

E2SHB 1614 - S COMM AMD
By Committee on Law & Justice

NOT ADOPTED 04/20/2017

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

3 "Sec. 1. RCW 9.96.060 and 2014 c 176 s 1 and 2014 c 109 s 1 are
4 each reenacted and amended to read as follows:

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

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

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

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

25 (c) The offense was a violation of RCW 46.61.502 (driving while
26 under the influence), 46.61.504 (actual physical control while under
27 the influence), 9.91.020 (operating a railroad, etc. while
28 intoxicated), or the offense is considered a "prior offense" under
29 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
30 violation within ten years of the date of arrest for the prior

1 offense or less than ten years has elapsed since the date of the
2 arrest for the prior offense;

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

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

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

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

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

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

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

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

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

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

8 (3) Subject to RCW 9.96.070, every person convicted of
9 prostitution under RCW 9A.88.030 who committed the offense as a
10 result of being a victim of trafficking, RCW 9A.40.100, promoting
11 prostitution in the first degree, RCW 9A.88.070, promoting commercial
12 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons
13 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.
14 7101 et seq. may apply to the sentencing court for vacation of the
15 applicant's record of conviction for the prostitution offense. An
16 applicant may not have the record of conviction for prostitution
17 vacated if any one of the following is present:

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

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

24 (4) Every person convicted prior to January 1, 1975, of violating
25 any statute or rule regarding the regulation of fishing activities,
26 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
27 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
28 who claimed to be exercising a treaty Indian fishing right, may apply
29 to the sentencing court for vacation of the applicant's record of the
30 misdemeanor, gross misdemeanor, or felony conviction for the offense.
31 If the person is deceased, a member of the person's family or an
32 official representative of the tribe of which the person was a member
33 may apply to the court on behalf of the deceased person.
34 Notwithstanding the requirements of RCW 9.94A.640, the court shall
35 vacate the record of conviction if:

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

38 (b) The state has been enjoined from taking enforcement action of
39 the statute or rule to the extent that it interferes with a treaty
40 Indian fishing right as determined under *United States v. Washington*,

1 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
2 899 (D. Oregon 1969), and any posttrial orders of those courts, or
3 any other state supreme court or federal court decision.

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

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

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

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

33 A police officer having probable cause to believe that a person
34 has committed or is committing a felony shall have the authority to
35 arrest the person without a warrant. A police officer may arrest a
36 person without a warrant for committing a misdemeanor or gross
37 misdemeanor only when the offense is committed in the presence of an
38 officer, except as provided in subsections (1) through (12) of this
39 section.

1 (1) Any police officer having probable cause to believe that a
2 person has committed or is committing a misdemeanor or gross
3 misdemeanor, involving physical harm or threats of harm to any person
4 or property or the unlawful taking of property or involving the use
5 or possession of cannabis, or involving the acquisition, possession,
6 or consumption of alcohol by a person under the age of twenty-one
7 years under RCW 66.44.270, or involving criminal trespass under RCW
8 9A.52.070 or 9A.52.080, shall have the authority to arrest the
9 person.

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

14 (a) An order has been issued of which the person has knowledge
15 under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09,
16 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the
17 person has violated the terms of the order restraining the person
18 from acts or threats of violence, or restraining the person from
19 going onto the grounds of or entering a residence, workplace, school,
20 or day care, or prohibiting the person from knowingly coming within,
21 or knowingly remaining within, a specified distance of a location or,
22 in the case of an order issued under RCW 26.44.063, imposing any
23 other restrictions or conditions upon the person; or

24 (b) A foreign protection order, as defined in RCW 26.52.010, has
25 been issued of which the person under restraint has knowledge and the
26 person under restraint has violated a provision of the foreign
27 protection order prohibiting the person under restraint from
28 contacting or communicating with another person, or excluding the
29 person under restraint from a residence, workplace, school, or day
30 care, or prohibiting the person from knowingly coming within, or
31 knowingly remaining within, a specified distance of a location, or a
32 violation of any provision for which the foreign protection order
33 specifically indicates that a violation will be a crime; or

34 (c) The person is eighteen years or older and within the
35 preceding four hours has assaulted a family or household member as
36 defined in RCW 10.99.020 and the officer believes: (i) A felonious
37 assault has occurred; (ii) an assault has occurred which has resulted
38 in bodily injury to the victim, whether the injury is observable by
39 the responding officer or not; or (iii) that any physical action has
40 occurred which was intended to cause another person reasonably to

1 fear imminent serious bodily injury or death. Bodily injury means
2 physical pain, illness, or an impairment of physical condition. When
3 the officer has probable cause to believe that family or household
4 members have assaulted each other, the officer is not required to
5 arrest both persons. The officer shall arrest the person whom the
6 officer believes to be the primary physical aggressor. In making this
7 determination, the officer shall make every reasonable effort to
8 consider: (A) The intent to protect victims of domestic violence
9 under RCW 10.99.010; (B) the comparative extent of injuries inflicted
10 or serious threats creating fear of physical injury; and (C) the
11 history of domestic violence of each person involved, including
12 whether the conduct was part of an ongoing pattern of abuse.

13 (3) A police officer shall, at the request of a parent or
14 guardian, arrest the sixteen or seventeen year old child of that
15 parent or guardian if the officer has probable cause to believe that
16 the child has assaulted a family or household member as defined in
17 RCW 10.99.020 in the preceding four hours. Nothing in this subsection
18 removes a police officer's existing authority provided in this
19 section to make an arrest.

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

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

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

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

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

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

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

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

37 (5) A law enforcement officer investigating at the scene of a
38 motor vehicle accident may arrest the driver of a motor vehicle
39 involved in the accident if the officer has probable cause to believe

1 that the driver has committed in connection with the accident a
2 violation of any traffic law or regulation.

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

8 (b) A law enforcement officer investigating at the scene of a
9 motor vessel accident may issue a citation for an infraction to the
10 operator of a motor vessel involved in the accident if the officer
11 has probable cause to believe that the operator has committed, in
12 connection with the accident, a violation of any boating safety law
13 of chapter 79A.60 RCW.

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

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

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

26 (10) A police officer may arrest and take into custody, pending
27 release on bail, personal recognizance, or court order, a person
28 without a warrant when the officer has probable cause to believe that
29 an order has been issued of which the person has knowledge under
30 chapter 10.14 RCW and the person has violated the terms of that
31 order.

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

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

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

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

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

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

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

17 (17)(a) Except as provided in (b) of this subsection, a police
18 officer shall arrest and keep in custody, until release by a judicial
19 officer on bail, personal recognizance, or court order, a person
20 without a warrant when the officer has probable cause to believe that
21 the person has violated RCW 46.61.502 or 46.61.504 or an equivalent
22 local ordinance and the police officer: (i) Has knowledge that the
23 person has a prior offense as defined in RCW 46.61.5055 within ten
24 years; or (ii) has knowledge, based on a review of the information
25 available to the officer at the time of arrest, that the person is
26 charged with or is awaiting arraignment for an offense that would
27 qualify as a prior offense as defined in RCW 46.61.5055 if it were a
28 conviction.

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

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

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

38 (1)(a) Any person licensed under this chapter or who has a valid
39 driver's license from another state, who is convicted of: (i) A

1 violation of RCW 46.61.502 or 46.61.504 or an equivalent local or
2 out-of-state statute or ordinance, or (ii) a violation of RCW
3 46.61.520(1)(a) or an equivalent local or out-of-state statute or
4 ordinance, or (iii) a conviction for a violation of RCW 46.61.520(1)
5 (b) or (c) if the conviction is the result of a charge that was
6 originally filed as a violation of RCW 46.61.520(1)(a), or (iv) RCW
7 46.61.522(1)(b) or an equivalent local or out-of-state statute or
8 ordinance, or (v) RCW 46.61.522(1) (a) or (c) if the conviction is
9 the result of a charge that was originally filed as a violation of
10 RCW 46.61.522(1)(b) committed while under the influence of
11 intoxicating liquor or any drug, or (vi) who has had or will have his
12 or her license suspended, revoked, or denied under RCW 46.20.3101, or
13 who is otherwise permitted under subsection (8) of this section, may
14 submit to the department an application for an ignition interlock
15 driver's license. The department, upon receipt of the prescribed fee
16 and upon determining that the petitioner is eligible to receive the
17 license, may issue an ignition interlock driver's license.

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

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

25 (i) The department shall require the person to maintain the
26 device on all vehicles operated by the person and shall restrict the
27 person to operating only vehicles equipped with the device, for the
28 remainder of the period of suspension, revocation, or denial, unless
29 otherwise permitted under RCW 46.20.720(6).

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

38 (2) An applicant for an ignition interlock driver's license who
39 qualifies under subsection (1) of this section is eligible to receive

1 a license only if the applicant files satisfactory proof of financial
2 responsibility under chapter 46.29 RCW.

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

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

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

31 (6)(a) Unless costs are waived by the ignition interlock company
32 or the person is indigent under RCW 10.101.010, the applicant shall
33 pay the cost of installing, removing, and leasing the ignition
34 interlock device and shall pay an additional fee of twenty dollars
35 per month. Payments shall be made directly to the ignition interlock
36 company. The company shall remit the additional (~~twenty dollar~~) fee
37 to the department, except that the company may retain twenty-five
38 cents per month of the additional fee to cover the expenses
39 associated with administering the fee.

1 (b) The department shall deposit the proceeds of the twenty
2 dollar fee into the ignition interlock device revolving account.
3 Expenditures from the account may be used only to administer and
4 operate the ignition interlock device revolving account program. The
5 department shall adopt rules to provide monetary assistance according
6 to greatest need and when funds are available.

7 (7) The department shall adopt rules to implement ignition
8 interlock licensing. The department shall consult with the
9 administrative office of the courts, the state patrol, the Washington
10 association of sheriffs and police chiefs, ignition interlock
11 companies, and any other organization or entity the department deems
12 appropriate.

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

18 (b) A person who does not have any driver's license under this
19 chapter, but who would otherwise be eligible under this section to
20 apply for an ignition interlock license, may submit to the department
21 an application for an ignition interlock license. The department may
22 require the person to take any driver's licensing examination under
23 this chapter and may require the person to also apply and qualify for
24 a temporary restricted driver's license under RCW 46.20.391.

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

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

30 (a) **Pretrial release.** Upon receipt of notice from a court that an
31 ignition interlock device restriction has been imposed under RCW
32 10.21.055;

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

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

38 (i) RCW 46.61.502 or 46.61.504 or an equivalent local ordinance;
39 or

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

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

7 (i) Due to a conviction of a violation of RCW 46.61.502 or
8 46.61.504 or an equivalent local or out-of-state statute or
9 ordinance; or

10 (ii) Due to a conviction of a violation of RCW 46.61.5249 or
11 46.61.500 or an equivalent local ordinance if the person is required
12 under RCW 46.61.5249(4) or 46.61.500(3) (a) or (b) to install an
13 ignition interlock device on all vehicles operated by the person; or

14 (e) **Court order.** Upon receipt of an order by a court having
15 jurisdiction that a person charged or convicted of any offense
16 involving the use, consumption, or possession of alcohol while
17 operating a motor vehicle may drive only a motor vehicle equipped
18 with a functioning ignition interlock. The court shall establish a
19 specific calibration setting at which the ignition interlock will
20 prevent the vehicle from being started. The court shall also
21 establish the period of time for which ignition interlock use will be
22 required.

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

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

29 (a) Subsection (1)(a) of this section shall remain in effect
30 until:

31 (i) The court has authorized the removal of the device under RCW
32 10.21.055; or

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

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

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

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

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

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

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

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

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

16 The period of restriction under (c) and (d) of this subsection
17 based on incidents occurring on or after June 9, 2016, must be tolled
18 for any period in which the person does not have an ignition
19 interlock device installed on a vehicle owned or operated by the
20 person unless the person receives a determination from the department
21 that the person is unable to operate an ignition interlock device due
22 to a physical disability. The department's determination that a
23 person is unable to operate an ignition interlock device must be
24 reasonable and be based upon good and substantial evidence. This
25 determination is subject to review by a court of competent
26 jurisdiction. The department may charge a person seeking a medical
27 exemption under this subsection a reasonable fee for the assessment.

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

35 (a) Any attempt to start the vehicle with a breath alcohol
36 concentration of 0.04 or more unless a subsequent test performed
37 within ten minutes registers a breath alcohol concentration lower
38 than 0.04 and the digital image confirms the same person provided
39 both samples;

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

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

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

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

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

23 (c) If the day-for-day credit granted under this subsection
24 equals or exceeds the period of time the ignition interlock device
25 restriction is imposed under subsection (1)(c) or (d) of this section
26 arising out of the same incident, and the person has already met the
27 requirements for removal of the device under subsection (4) of this
28 section, the department may waive the requirement that a device be
29 installed or that the person again meet the requirements for removal.

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

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

4 (7) **Ignition interlock device revolving account.** In addition to
5 any other costs associated with the use of an ignition interlock
6 device imposed on the person restricted under this section, the
7 person shall pay an additional fee of twenty dollars per month.
8 Payments must be made directly to the ignition interlock company. The
9 company shall remit the additional (~~twenty dollar~~) fee to the
10 department to be deposited into the ignition interlock device
11 revolving account, except that the company may retain twenty-five
12 cents per month of the additional fee to cover the expenses
13 associated with administering the fee. The department may waive the
14 monthly fee if the person is indigent under RCW 10.101.010.

15 (8) **Foreign jurisdiction.** For a person restricted under this
16 section who is residing outside of the state of Washington, the
17 department may accept verification of installation of an ignition
18 interlock device by an ignition interlock company authorized to do
19 business in the jurisdiction in which the person resides, provided
20 the device meets any applicable requirements of that jurisdiction.
21 The department may waive the monthly fee required by subsection (7)
22 of this section if collection of the fee would be impractical in the
23 case of a person residing in another jurisdiction.

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

26 (1) **No prior offenses in seven years.** Except as provided in RCW
27 46.61.502(6) or 46.61.504(6), a person who is convicted of a
28 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
29 within seven years shall be punished as follows:

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

35 (i) By imprisonment for not less than one day nor more than three
36 hundred sixty-four days. Twenty-four consecutive hours of the
37 imprisonment may not be suspended unless the court finds that the
38 imposition of this mandatory minimum sentence would impose a
39 substantial risk to the offender's physical or mental well-being.

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

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

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

26 (i) By imprisonment for not less than two days nor more than
27 three hundred sixty-four days. Forty-eight consecutive hours of the
28 imprisonment may not be suspended unless the court finds that the
29 imposition of this mandatory minimum sentence would impose a
30 substantial risk to the offender's physical or mental well-being.
31 Whenever the mandatory minimum sentence is suspended, the court shall
32 state in writing the reason for granting the suspension and the facts
33 upon which the suspension is based. In lieu of the mandatory minimum
34 term of imprisonment required under this subsection (1)(b)(i), the
35 court may order not less than thirty days of electronic home
36 monitoring or a one hundred twenty day period of 24/7 sobriety
37 program monitoring. The court may consider the offender's pretrial
38 24/7 sobriety program testing as fulfilling a portion of posttrial
39 sentencing. The offender shall pay the cost of electronic home
40 monitoring. The county or municipality in which the penalty is being

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

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

10 (2) **One prior offense in seven years.** Except as provided in RCW
11 46.61.502(6) or 46.61.504(6), a person who is convicted of a
12 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense
13 within seven years shall be punished as follows:

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

19 (i) By imprisonment for not less than thirty days nor more than
20 three hundred sixty-four days and sixty days of electronic home
21 monitoring. In lieu of the mandatory (~~minimum~~) term of (~~sixty~~
22 ~~days~~) imprisonment and electronic home monitoring under this
23 subsection (2)(a)(i), the court may order (~~at least an additional~~)
24 a minimum of four days in jail (~~or, if available in that county or~~
25 city, a six-month) and either one hundred eighty days of electronic
26 home monitoring or a one hundred twenty-day period of 24/7 sobriety
27 program monitoring pursuant to RCW 36.28A.300 through 36.28A.390(~~or~~
28 and). The court may consider the offender's pretrial 24/7 sobriety
29 program monitoring as fulfilling a portion of posttrial sentencing.

30 The court shall order an expanded alcohol assessment and treatment,
31 if deemed appropriate by the assessment. The offender shall pay for
32 the cost of the electronic monitoring. The county or municipality
33 where the penalty is being imposed shall determine the cost. The
34 court may also require the offender's electronic home monitoring
35 device include an alcohol detection breathalyzer or other separate
36 alcohol monitoring device, and may restrict the amount of alcohol the
37 offender may consume during the time the offender is on electronic
38 home monitoring. Thirty days of imprisonment and sixty days of
39 electronic home monitoring may not be suspended unless the court
40 finds that the imposition of this mandatory minimum sentence would

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

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

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

13 (i) By imprisonment for not less than forty-five days nor more
14 than three hundred sixty-four days and ninety days of electronic home
15 monitoring. In lieu of the mandatory minimum term of ~~((ninety days))~~
16 imprisonment and electronic home monitoring under this subsection
17 (2)(b)(i), the court may order ~~((at least an additional))~~ a minimum
18 of six days in jail ~~((or, if available in that county or city,))~~ and
19 either six months of electronic home monitoring or a ~~((six month))~~
20 one hundred twenty-day period of 24/7 sobriety program monitoring
21 pursuant to RCW 36.28A.300 through 36.28A.390~~((, and))~~. The court may
22 consider the offender's pretrial 24/7 sobriety program monitoring as
23 fulfilling a portion of posttrial sentencing. The court shall order
24 an expanded alcohol assessment and treatment, if deemed appropriate
25 by the assessment. The offender shall pay for the cost of the
26 electronic monitoring. The county or municipality where the penalty
27 is being imposed shall determine the cost. The court may also require
28 the offender's electronic home monitoring device include an alcohol
29 detection breathalyzer or other separate alcohol monitoring device,
30 and may restrict the amount of alcohol the offender may consume
31 during the time the offender is on electronic home monitoring. Forty-
32 five days of imprisonment and ninety days of electronic home
33 monitoring may not be suspended unless the court finds that the
34 imposition of this mandatory minimum sentence would impose a
35 substantial risk to the offender's physical or mental well-being.
36 Whenever the mandatory minimum sentence is suspended, the court shall
37 state in writing the reason for granting the suspension and the facts
38 upon which the suspension is based; and

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

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

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

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

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

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

38 (b) **Penalty for alcohol concentration at least 0.15.** In the case
39 of a person whose alcohol concentration was at least 0.15, or for
40 whom by reason of the person's refusal to take a test offered

1 pursuant to RCW 46.20.308 there is no test result indicating the
2 person's alcohol concentration:

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

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

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

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

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

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

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

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

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

2 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall
3 require any person convicted of a violation of RCW 46.61.502 or
4 46.61.504 or an equivalent local ordinance to comply with the rules
5 and requirements of the department regarding the installation and use
6 of a functioning ignition interlock device installed on all motor
7 vehicles operated by the person.

8 (b) **Monitoring devices.** If the court orders that a person refrain
9 from consuming any alcohol, the court may order the person to submit
10 to alcohol monitoring through an alcohol detection breathalyzer
11 device, transdermal sensor device, or other technology designed to
12 detect alcohol in a person's system. The person shall pay for the
13 cost of the monitoring, unless the court specifies that the cost of
14 monitoring will be paid with funds that are available from an
15 alternative source identified by the court. The county or
16 municipality where the penalty is being imposed shall determine the
17 cost.

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

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

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

27 (iii) Order the person to install and use a functioning ignition
28 interlock or other device in addition to a period of 24/7 sobriety
29 program monitoring pursuant to subsections (1) through (3) of this
30 section.

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

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

37 (b) In any case in which the person has no prior offenses within
38 seven years, and except as provided in RCW 46.61.502(6) or
39 46.61.504(6), order an additional twenty-four hours of imprisonment
40 and a fine of not less than one thousand dollars and not more than

1 five thousand dollars. One thousand dollars of the fine may not be
2 suspended unless the court finds the offender to be indigent;

3 (c) In any case in which the person has one prior offense within
4 seven years, and except as provided in RCW 46.61.502(6) or
5 46.61.504(6), order an additional five days of imprisonment and a
6 fine of not less than two thousand dollars and not more than five
7 thousand dollars. One thousand dollars of the fine may not be
8 suspended unless the court finds the offender to be indigent;

9 (d) In any case in which the person has two or three prior
10 offenses within seven years, and except as provided in RCW
11 46.61.502(6) or 46.61.504(6), order an additional ten days of
12 imprisonment and a fine of not less than three thousand dollars and
13 not more than ten thousand dollars. One thousand dollars of the fine
14 may not be suspended unless the court finds the offender to be
15 indigent.

16 (7) **Other items courts must consider while setting penalties.** In
17 exercising its discretion in setting penalties within the limits
18 allowed by this section, the court shall particularly consider the
19 following:

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

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

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

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

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

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

37 (a) **Penalty for alcohol concentration less than 0.15.** If the
38 person's alcohol concentration was less than 0.15, or if for reasons
39 other than the person's refusal to take a test offered under RCW

1 46.20.308 there is no test result indicating the person's alcohol
2 concentration:

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

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

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

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

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

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

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

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

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

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

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

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

7 Upon receipt of a notice from the court under RCW 36.28A.390 that
8 a participant has been removed from a 24/7 sobriety program, the
9 department must resume any suspension, revocation, or denial that had
10 been terminated early under this subsection due to participation in
11 the program, granting credit on a day-for-day basis for any portion
12 of a suspension, revocation, or denial already served under RCW
13 46.20.3101 or this section arising out of the same incident.

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

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

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

32 **(11) Conditions of probation.** (a) In addition to any
33 nonsuspendable and nondeferrable jail sentence required by this
34 section, whenever the court imposes up to three hundred sixty-four
35 days in jail, the court shall also suspend but shall not defer a
36 period of confinement for a period not exceeding five years. The
37 court shall impose conditions of probation that include: (i) Not
38 driving a motor vehicle within this state without a valid license to
39 drive; (ii) not driving a motor vehicle within this state without
40 proof of liability insurance or other financial responsibility for

1 the future pursuant to RCW 46.30.020; (iii) not driving or being in
2 physical control of a motor vehicle within this state while having an
3 alcohol concentration of 0.08 or more or a THC concentration of 5.00
4 nanograms per milliliter of whole blood or higher, within two hours
5 after driving; (iv) not refusing to submit to a test of his or her
6 breath or blood to determine alcohol or drug concentration upon
7 request of a law enforcement officer who has reasonable grounds to
8 believe the person was driving or was in actual physical control of a
9 motor vehicle within this state while under the influence of
10 intoxicating liquor or drug; and (v) not driving a motor vehicle in
11 this state without a functioning ignition interlock device as
12 required by the department under RCW 46.20.720. The court may impose
13 conditions of probation that include nonrepetition, installation of
14 an ignition interlock device on the probationer's motor vehicle,
15 alcohol or drug treatment, supervised probation, or other conditions
16 that may be appropriate. The sentence may be imposed in whole or in
17 part upon violation of a condition of probation during the suspension
18 period.

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

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

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

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

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

2 (c) The court determines that there is reason to believe that the
3 offender would violate the conditions of the electronic home
4 monitoring penalty.

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

12 Whenever the combination of jail time and electronic home
13 monitoring or alternative sentence would exceed three hundred sixty-
14 four days, the offender shall serve the jail portion of the sentence
15 first, and the electronic home monitoring or alternative portion of
16 the sentence shall be reduced so that the combination does not exceed
17 three hundred sixty-four days.

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

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

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

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

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

30 (iii) A conviction for a violation of RCW 46.25.110 or an
31 equivalent local ordinance;

32 (iv) A conviction for a violation of RCW 79A.60.040(2) or an
33 equivalent local ordinance;

34 (v) A conviction for a violation of RCW 79A.60.040(1) or an
35 equivalent local ordinance committed in a reckless manner if the
36 conviction is the result of a charge that was originally filed as a
37 violation of RCW 79A.60.040(2) or an equivalent local ordinance;

38 (vi) A conviction for a violation of RCW 47.68.220 or an
39 equivalent local ordinance committed while under the influence of
40 intoxicating liquor or any drug;

1 (vii) A conviction for a violation of RCW 47.68.220 or an
2 equivalent local ordinance committed in a careless or reckless manner
3 if the conviction is the result of a charge that was originally filed
4 as a violation of RCW 47.68.220 or an equivalent local ordinance
5 while under the influence of intoxicating liquor or any drug;

6 (viii) A conviction for a violation of RCW 46.09.470(2) or an
7 equivalent local ordinance;

8 (ix) A conviction for a violation of RCW 46.10.490(2) or an
9 equivalent local ordinance;

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

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

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

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

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

35 (xv) A deferred prosecution under chapter 10.05 RCW granted in a
36 prosecution for a violation of RCW 46.61.5249, or an equivalent local
37 ordinance, if the charge under which the deferred prosecution was
38 granted was originally filed as a violation of RCW 46.61.502 or
39 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
40 46.61.522;

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

7 (xvii) A deferred sentence imposed in a prosecution for a
8 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
9 equivalent local ordinance, if the charge under which the deferred
10 sentence was imposed was originally filed as a violation of RCW
11 46.61.502 or 46.61.504, or an equivalent local ordinance, or a
12 violation of RCW 46.61.520 or 46.61.522;

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

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

19 (c) "Within seven years" means that the arrest for a prior
20 offense occurred within seven years before or after the arrest for
21 the current offense; and

22 (d) "Within ten years" means that the arrest for a prior offense
23 occurred within ten years before or after the arrest for the current
24 offense.

25 (15) All fines imposed by this section apply to adult offenders
26 only.

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

29 (1) Upon the trial of any civil or criminal action or proceeding
30 arising out of acts alleged to have been committed by any person
31 while driving or in actual physical control of a vehicle while under
32 the influence of intoxicating liquor or any drug, if the person's
33 alcohol concentration is less than 0.08 or the person's THC
34 concentration is less than 5.00, it is evidence that may be
35 considered with other competent evidence in determining whether the
36 person was under the influence of intoxicating liquor or any drug.

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

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

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

7 (3) Analysis of the person's blood or breath to be considered
8 valid under the provisions of this section or RCW 46.61.502 or
9 46.61.504 shall have been performed according to methods approved by
10 the state toxicologist and by an individual possessing a valid permit
11 issued by the state toxicologist for this purpose. The state
12 toxicologist is directed to approve satisfactory techniques or
13 methods, to supervise the examination of individuals to ascertain
14 their qualifications and competence to conduct such analyses, and to
15 issue permits which shall be subject to termination or revocation at
16 the discretion of the state toxicologist.

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

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

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

26 (iii) The person being tested did not have any foreign
27 substances, not to include dental work or piercings, fixed or
28 removable, in his or her mouth at the beginning of the fifteen-minute
29 observation period;

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

34 (v) The internal standard test resulted in the message
35 "verified";

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

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

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

5 (b) For purposes of this section, "prima facie evidence" is
6 evidence of sufficient circumstances that would support a logical and
7 reasonable inference of the facts sought to be proved. In assessing
8 whether there is sufficient evidence of the foundational facts, the
9 court or administrative tribunal is to assume the truth of the
10 prosecution's or department's evidence and all reasonable inferences
11 from it in a light most favorable to the prosecution or department.

12 (c) Nothing in this section shall be deemed to prevent the
13 subject of the test from challenging the reliability or accuracy of
14 the test, the reliability or functioning of the instrument, or any
15 maintenance procedures. Such challenges, however, shall not preclude
16 the admissibility of the test once the prosecution or department has
17 made a prima facie showing of the requirements contained in (a) of
18 this subsection. Instead, such challenges may be considered by the
19 trier of fact in determining what weight to give to the test result.

20 (5) When a blood test is administered under the provisions of RCW
21 46.20.308, the withdrawal of blood for the purpose of determining its
22 ~~((alcoholic))~~ alcohol or drug content may be performed only by a
23 physician licensed under chapter 18.71 RCW; an osteopathic physician
24 licensed under chapter 18.57 RCW; a registered nurse, licensed
25 practical nurse, or advanced registered nurse practitioner licensed
26 under chapter 18.79 RCW; a physician assistant licensed under chapter
27 18.71A RCW; an osteopathic physician assistant licensed under chapter
28 18.57A RCW; an advanced emergency medical technician or paramedic
29 ~~((licensed))~~ certified under chapter ~~((18.73))~~ 18.71 RCW; ~~((until~~
30 ~~July 1, 2016, a health care assistant certified under chapter 18.135~~
31 ~~RCW;))~~ or a medical assistant-certified or medical assistant-
32 phlebotomist certified under chapter 18.360 RCW, a person holding
33 another credential under Title 18 RCW whose scope of practice
34 includes performing venous blood draws, or a forensic phlebotomist.
35 When the blood test is performed outside the state of Washington, the
36 withdrawal of blood for the purpose of determining its alcohol or
37 drug content may be performed by any person who is authorized by the
38 out-of-state jurisdiction to perform venous blood draws. Proof of
39 qualification to draw blood may be established through the department

1 of health's provider credential search. This limitation shall not
2 apply to the taking of breath specimens.

3 (6) When a venous blood sample is performed by a forensic
4 phlebotomist, it must be done under the following conditions:

5 (a) If taken at the scene, it must be performed in an ambulance
6 or aid service vehicle licensed by the department of health under
7 chapter 18.73 RCW.

8 (b) The collection of blood samples must not interfere with the
9 provision of essential medical care.

10 (c) The blood sample must be collected using sterile equipment
11 and the skin area of puncture must be thoroughly cleansed and
12 disinfected.

13 (d) The person whose blood is collected must be seated, reclined,
14 or lying down when the blood is collected.

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

25 ~~((+7))~~ (8) Upon the request of the person who shall submit to a
26 test or tests at the request of a law enforcement officer, full
27 information concerning the test or tests shall be made available to
28 him or her or his or her attorney.

29 **Sec. 7.** RCW 46.61.508 and 2015 2nd sp.s. c 3 s 23 are each
30 amended to read as follows:

31 No physician licensed under chapter 18.71 RCW; osteopathic
32 physician licensed under chapter 18.57 RCW; registered nurse,
33 licensed practical nurse, or advanced registered nurse practitioner
34 licensed under chapter 18.79 RCW; physician assistant licensed under
35 chapter 18.71A RCW; osteopathic physician assistant licensed under
36 chapter 18.57A RCW; advanced emergency medical technician or
37 paramedic ~~((licensed))~~ certified under chapter ~~((18.73))~~ 18.71 RCW;
38 ~~((until July 1, 2016, health care assistant-certified under chapter~~
39 ~~18.135 RCW;))~~ or medical assistant-certified or medical assistant-

1 phlebotomist certified under chapter 18.360 RCW, person holding
2 another credential under Title 18 RCW whose scope of practice
3 includes performing venous blood draws, or forensic phlebotomist, or
4 hospital, or duly licensed clinical laboratory employing or utilizing
5 services of such licensed or certified health care provider, shall
6 incur any civil or criminal liability as a result of the act of
7 withdrawing blood from any person when directed by a law enforcement
8 officer to do so for the purpose of a blood test under the provisions
9 of a search warrant, a waiver of the search warrant requirement,
10 exigent circumstances, or any other authority of law(~~(, or RCW~~
11 ~~46.20.308, as now or hereafter amended)~~): PROVIDED, That nothing in
12 this section shall relieve such licensed or certified health care
13 provider, (~~(or)~~) hospital or duly licensed clinical laboratory, or
14 forensic phlebotomist from civil liability arising from the use of
15 improper procedures or failing to exercise the required standard of
16 care.

17 **Sec. 8.** RCW 18.130.410 and 2015 2nd sp.s. c 3 s 21 are each
18 amended to read as follows:

19 It is not professional misconduct for a physician licensed under
20 chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57
21 RCW; registered nurse, licensed practical nurse, or advanced
22 registered nurse practitioner licensed under chapter 18.79 RCW;
23 physician assistant licensed under chapter 18.71A RCW; osteopathic
24 physician assistant licensed under chapter 18.57A RCW; advanced
25 emergency medical technician or paramedic (~~(licensed)~~) certified
26 under chapter (~~(18.73)~~) 18.71 RCW; (~~(until July 1, 2016, health care~~
27 ~~assistant certified under chapter 18.135 RCW;)~~) or medical assistant-
28 certified or medical assistant-phlebotomist certified under chapter
29 18.360 RCW, or person holding another credential under Title 18 RCW
30 whose scope of practice includes performing venous blood draws, or
31 hospital, or duly licensed clinical laboratory employing or utilizing
32 services of such licensed or certified health care provider, to
33 collect a blood sample without a person's consent when the physician
34 licensed under chapter 18.71 RCW; osteopathic physician licensed
35 under chapter 18.57 RCW; registered nurse, licensed practical nurse,
36 or advanced registered nurse practitioner licensed under chapter
37 18.79 RCW; physician assistant licensed under chapter 18.71A RCW;
38 osteopathic physician assistant licensed under chapter 18.57A RCW;
39 advanced emergency medical technician or paramedic (~~(licensed)~~)

1 certified under chapter ~~((18.73))~~ 18.71 RCW; ~~((until July 1, 2016,~~
2 ~~health care assistant certified under chapter 18.135 RCW;))~~ or
3 medical assistant-certified or medical assistant-phlebotomist
4 certified under chapter 18.360 RCW, or person holding another
5 credential under Title 18 RCW whose scope of practice includes
6 performing venous blood draws, or hospital, or duly licensed clinical
7 laboratory employing or utilizing services of such licensed or
8 certified health care provider withdrawing blood was directed by a
9 law enforcement officer to do so for the purpose of a blood test
10 under the provisions of a search warrant or exigent circumstances:
11 PROVIDED, That nothing in this section shall relieve a physician
12 licensed under chapter 18.71 RCW; osteopathic physician licensed
13 under chapter 18.57 RCW; registered nurse, licensed practical nurse,
14 or advanced registered nurse practitioner licensed under chapter
15 18.79 RCW; physician assistant licensed under chapter 18.71A RCW;
16 osteopathic physician assistant licensed under chapter 18.57A RCW;
17 advanced emergency medical technician or paramedic ~~((licensed))~~
18 certified under chapter ~~((18.73))~~ 18.71 RCW; ~~((until July 1, 2016,~~
19 ~~health care assistant certified under chapter 18.135 RCW;))~~ or
20 medical assistant-certified or medical assistant-phlebotomist
21 certified under chapter 18.360 RCW, or person holding another
22 credential under Title 18 RCW whose scope of practice includes
23 performing venous blood draws, or hospital, or duly licensed clinical
24 laboratory employing or utilizing services of such licensed or
25 certified health care provider withdrawing blood from professional
26 discipline arising from the use of improper procedures or from
27 failing to exercise the required standard of care.

28 NEW SECTION. **Sec. 9.** A new section is added to chapter 46.04
29 RCW to read as follows:

30 "Forensic phlebotomist" means a police officer, law enforcement
31 officer, or employee of a correctional facility or detention
32 facility, who meets the training and proficiency standards of his or
33 her employer and who is collecting a venous blood sample for forensic
34 testing pursuant to a search warrant, a waiver of the warrant
35 requirement, or exigent circumstances.

36 **Sec. 10.** RCW 46.61.517 and 2001 c 142 s 1 are each amended to
37 read as follows:

1 The refusal of a person to submit to a test of the alcohol or
2 drug concentration in the person's (~~blood or~~) breath under RCW
3 46.20.308 is admissible into evidence at a subsequent criminal trial.
4 The refusal of a person to submit to a test of the person's blood is
5 admissible into evidence at a subsequent criminal trial when a search
6 warrant, or an exception to the search warrant, authorized the
7 seizure.

8 **Sec. 11.** RCW 46.64.025 and 2016 c 203 s 4 are each amended to
9 read as follows:

10 Whenever any person served with, or provided notice of, a traffic
11 (~~citation~~) infraction or a traffic-related criminal complaint
12 willfully fails to appear at a requested hearing for a moving
13 violation, or fails to comply with the terms of a notice of (~~traffic~~
14 ~~citation~~) infraction for a moving violation or a traffic-related
15 criminal complaint, the court (~~in which the defendant failed to~~
16 ~~appear~~) with jurisdiction over the traffic infraction or traffic-
17 related criminal complaint shall promptly give notice of such fact to
18 the department of licensing. Whenever thereafter the case in which
19 the defendant failed to appear or comply is adjudicated, the court
20 hearing the case shall promptly file with the department a
21 certificate showing that the case has been adjudicated. For the
22 purposes of this section, "moving violation" is defined by rule
23 pursuant to RCW 46.20.2891.

24 **Sec. 12.** RCW 36.28A.370 and 2015 2nd sp.s. c 3 s 18 are each
25 amended to read as follows:

26 (1) Any daily user fee, installation fee, deactivation fee,
27 enrollment fee, or monitoring fee must be collected by the
28 participating agency and used to defray the participating agency's
29 costs of the 24/7 sobriety program.

30 (2) Any participation fee must be collected by the participating
31 agency and deposited in the state 24/7 sobriety account to cover 24/7
32 sobriety program administration costs incurred by the Washington
33 association of sheriffs and police chiefs.

34 (3) All applicable fees shall be paid by the participant
35 contemporaneously or in advance of the time when the fee becomes due;
36 however, cities and counties may subsidize or pay any applicable
37 fees.

1 (4) A city or county may accept for deposit, donations, gifts,
2 grants, local account fund transfers, and other assistance into its
3 local 24/7 sobriety account to defray the participating agency's
4 costs of the 24/7 sobriety program."

E2SHB 1614 - S COMM AMD

By Committee on Law & Justice

NOT ADOPTED 04/20/2017

5 On page 1, line 1 of the title, after "driving;" strike the
6 remainder of the title and insert "amending RCW 46.20.385, 46.20.720,
7 46.61.506, 46.61.508, 18.130.140, 46.61.517, 46.64.025, and
8 36.28A.370; reenacting and amending RCW 9.96.060, 10.31.100, and
9 46.61.5055; and adding a new section to chapter 46.04 RCW."

EFFECT: Retains the provisions of the underlying bill with the following amendments:

(1) Allows an ignition interlock company to retain twenty-five cents per month to cover the expenses associated with administering the fee.

(2) Amends the exceptions to the standard penalties for a second impaired driving offense requiring a minimum amount of jail time and either 180 days of electronic home monitoring or 120 days of 24/7 sobriety program monitoring in lieu of the mandatory minimum term of imprisonment and electronic home monitoring.

(3) Allows for a forensic phlebotomist or any person qualified by the department of health (DOH) or out-of-state jurisdiction to withdraw blood for the purpose of determining its alcohol or drug content.

(4) Provides that it is not professional misconduct for a person qualified by the DOH to collect a blood sample without a person's consent under certain conditions. Requires any venous blood sample performed by a forensic phlebotomist to be done under certain conditions.

(5) Defines forensic phlebotomist.

(6) Allows a city or county to accept local account fund transfers into its local 24/7 sobriety account to defray the costs of the 24/7 sobriety program.

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