 and 2009 c 479 s 38 are each amended to
12 read as follows:

13 (1) Upon the arrest of a person or upon the filing of a complaint,
14 citation, or information in a court of competent jurisdiction, based
15 upon probable cause to believe that a person has violated RCW
16 46.20.740, 46.61.502, or 46.61.504 or any similar municipal ordinance,
17 if such person has a prior offense within seven years as defined in RCW
18 46.61.5055, and where the person has been provided written notice that
19 any transfer, sale, or encumbrance of such person's interest in the
20 vehicle over which that person was actually driving or had physical
21 control when the violation occurred, is unlawful pending either
22 acquittal, dismissal, sixty days after conviction, or other termination
23 of the charge, such person shall be prohibited from encumbering,
24 selling, or transferring his or her interest in such vehicle, except as
25 otherwise provided in (a), (b), and (c) of this subsection, until
26 either acquittal, dismissal, sixty days after conviction, or other
27 termination of the charge. The prohibition against transfer of title
28 shall not be stayed pending the determination of an appeal from the
29 conviction.

30 (a) A vehicle encumbered by a bona fide security interest may be
31 transferred to the secured party or to a person designated by the
32 secured party;

33 (b) A leased or rented vehicle may be transferred to the lessor,
34 rental agency, or to a person designated by the lessor or rental
35 agency; and

36 (c) A vehicle may be transferred to a third party or a vehicle
37 dealer who is a bona fide purchaser or may be subject to a bona fide

1 security interest in the vehicle unless it is established that (i) in
2 the case of a purchase by a third party or vehicle dealer, such party
3 or dealer had actual notice that the vehicle was subject to the
4 prohibition prior to the purchase, or (ii) in the case of a security
5 interest, the holder of the security interest had actual notice that
6 the vehicle was subject to the prohibition prior to the encumbrance of
7 title.

8 (2) On conviction for a violation of either RCW 46.20.740,
9 46.61.502, or 46.61.504 or any similar municipal ordinance where the
10 person convicted has a prior offense within seven years as defined in
11 RCW 46.61.5055, the motor vehicle the person was driving or over which
12 the person had actual physical control at the time of the offense, if
13 the person has a financial interest in the vehicle, (~~is subject to~~
14 ~~seizure and forfeiture pursuant to this section~~) the court shall
15 consider at sentencing whether the vehicle shall be seized and
16 forfeited pursuant to this section if a seizure or forfeiture has not
17 yet occurred.

18 (3) A vehicle subject to forfeiture under this chapter may be
19 seized by a law enforcement officer of this state upon process issued
20 by a court of competent jurisdiction. Seizure of a vehicle may be made
21 without process if the vehicle subject to seizure has been the subject
22 of a prior judgment in favor of the state in a forfeiture proceeding
23 based upon this section.

24 (4) Seizure under subsection (3) of this section automatically
25 commences proceedings for forfeiture. The law enforcement agency under
26 whose authority the seizure was made shall cause notice of the seizure
27 and intended forfeiture of the seized vehicle to be served within
28 fifteen days after the seizure on the owner of the vehicle seized, on
29 the person in charge of the vehicle, and on any person having a known
30 right or interest in the vehicle, including a community property
31 interest. The notice of seizure may be served by any method authorized
32 by law or court rule, including but not limited to service by certified
33 mail with return receipt requested. Service by mail is complete upon
34 mailing within the fifteen-day period after the seizure. Notice of
35 seizure in the case of property subject to a security interest that has
36 been perfected on a certificate of title shall be made by service upon
37 the secured party or the secured party's assignee at the address shown
38 on the financing statement or the certificate of title.

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

5 (6) If a person notifies the seizing law enforcement agency in
6 writing of the person's claim of ownership or right to possession of
7 the seized vehicle within forty-five days of the seizure, the law
8 enforcement agency shall give the person or persons a reasonable
9 opportunity to be heard as to the claim or right. The hearing shall be
10 before the chief law enforcement officer of the seizing agency or the
11 chief law enforcement officer's designee, except where the seizing
12 agency is a state agency as defined in RCW 34.12.020, the hearing shall
13 be before the chief law enforcement officer of the seizing agency or an
14 administrative law judge appointed under chapter 34.12 RCW, except that
15 any person asserting a claim or right may remove the matter to a court
16 of competent jurisdiction. Removal may only be accomplished according
17 to the rules of civil procedure. The person seeking removal of the
18 matter must serve process against the state, county, political
19 subdivision, or municipality that operates the seizing agency, and any
20 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,
21 within forty-five days after the person seeking removal has notified
22 the seizing law enforcement agency of the person's claim of ownership
23 or right to possession. The court to which the matter is to be removed
24 shall be the district court when the aggregate value of the vehicle is
25 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
26 before the seizing agency and any appeal therefrom shall be under Title
27 34 RCW. In a court hearing between two or more claimants to the
28 vehicle involved, the prevailing party shall be entitled to a judgment
29 for costs and reasonable attorneys' fees. The burden of producing
30 evidence shall be upon the person claiming to be the legal owner or the
31 person claiming to have the lawful right to possession of the vehicle.
32 The seizing law enforcement agency shall promptly return the vehicle to
33 the claimant upon a determination by the administrative law judge or
34 court that the claimant is the present legal owner under this title
35 (~~46-RCW~~) or is lawfully entitled to possession of the vehicle.

36 (7) When a vehicle is forfeited under this chapter the seizing law
37 enforcement agency may sell the vehicle, retain it for official use, or
38 upon application by a law enforcement agency of this state release the

1 vehicle to that agency for the exclusive use of enforcing this title;
2 provided, however, that the agency shall first satisfy any bona fide
3 security interest to which the vehicle is subject under subsection
4 (1)(a) or (c) of this section.

5 (8) When a vehicle is forfeited, the seizing agency shall keep a
6 record indicating the identity of the prior owner, if known, a
7 description of the vehicle, the disposition of the vehicle, the value
8 of the vehicle at the time of seizure, and the amount of proceeds
9 realized from disposition of the vehicle.

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

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

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

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

23 (13) The net proceeds of a forfeited vehicle is the value of the
24 forfeitable interest in the vehicle after deducting the cost of
25 satisfying a bona fide security interest to which the vehicle is
26 subject at the time of seizure; and in the case of a sold vehicle,
27 after deducting the cost of sale, including reasonable fees or
28 commissions paid to independent selling agents.

29 (14) The value of a sold forfeited vehicle is the sale price. The
30 value of a retained forfeited vehicle is the fair market value of the
31 vehicle at the time of seizure, determined when possible by reference
32 to an applicable commonly used index, such as the index used by the
33 department of licensing. A seizing agency may, but need not, use an
34 independent qualified appraiser to determine the value of retained
35 vehicles. If an appraiser is used, the value of the vehicle appraised
36 is net of the cost of the appraisal.

1 **Sec. 19.** RCW 46.20.720 and 2012 c 183 s 9 are each amended to read
2 as follows:

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

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

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

33 ~~((The department may waive the requirement for the use of such a
34 device if it concludes that such devices are not reasonably available
35 in the local area.))~~

36 (b)(i) Except as provided in (b)(ii) of this subsection, the
37 installation of an ignition interlock device is not necessary on
38 vehicles owned, leased, or rented by a person's employer and on those

1 vehicles whose care and/or maintenance is the temporary responsibility
2 of the employer, and driven at the direction of a person's employer as
3 a 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,~~)

8 (ii) The employer exemption does not apply:

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

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

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

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

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

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

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

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

37 (a) ~~(An)~~ Any attempt to start the vehicle with a breath alcohol

1 concentration of 0.04 or more unless a subsequent test performed within
2 ten minutes registers a breath alcohol concentration lower than 0.04
3 and the digital image confirms the same person provided both samples;

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

7 (c) Failure to pass any random retest with a breath alcohol
8 concentration of 0.025 or lower unless a subsequent test performed
9 within ten minutes registers a breath alcohol concentration lower than
10 0.025, and the digital image confirms the same person provided both
11 samples; or

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

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

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

26 **Sec. 20.** RCW 46.20.385 and 2012 c 183 s 8 are each amended to read
27 as follows:

28 (1)(a) Beginning January 1, 2009, any person licensed under this
29 chapter who is convicted of a violation of RCW 46.61.502 or 46.61.504
30 or an equivalent local or out-of-state statute or ordinance, or a
31 violation of RCW 46.61.520(1)(a) or 46.61.522(1)(b), or who has had or
32 will have his or her license suspended, revoked, or denied under RCW
33 46.20.3101, or who is otherwise permitted under subsection (8) of this
34 section, may submit to the department an application for an ignition
35 interlock driver's license. The department, upon receipt of the
36 prescribed fee and upon determining that the petitioner is eligible to
37 receive the license, may issue an ignition interlock driver's license.

1 (b) A person may apply for an ignition interlock driver's license
2 anytime, including immediately after receiving the notices under RCW
3 46.20.308 or after his or her license is suspended, revoked, or denied.
4 A person receiving an ignition interlock driver's license waives his or
5 her right to a hearing or appeal under RCW 46.20.308.

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

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

25 (ii) Subject to any periodic renewal requirements established by
26 the department under this section and subject to any applicable
27 compliance requirements under this chapter or other law, an ignition
28 interlock driver's license granted upon a suspension or revocation
29 under RCW 46.61.5055 or 46.20.3101 extends through the remaining
30 portion of any concurrent or consecutive suspension or revocation that
31 may be imposed as the result of administrative action and criminal
32 conviction arising out of the same incident.

33 (iii) The time period during which the person is licensed under
34 this section shall apply on a day-for-day basis toward satisfying the
35 period of time the ignition interlock device restriction is required
36 under RCW 46.20.720 and 46.61.5055. Beginning with incidents occurring
37 on or after September 1, 2011, when calculating the period of time for
38 the restriction under RCW 46.20.720(3), the department must also give

1 the person a day-for-day credit for the time period, beginning from the
2 date of the incident, during which the person kept an ignition
3 interlock device installed on all vehicles the person operates. For
4 the purposes of this subsection (1)(c)(iii), the term "all vehicles"
5 does not include vehicles that would be subject to the employer
6 exception under RCW 46.20.720(3).

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

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

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

27 (5) The director shall cancel an ignition interlock driver's
28 license after receiving notice that the holder thereof has been
29 convicted of operating a motor vehicle in violation of its
30 restrictions, no longer meets the eligibility requirements, or has been
31 convicted of or found to have committed a separate offense or any other
32 act or omission that under this chapter would warrant suspension or
33 revocation of a regular driver's license. The department must give
34 notice of the cancellation as provided under RCW 46.20.245. A person
35 whose ignition interlock driver's license has been canceled under this
36 section may reapply for a new ignition interlock driver's license if he
37 or she is otherwise qualified under this section and pays the fee
38 required under RCW 46.20.380.

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

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

13 (7) The department shall adopt rules to implement ignition
14 interlock licensing. The department shall consult with the
15 administrative office of the courts, the state patrol, the Washington
16 association of sheriffs and police chiefs, ignition interlock
17 companies, and any other organization or entity the department deems
18 appropriate.

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

24 (b) A person who does not have any driver's license under this
25 chapter, but who would otherwise be eligible under this section to
26 apply for an ignition interlock license, may submit to the department
27 an application for an ignition interlock license. The department may
28 require the person to take any driver's licensing examination under
29 this chapter (~~(46.20-RCW)~~) and may require the person to also apply and
30 qualify for a temporary restricted driver's license under RCW
31 46.20.391.

32 **Sec. 21.** RCW 10.05.140 and 2011 c 293 s 8 are each amended to read
33 as follows:

34 As a condition of granting a deferred prosecution petition, the
35 court shall order that the petitioner shall not operate a motor vehicle
36 upon the public highways without a valid operator's license and proof
37 of liability insurance. The amount of liability insurance shall be

1 established by the court at not less than that established by RCW
2 46.29.490. As a condition of granting a deferred prosecution petition
3 on any alcohol-dependency based case, the court shall also order the
4 installation of an ignition interlock under RCW 46.20.720. The
5 required periods of use of the interlock shall be not less than the
6 periods provided for in RCW 46.20.720(3) (~~((a), (b), and (c))~~). As a
7 condition of granting a deferred prosecution petition, the court may
8 order the petitioner to make restitution and to pay costs as defined in
9 RCW 10.01.160. To help ensure continued sobriety and reduce the
10 likelihood of reoffense, the court may order reasonable conditions
11 during the period of the deferred prosecution including, but not
12 limited to, attendance at self-help recovery support groups for
13 alcoholism or drugs, complete abstinence from alcohol and all
14 nonprescribed mind-altering drugs, periodic urinalysis or breath
15 analysis, and maintaining law-abiding behavior. The court may
16 terminate the deferred prosecution program upon violation of the
17 deferred prosecution order.

18 **Sec. 22.** RCW 10.31.100 and 2013 c 278 s 4 and 2013 c 84 s 32 are
19 each reenacted and amended to read as follows:

20 A police officer having probable cause to believe that a person has
21 committed or is committing a felony shall have the authority to arrest
22 the person without a warrant. A police officer may arrest a person
23 without a warrant for committing a misdemeanor or gross misdemeanor
24 only when the offense is committed in the presence of the officer,
25 except as provided in subsections (1) through (11) of this section.

26 (1) Any police officer having probable cause to believe that a
27 person has committed or is committing a misdemeanor or gross
28 misdemeanor, involving physical harm or threats of harm to any person
29 or property or the unlawful taking of property or involving the use or
30 possession of cannabis, or involving the acquisition, possession, or
31 consumption of alcohol by a person under the age of twenty-one years
32 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070
33 or 9A.52.080, shall have the authority to arrest the person.

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

1 (a) An order has been issued of which the person has knowledge
2 under RCW 26.44.063, or chapter 7.-- (the new chapter created in
3 section 33, chapter 84, Laws of 2013), 7.90, 9A.46, 10.99, 26.09,
4 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the person
5 has violated the terms of the order restraining the person from acts or
6 threats of violence, or restraining the person from going onto the
7 grounds of or entering a residence, workplace, school, or day care, or
8 prohibiting the person from knowingly coming within, or knowingly
9 remaining within, a specified distance of a location or, in the case of
10 an order issued under RCW 26.44.063, imposing any other restrictions or
11 conditions upon the person; or

12 (b) A foreign protection order, as defined in RCW 26.52.010, has
13 been issued of which the person under restraint has knowledge and the
14 person under restraint has violated a provision of the foreign
15 protection order prohibiting the person under restraint from contacting
16 or communicating with another person, or excluding the person under
17 restraint from a residence, workplace, school, or day care, or
18 prohibiting the person from knowingly coming within, or knowingly
19 remaining within, a specified distance of a location, or a violation of
20 any provision for which the foreign protection order specifically
21 indicates that a violation will be a crime; or

22 (c) The person is sixteen years or older and within the preceding
23 four hours has assaulted a family or household member as defined in RCW
24 10.99.020 and the officer believes: (i) A felonious assault has
25 occurred; (ii) an assault has occurred which has resulted in bodily
26 injury to the victim, whether the injury is observable by the
27 responding officer or not; or (iii) that any physical action has
28 occurred which was intended to cause another person reasonably to fear
29 imminent serious bodily injury or death. Bodily injury means physical
30 pain, illness, or an impairment of physical condition. When the
31 officer has probable cause to believe that family or household members
32 have assaulted each other, the officer is not required to arrest both
33 persons. The officer shall arrest the person whom the officer believes
34 to be the primary physical aggressor. In making this determination,
35 the officer shall make every reasonable effort to consider: (i) The
36 intent to protect victims of domestic violence under RCW 10.99.010;
37 (ii) the comparative extent of injuries inflicted or serious threats

1 creating fear of physical injury; and (iii) the history of domestic
2 violence of each person involved, including whether the conduct was
3 part of an ongoing pattern of abuse; or

4 (d) The person has violated RCW 46.61.502 or 46.61.504 or an
5 equivalent local ordinance and the police officer has knowledge that
6 the person has a prior offense as defined in RCW 46.61.5055 within ten
7 years.

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

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

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

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

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

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

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

23 ((+f)) (g) RCW 46.61.5249, relating to operating a motor vehicle
24 in a negligent manner.

25 (4) A law enforcement officer investigating at the scene of a motor
26 vehicle accident may arrest the driver of a motor vehicle involved in
27 the accident if the officer has probable cause to believe that the
28 driver has committed in connection with the accident a violation of any
29 traffic law or regulation.

30 (5)(a) A law enforcement officer investigating at the scene of a
31 motor vessel accident may arrest the operator of a motor vessel
32 involved in the accident if the officer has probable cause to believe
33 that the operator has committed, in connection with the accident, a
34 criminal violation of chapter 79A.60 RCW.

35 (b) A law enforcement officer investigating at the scene of a motor
36 vessel accident may issue a citation for an infraction to the operator
37 of a motor vessel involved in the accident if the officer has probable

1 cause to believe that the operator has committed, in connection with
2 the accident, a violation of any boating safety law of chapter 79A.60
3 RCW.

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

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

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

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

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

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

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

31 (12) Except as specifically provided in subsections (2), (3), (4),
32 and (7) of this section, nothing in this section extends or otherwise
33 affects the powers of arrest prescribed in Title 46 RCW.

34 (13) No police officer may be held criminally or civilly liable for
35 making an arrest pursuant to subsection (2) or (9) of this section if
36 the police officer acts in good faith and without malice.

1 NEW SECTION. **Sec. 23.** There is created a 24/7 sobriety program to
2 be administered by the Washington traffic safety commission in
3 conjunction with the Washington association of sheriffs and police
4 chiefs. The program shall coordinate efforts among various local
5 government entities for the purpose of implementing alternatives to
6 incarceration for offenders convicted under RCW 46.61.502 or 46.61.504
7 with one or more prior convictions under RCW 46.61.502 or 46.61.504.

8 NEW SECTION. **Sec. 24.** The Washington association of sheriffs and
9 police chiefs shall conduct a 24/7 sobriety program pilot project.

10 (1) Pilot project sites shall be established in no more than three
11 counties and two cities. Local jurisdictions outside of the pilot
12 project sites are encouraged to establish a 24/7 sobriety program as
13 soon as practicable.

14 (2) The Washington association of sheriffs and police chiefs must,
15 to the greatest extent possible, select pilot project sites from
16 diverse geographic areas. The cities selected for participation in the
17 project must not be from within a county selected for the program.

18 (3) The Washington association of sheriffs and police chiefs shall
19 develop criteria for participation in the 24/7 sobriety program pilot
20 project including, but not limited to:

21 (a) Geographic diversity;

22 (b) Sufficient volume of eligible participants to provide useable
23 data for the pilot;

24 (c) County or city commitment to administration of the program; and

25 (d) Capability of the county or city law enforcement agency to
26 effectively accommodate and administer the program.

27 (4) The Washington association of sheriffs and police chiefs shall
28 provide a study of the 24/7 sobriety program project measuring changes
29 in recidivism and related county or city savings or costs.

30 (5) The Washington association of sheriffs and police chiefs shall
31 report preliminary findings and final results of the study to the
32 governor and the legislature on an annual basis. It is the intent of
33 the legislature that the 24/7 sobriety program shall achieve the goal
34 of implementation statewide by January 1, 2017.

35 NEW SECTION. **Sec. 25.** There is hereby established in the state
36 treasury the 24/7 sobriety account. The account shall be maintained

1 and administered by the Washington traffic safety commission to
2 reimburse the state for costs associated with establishing the program
3 and the Washington association of sheriffs and police chiefs for
4 ongoing program administration costs. The Washington traffic safety
5 commission may accept for deposit in the account money from donations,
6 gifts, grants, participation fees, and user fees or payments.
7 Expenditures from the account shall be budgeted through the normal
8 budget process.

9 NEW SECTION. **Sec. 26.** The definitions in this section apply
10 throughout sections 23 through 32 of this act unless the context
11 clearly requires otherwise.

12 (1) "24/7 electronic alcohol/drug monitoring" means the monitoring
13 by the use of any electronic instrument that is capable of determining
14 and monitoring the presence of alcohol or drugs in a person's body and
15 includes any associated equipment a participant needs in order for the
16 device to properly perform. Monitoring may also include mandatory
17 urine analysis tests as ordered by the court.

18 (2) "Participant" means a person who has one or more prior
19 convictions for a violation of RCW 46.61.502 or 46.61.504 and who has
20 been ordered by a court to participate in the 24/7 sobriety program.

21 (3) "Participating agency" means a sheriff's office or a designated
22 entity named by a sheriff that has agreed to participate in the 24/7
23 sobriety program by enrolling participants, administering one or more
24 of the tests, and submitting reports to the Washington association of
25 sheriffs and police chiefs.

26 (4) "Participation agreement" means a written document executed by
27 a participant agreeing to participate in the 24/7 sobriety program in
28 a form approved by the Washington association of sheriffs and police
29 chiefs that contains the following information:

- 30 (a) The type, frequency, and time period of testing;
31 (b) The location of testing;
32 (c) The fees and payment procedures required for testing; and
33 (d) The responsibilities and obligations of the participant under
34 the 24/7 sobriety program.

35 (5) "24/7 sobriety program" means a twenty-four hour and seven day
36 a week sobriety program in which a participant submits to the testing

1 of the participant's blood, breath, urine, or other bodily substances
2 in order to determine the presence of alcohol, marijuana, or any
3 controlled substance in the participant's body.

4 NEW SECTION. **Sec. 27.** Each county or city, through its sheriff or
5 chief, may participate in the 24/7 sobriety program. If a sheriff or
6 chief is unwilling or unable to participate in the 24/7 sobriety
7 program, the sheriff or chief may designate an entity willing to
8 provide the service.

9 NEW SECTION. **Sec. 28.** The court may condition any bond or
10 pretrial release upon participation in the 24/7 sobriety program and
11 payment of associated costs and expenses, if available.

12 NEW SECTION. **Sec. 29.** The Washington association of sheriffs and
13 police chiefs may adopt policies and procedures for the administration
14 of the 24/7 sobriety program to:

- 15 (1) Provide for procedures and apparatus for testing;
16 (2) Establish fees and costs for participation in the program to be
17 paid by the participants;
18 (3) Require the submission of reports and information by law
19 enforcement agencies within this state.

20 NEW SECTION. **Sec. 30.** (1) Funds in the 24/7 sobriety account
21 shall be distributed as follows:

22 (a) Any daily user fee, installation fee, deactivation fee,
23 enrollment fee, or monitoring fee collected under the 24/7 sobriety
24 program shall be collected by the sheriff or chief, or an entity
25 designated by the sheriff or chief, and deposited with the county or
26 city treasurer of the proper county or city, the proceeds of which
27 shall be applied and used only to defray the recurring costs of the
28 24/7 sobriety program including maintaining equipment, funding support
29 services, and ensuring compliance; and

30 (b) Any participation fee collected in the administration of
31 testing under the 24/7 sobriety program to cover program administration
32 costs incurred by the Washington association of sheriffs and police
33 chiefs shall be collected by the sheriff or chief, or an entity

1 designated by the sheriff or chief, and deposited in the 24/7 sobriety
2 account.

3 (2) All applicable fees shall be paid by the participant
4 contemporaneously or in advance of the time when the fee becomes due.

5 NEW SECTION. **Sec. 31.** The court shall not waive or reduce fees or
6 associated costs charged for participation in the 24/7 sobriety
7 program.

8 NEW SECTION. **Sec. 32.** (1) A participant who violates the terms of
9 participation in the 24/7 sobriety program or does not pay the required
10 fees or associated costs shall:

11 (a) Receive a written warning notice for a first violation;

12 (b) Serve a term of two days imprisonment for a second violation;

13 (c) Serve a term of up to five days imprisonment for a third
14 violation;

15 (d) Serve a term of up to ten days imprisonment for a fourth
16 violation; and

17 (e) For a fifth violation, the participant shall serve the entire
18 remaining sentence imposed by the court.

19 (2) A sheriff or chief, or the designee of a sheriff or chief, who
20 has probable cause to believe that a participant has violated the terms
21 of participation in the 24/7 sobriety program or has not paid the
22 required fees or associated costs shall immediately take the
23 participant into custody and cause him or her to be held until an
24 appearance before a judge on the next judicial day.

25 **Sec. 33.** RCW 4.24.545 and 2006 c 130 s 3 are each amended to read
26 as follows:

27 Local governments, their subdivisions and employees, the department
28 of corrections and its employees, and the Washington association of
29 sheriffs and police chiefs and its employees are immune from civil
30 liability for damages arising from incidents involving offenders who
31 are placed on electronic monitoring or who are participating in the
32 24/7 sobriety program, unless it is shown that an employee acted with
33 gross negligence or bad faith.

1 NEW SECTION. **Sec. 34.** (1) Any funding provided during the 2013-
2 2015 biennium for the ignition interlock program at the Washington
3 state patrol that is in addition to any funding identified in chapter
4 306, Laws of 2013 (omnibus transportation appropriations act) may only
5 be used to provide field officers to work directly with manufacturers,
6 service centers, technicians, and participants in the program. This
7 may include up to one full-time equivalent noncommissioned staff to
8 provide administrative support for the program. Any funding provided
9 as identified in this section must be used to supplement and not
10 supplant other funds being used to fund the ignition interlock program.

11 (2) This section expires July 1, 2015.

12 NEW SECTION. **Sec. 35.** A new section is added to chapter 43.43 RCW
13 to read as follows:

14 (1) Any officer conducting field inspections of ignition interlock
15 devices under the ignition interlock program shall report violations by
16 program participants to the court.

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

21 **Sec. 36.** RCW 46.20.308 and 2013 c 3 s 31 (Initiative Measure No.
22 502), 2012 c 183 s 7, and 2012 c 80 s 12 are each reenacted and amended
23 to read as follows:

24 (1) Any person who operates a motor vehicle within this state is
25 deemed to have given consent, subject to the provisions of RCW
26 46.61.506, to a test or tests of his or her breath (~~(or blood)~~) for the
27 purpose of determining the alcohol concentration, THC concentration, or
28 presence of any drug in his or her breath (~~(or blood)~~) if arrested for
29 any offense where, at the time of the arrest, the arresting officer has
30 reasonable grounds to believe the person had been driving or was in
31 actual physical control of a motor vehicle while under the influence of
32 intoxicating liquor or any drug or was in violation of RCW 46.61.503.
33 Neither consent nor this section precludes a police officer from
34 obtaining a search warrant for a person's breath or blood.

35 (2) The test or tests of breath shall be administered at the
36 direction of a law enforcement officer having reasonable grounds to

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

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

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

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

27 (i) The driver is age twenty-one or over and the test indicates
28 either that the alcohol concentration of the driver's breath (~~or~~
29 ~~blood~~) is 0.08 or more or that the THC concentration of the driver's
30 blood is 5.00 or more; or

31 (ii) The driver is under age twenty-one and the test indicates
32 either that the alcohol concentration of the driver's breath (~~or~~
33 ~~blood~~) is 0.02 or more or that the THC concentration of the driver's
34 blood is above 0.00; or

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

37 (d) If the driver's license, permit, or privilege to drive is

1 suspended, revoked, or denied the driver may be eligible to immediately
2 apply for an ignition interlock driver's license.

3 (3) Except as provided in this section, the test administered shall
4 be of the breath only. If an individual is unconscious or is under
5 arrest for the crime of felony driving under the influence of
6 intoxicating liquor or drugs under RCW 46.61.502(6), felony physical
7 control of a motor vehicle while under the influence of intoxicating
8 liquor or any drug under RCW 46.61.504(6), vehicular homicide as
9 provided in RCW 46.61.520, or vehicular assault as provided in RCW
10 46.61.522, or if an individual is under arrest for the crime of driving
11 while under the influence of intoxicating liquor or drugs as provided
12 in RCW 46.61.502, which arrest results from an accident in which there
13 has been serious bodily injury to another person, a breath or blood
14 test may be administered without the consent of the individual so
15 arrested pursuant to a search warrant, a valid waiver of the warrant
16 requirement, or when exigent circumstances exist.

17 ~~(4) ((Any person who is dead, unconscious, or who is otherwise in~~
18 ~~a condition rendering him or her incapable of refusal, shall be deemed~~
19 ~~not to have withdrawn the consent provided by subsection (1) of this~~
20 ~~section and the test or tests may be administered, subject to the~~
21 ~~provisions of RCW 46.61.506, and the person shall be deemed to have~~
22 ~~received the warnings required under subsection (2) of this section.~~

23 ~~(5))~~ If, following his or her arrest and receipt of warnings under
24 subsection (2) of this section, the person arrested refuses upon the
25 request of a law enforcement officer to submit to a test or tests of
26 his or her breath ~~((or blood))~~, no test shall be given except as
27 authorized ~~((under subsection (3) or (4) of this section))~~ by a search
28 warrant.

29 ~~((+6))~~ (5) If, after arrest and after the other applicable
30 conditions and requirements of this section have been satisfied, a test
31 or tests of the person's blood or breath is administered and the test
32 results indicate that the alcohol concentration of the person's breath
33 or blood is 0.08 or more, or the THC concentration of the person's
34 blood is 5.00 or more, if the person is age twenty-one or over, or that
35 the alcohol concentration of the person's breath or blood is 0.02 or
36 more, or the THC concentration of the person's blood is above 0.00, if
37 the person is under the age of twenty-one, or the person refuses to
38 submit to a test, the arresting officer or other law enforcement

1 officer at whose direction any test has been given, or the department,
2 where applicable, if the arrest results in a test of the person's
3 blood, shall:

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

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

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

15 ~~(d))~~ Serve notice in writing that the (~~(marked)~~) license or
16 permit, if any, is a temporary license that is valid for sixty days
17 from the date of arrest or from the date notice has been given in the
18 event notice is given by the department following a blood test, or
19 until the suspension, revocation, or denial of the person's license,
20 permit, or privilege to drive is sustained at a hearing pursuant to
21 subsection (~~((8))~~) (7) of this section, whichever occurs first. No
22 temporary license is valid to any greater degree than the license or
23 permit that it replaces; and

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

28 (i) That the officer had reasonable grounds to believe the arrested
29 person had been driving or was in actual physical control of a motor
30 vehicle within this state while under the influence of intoxicating
31 liquor or drugs, or both, or was under the age of twenty-one years and
32 had been driving or was in actual physical control of a motor vehicle
33 while having an alcohol or THC concentration in violation of RCW
34 46.61.503;

35 (ii) That after receipt of the warnings required by subsection (2)
36 of this section the person refused to submit to a test of his or her
37 (~~(blood or)~~) breath, or a test was administered and the results
38 indicated that the alcohol concentration of the person's breath or

1 blood was 0.08 or more, or the THC concentration of the person's blood
2 was 5.00 or more, if the person is age twenty-one or over, or that the
3 alcohol concentration of the person's breath or blood was 0.02 or more,
4 or the THC concentration of the person's blood was above 0.00, if the
5 person is under the age of twenty-one; and

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

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

17 ~~((+8))~~ (7) A person receiving notification under subsection
18 ~~((+6))~~ (5)(b) of this section may, within twenty days after the notice
19 has been given, request in writing a formal hearing before the
20 department. The person shall pay a fee of three hundred seventy-five
21 dollars as part of the request. If the request is mailed, it must be
22 postmarked within twenty days after receipt of the notification. Upon
23 timely receipt of such a request for a formal hearing, including
24 receipt of the required three hundred seventy-five dollar fee, the
25 department shall afford the person an opportunity for a hearing. The
26 department may waive the required three hundred seventy-five dollar fee
27 if the person is an indigent as defined in RCW 10.101.010. Except as
28 otherwise provided in this section, the hearing is subject to and shall
29 be scheduled and conducted in accordance with RCW 46.20.329 and
30 46.20.332. The hearing shall be conducted in the county of the arrest,
31 except that all or part of the hearing may, at the discretion of the
32 department, be conducted by telephone or other electronic means. The
33 hearing shall be held within sixty days following the arrest or
34 following the date notice has been given in the event notice is given
35 by the department following a blood test, unless otherwise agreed to by
36 the department and the person, in which case the action by the
37 department shall be stayed, and any valid temporary license marked
38 under subsection ~~((+6)(e))~~ (5) of this section extended, if the person

1 is otherwise eligible for licensing. For the purposes of this section,
2 the scope of the hearing shall cover the issues of whether a law
3 enforcement officer had reasonable grounds to believe the person had
4 been driving or was in actual physical control of a motor vehicle
5 within this state while under the influence of intoxicating liquor or
6 any drug or had been driving or was in actual physical control of a
7 motor vehicle within this state while having alcohol in his or her
8 system in a concentration of 0.02 or more, or THC in his or her system
9 in a concentration above 0.00, if the person was under the age of
10 twenty-one, whether the person was placed under arrest, and (a) whether
11 the person refused to submit to the test or tests upon request of the
12 officer after having been informed that such refusal would result in
13 the revocation of the person's license, permit, or privilege to drive,
14 or (b) if a test or tests were administered, whether the applicable
15 requirements of this section were satisfied before the administration
16 of the test or tests, whether the person submitted to the test or
17 tests, or whether a test was administered without express consent as
18 permitted under this section, and whether the test or tests indicated
19 that the alcohol concentration of the person's breath or blood was 0.08
20 or more, or the THC concentration of the person's blood was 5.00 or
21 more, if the person was age twenty-one or over at the time of the
22 arrest, or that the alcohol concentration of the person's breath or
23 blood was 0.02 or more, or the THC concentration of the person's blood
24 was above 0.00, if the person was under the age of twenty-one at the
25 time of the arrest. The sworn report or report under a declaration
26 authorized by RCW 9A.72.085 submitted by a law enforcement officer is
27 prima facie evidence that the officer had reasonable grounds to believe
28 the person had been driving or was in actual physical control of a
29 motor vehicle within this state while under the influence of
30 intoxicating liquor or drugs, or both, or the person had been driving
31 or was in actual physical control of a motor vehicle within this state
32 while having alcohol in his or her system in a concentration of 0.02 or
33 more, or THC in his or her system in a concentration above 0.00, and
34 was under the age of twenty-one and that the officer complied with the
35 requirements of this section.

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

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

13 ((+9+)) (8) If the suspension, revocation, or denial is sustained
14 after such a hearing, the person whose license, privilege, or permit is
15 suspended, revoked, or denied has the right to file a petition in the
16 superior court of the county of arrest to review the final order of
17 revocation by the department in the same manner as an appeal from a
18 decision of a court of limited jurisdiction. Notice of appeal must be
19 filed within thirty days after the date the final order is served or
20 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
21 1.1, or other statutes or rules referencing de novo review, the appeal
22 shall be limited to a review of the record of the administrative
23 hearing. The appellant must pay the costs associated with obtaining
24 the record of the hearing before the hearing officer. The filing of
25 the appeal does not stay the effective date of the suspension,
26 revocation, or denial. A petition filed under this subsection must
27 include the petitioner's grounds for requesting review. Upon granting
28 petitioner's request for review, the court shall review the
29 department's final order of suspension, revocation, or denial as
30 expeditiously as possible. The review must be limited to a
31 determination of whether the department has committed any errors of
32 law. The superior court shall accept those factual determinations
33 supported by substantial evidence in the record: (a) That were
34 expressly made by the department; or (b) that may reasonably be
35 inferred from the final order of the department. The superior court
36 may reverse, affirm, or modify the decision of the department or remand
37 the case back to the department for further proceedings. The decision
38 of the superior court must be in writing and filed in the clerk's

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

8 ~~((+10+))~~ (9)(a) If a person whose driver's license, permit, or
9 privilege to drive has been or will be suspended, revoked, or denied
10 under subsection ~~((+7+))~~ (6) of this section, other than as a result of
11 a breath ~~((or blood))~~ test refusal, and who has not committed an
12 offense for which he or she was granted a deferred prosecution under
13 chapter 10.05 RCW, petitions a court for a deferred prosecution on
14 criminal charges arising out of the arrest for which action has been or
15 will be taken under subsection ~~((+7+))~~ (6) of this section, or notifies
16 the department of licensing of the intent to seek such a deferred
17 prosecution, then the license suspension or revocation shall be stayed
18 pending entry of the deferred prosecution. The stay shall not be
19 longer than one hundred fifty days after the date charges are filed, or
20 two years after the date of the arrest, whichever time period is
21 shorter. If the court stays the suspension, revocation, or denial, it
22 may impose conditions on such stay. If the person is otherwise
23 eligible for licensing, the department shall issue a temporary license,
24 or extend any valid temporary license ~~((marked))~~ under subsection
25 ~~((+6+))~~ (5) of this section, for the period of the stay. If a deferred
26 prosecution treatment plan is not recommended in the report made under
27 RCW 10.05.050, or if treatment is rejected by the court, or if the
28 person declines to accept an offered treatment plan, or if the person
29 violates any condition imposed by the court, then the court shall
30 immediately direct the department to cancel the stay and any temporary
31 ~~marked~~ license or extension of a temporary license issued under this
32 subsection.

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

1 terminated, the stay shall be lifted and the suspension, revocation, or
2 denial reinstated. If the deferred prosecution is completed, the stay
3 shall be lifted and the suspension, revocation, or denial canceled.

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

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

15 **Sec. 37.** RCW 9.94A.535 and 2013 c 256 s 2 and 2013 c 84 s 26 are
16 each reenacted and amended to read as follows:

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

23 Whenever a sentence outside the standard sentence range is imposed,
24 the court shall set forth the reasons for its decision in written
25 findings of fact and conclusions of law. A sentence outside the
26 standard sentence range shall be a determinate sentence.

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

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

35 (1) Mitigating Circumstances - Court to Consider

36 The court may impose an exceptional sentence below the standard

1 range if it finds that mitigating circumstances are established by a
2 preponderance of the evidence. The following are illustrative only and
3 are not intended to be exclusive reasons for exceptional sentences.

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

6 (b) Before detection, the defendant compensated, or made a good
7 faith effort to compensate, the victim of the criminal conduct for any
8 damage or injury sustained.

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

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

14 (e) The defendant's capacity to appreciate the wrongfulness of his
15 or her conduct, or to conform his or her conduct to the requirements of
16 the law, was significantly impaired. Voluntary use of drugs or alcohol
17 is excluded.

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

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

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

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

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

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

37 (a) The defendant and the state both stipulate that justice is best
38 served by the imposition of an exceptional sentence outside the

1 standard range, and the court finds the exceptional sentence to be
2 consistent with and in furtherance of the interests of justice and the
3 purposes of the sentencing reform act.

4 (b) The defendant's prior unscored misdemeanor or prior unscored
5 foreign criminal history results in a presumptive sentence that is
6 clearly too lenient in light of the purpose of this chapter, as
7 expressed in RCW 9.94A.010.

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

11 (d) The failure to consider the defendant's prior criminal history
12 which was omitted from the offender score calculation pursuant to RCW
13 9.94A.525 results in a presumptive sentence that is clearly too
14 lenient.

15 (3) Aggravating Circumstances - Considered by a Jury - Imposed by
16 the Court

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

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

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

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

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

30 (i) The current offense involved multiple victims or multiple
31 incidents per victim;

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

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

36 (iv) The defendant used his or her position of trust, confidence,
37 or fiduciary responsibility to facilitate the commission of the current
38 offense.

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

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

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

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

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

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

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

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

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

28 (h) The current offense involved domestic violence, as defined in
29 RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or
30 more of the following was present:

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

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

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

- 1 (i) The offense resulted in the pregnancy of a child victim of
2 rape.
- 3 (j) The defendant knew that the victim of the current offense was
4 a youth who was not residing with a legal custodian and the defendant
5 established or promoted the relationship for the primary purpose of
6 victimization.
- 7 (k) The offense was committed with the intent to obstruct or impair
8 human or animal health care or agricultural or forestry research or
9 commercial production.
- 10 (l) The current offense is trafficking in the first degree or
11 trafficking in the second degree and any victim was a minor at the time
12 of the offense.
- 13 (m) The offense involved a high degree of sophistication or
14 planning.
- 15 (n) The defendant used his or her position of trust, confidence, or
16 fiduciary responsibility to facilitate the commission of the current
17 offense.
- 18 (o) The defendant committed a current sex offense, has a history of
19 sex offenses, and is not amenable to treatment.
- 20 (p) The offense involved an invasion of the victim's privacy.
- 21 (q) The defendant demonstrated or displayed an egregious lack of
22 remorse.
- 23 (r) The offense involved a destructive and foreseeable impact on
24 persons other than the victim.
- 25 (s) The defendant committed the offense to obtain or maintain his
26 or her membership or to advance his or her position in the hierarchy of
27 an organization, association, or identifiable group.
- 28 (t) The defendant committed the current offense shortly after being
29 released from incarceration.
- 30 (u) The current offense is a burglary and the victim of the
31 burglary was present in the building or residence when the crime was
32 committed.
- 33 (v) The offense was committed against a law enforcement officer who
34 was performing his or her official duties at the time of the offense,
35 the offender knew that the victim was a law enforcement officer, and
36 the victim's status as a law enforcement officer is not an element of
37 the offense.

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

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

6 (y) The victim's injuries substantially exceed the level of bodily
7 harm necessary to satisfy the elements of the offense. This aggravator
8 is not an exception to RCW 9.94A.530(2).

9 (z)(i)(A) The current offense is theft in the first degree, theft
10 in the second degree, possession of stolen property in the first
11 degree, or possession of stolen property in the second degree; (B) the
12 stolen property involved is metal property; and (C) the property damage
13 to the victim caused in the course of the theft of metal property is
14 more than three times the value of the stolen metal property, or the
15 theft of the metal property creates a public hazard.

16 (ii) For purposes of this subsection, "metal property" means
17 commercial metal property, private metal property, or nonferrous metal
18 property, as defined in RCW 19.290.010.

19 (aa) The defendant committed the offense with the intent to
20 directly or indirectly cause any benefit, aggrandizement, gain, profit,
21 or other advantage to or for a criminal street gang as defined in RCW
22 9.94A.030, its reputation, influence, or membership.

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

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

29 (dd) The current offense involved a felony crime against persons,
30 except for assault in the third degree pursuant to RCW 9A.36.031(1)(k),
31 that occurs in a courtroom, jury room, judge's chamber, or any waiting
32 area or corridor immediately adjacent to a courtroom, jury room, or
33 judge's chamber. This subsection shall apply only: (i) During the
34 times when a courtroom, jury room, or judge's chamber is being used for
35 judicial purposes during court proceedings; and (ii) if signage was
36 posted in compliance with section 3, chapter 256, Laws of 2013 at the
37 time of the offense.

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

5 NEW SECTION. Sec. 38. (1) The legislature finds that Washington
6 state has one of the weakest driving under the influence felony laws
7 (in noninjury cases) in the nation. Of the forty-five states that have
8 felony driving under the influence laws for convictions, Washington
9 state and North Dakota were the only states where a convicted driving
10 under the influence offender in a noninjury crash could be charged with
11 a felony starting on the fifth offense. This year, North Dakota
12 changed its law making a fourth time driving under the influence
13 offender a felon, leaving Washington state with the dubious distinction
14 as the state with the greatest number of prior convictions required to
15 constitute a driving under the influence felony. The legislature
16 further notes that there have been several high profile driving under
17 the influence fatalities in Washington state committed by offenders
18 with multiple prior driving under the influence offenses on their
19 record or while waiting to have their cases resolved pretrial. The
20 Washington impaired driving work group is established to study
21 effective strategies to reduce vehicle-related deaths and serious
22 injuries that are a result of impaired driving incidents in Washington
23 state.

24 (2) Members of the work group shall consist of the following
25 members:

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

28 (b) One member from each of the two largest caucuses of the house
29 of representatives, appointed by the speaker of the house of
30 representatives;

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

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

35 (e) The director of the department of licensing, or the director's
36 designee;

1 (f) The secretary of the department of corrections, or the
2 secretary's designee;

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

5 (h) One member representing the Washington traffic safety
6 commission;

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

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

10 (k) One member representing the district and municipal court
11 judges' association;

12 (l) One member representing the Washington state association of
13 counties;

14 (m) One member representing the Washington association of
15 prosecuting attorneys;

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

18 (o) One member representing the Washington state association of
19 drug court professionals;

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

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

22 (r) One member representing the Washington state association of
23 cities;

24 (s) One member representing treatment providers;

25 (t) One representative representing driving under the influence
26 victim impact panels; and

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

29 (i) City law enforcement;

30 (ii) County law enforcement;

31 (iii) Court administrators; and

32 (iv) Driving under the influence victims or family members of a
33 victim.

34 (3) The Washington traffic safety commission shall convene the
35 initial meeting of the work group and provide staff support.

36 (4) Members of the work group shall select the chair of the work
37 group.

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

3 (a) Lowering the minimum number of previous impaired driving
4 convictions that must be counted before constituting and being
5 punishable as a felony offense;

6 (b) Providing effective strategies for reducing motor vehicle-
7 related deaths and serious injuries due to impaired driving;

8 (c) Increasing mandatory minimum penalties and fines for repeat
9 offenders;

10 (d) Promoting and monitoring the use of mandatory ignition
11 interlocks;

12 (e) The advantages and disadvantages of creating sobriety
13 checkpoints;

14 (f) Requiring mandatory arrests for a first offense for an impaired
15 driving offense;

16 (g) Increasing treatment and rehabilitation for repeat offenders;

17 (h) Reviewing the penalties for refusing to take a breath or blood
18 test for the purpose of determining the alcohol concentration or
19 presence of any drugs;

20 (i) Increasing funding for prevention, intervention, suppression,
21 and prosecution of impaired driving offenses;

22 (j) Prohibiting the sale of alcohol to offenders convicted of
23 repeat impaired driving offenses;

24 (k) Improving prosecution and encouraging prosecutors to
25 aggressively enforce impaired driving laws;

26 (l) Increasing the number of driving under the influence courts and
27 court-related services;

28 (m) Creating state and local impaired driving enforcement task
29 forces to increase the visibility of enforcement;

30 (n) Promoting education and prevention strategies; and

31 (o) Encouraging private sector collaboration.

32 (6) The work group shall compile its findings and recommendations
33 into a final report and provide its report to the legislature and
34 governor by December 1, 2013.

35 (7) The work group shall function within existing resources and no
36 specific budget may be provided to complete the study. The
37 participants of the study group are encouraged to donate their time to
38 offset any costs.

1 (8) This section expires January 1, 2014.

2 NEW SECTION. **Sec. 39.** The sum of one hundred seventy-six thousand
3 dollars of the state general fund for the fiscal year ending June 30,
4 2014, and one hundred seventy-six thousand dollars of the state general
5 fund for the fiscal year ending June 30, 2015, or as much thereof as
6 may be necessary, are appropriated to the Washington traffic safety
7 commission solely for the purposes of section 25 of this act.

8 NEW SECTION. **Sec. 40.** The sum of two hundred seventy thousand
9 dollars of the state general fund for the fiscal year ending June 30,
10 2014, and three hundred sixty thousand dollars of the state general
11 fund for the fiscal year ending June 30, 2015, or as much thereof as
12 may be necessary, are appropriated to the Washington traffic safety
13 commission solely for allocation to counties for the increased
14 incarceration costs incurred as a result of mandatory arrest of repeat
15 offenders under RCW 10.31.100(2)(d).

16 NEW SECTION. **Sec. 41.** The sum of one million two hundred seventy
17 thousand five hundred dollars of the general fund--state appropriation
18 for the fiscal year ending June 30, 2014, and one million two hundred
19 seventy thousand five hundred dollars of the general fund--state
20 appropriation for the fiscal year ending June 30, 2015, are provided as
21 a grant to the Washington association of prosecuting attorneys for
22 funding up to eleven deputy prosecuting attorney positions focused upon
23 rush filing charges against repeat DUI offenders. The new positions
24 will be in addition to current resources and not supplant existing
25 positions. The Washington association of prosecuting attorneys will
26 provide a report by December 1, 2014, on the number of cases rush filed
27 by the new positions and the overall effect on case processing within
28 each jurisdiction.

29 NEW SECTION. **Sec. 42.** The sum of one hundred thousand dollars of
30 the state general fund for the fiscal year ending June 30, 2014, and
31 one hundred twenty-two thousand dollars of the state general fund for
32 the fiscal year ending June 30, 2015, or as much thereof as may be
33 necessary, are appropriated to the department of corrections solely for
34 the increased supervision of offenders under RCW 9.94A.501(4)(h).

1 NEW SECTION. **Sec. 43.** The sum of four hundred twenty-three
2 thousand dollars of the state general fund for the fiscal year ending
3 June 30, 2014, eight hundred fourteen thousand dollars of the state
4 general fund for the fiscal year ending June 30, 2015, and one million
5 four hundred seventy-eight thousand dollars of the state general fund
6 federal appropriation, or as much thereof as may be necessary, are
7 appropriated to the department of social and health services to provide
8 court ordered chemical dependency assessment and treatment services for
9 low-income or medicaid eligible repeat DUI offenders.

10 NEW SECTION. **Sec. 44.** Sections 27, 28, and 30 through 32 of this
11 act take effect January 1, 2014.

12 NEW SECTION. **Sec. 45.** Sections 23 through 32 of this act are each
13 added to chapter 36.28A RCW.

14 NEW SECTION. **Sec. 46.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

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