**1504-S.E AMS LAW S3094.2 - NOT FOR FLOOR USE**

**ESHB 1504** - S COMM AMD

By Committee on Law & Justice

**OUT OF ORDER 04/17/2019**

Strike everything after the enacting clause and insert the following:

"**Sec.**  RCW 9.94A.533 and 2018 c 7 s 8 are each amended to read as follows:

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

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

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

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

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

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

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

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c); or

(ii) Released under the provisions of RCW 9.94A.730;

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

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

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

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

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

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

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

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c); or

(ii) Released under the provisions of RCW 9.94A.730;

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

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

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

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

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

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

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

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

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.

Notwithstanding any other provision of law, all impaired driving enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other impaired driving enhancements, for all offenses sentenced under this chapter.

An offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c).

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

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

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

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

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

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c); or

(ii) Released under the provisions of RCW 9.94A.730;

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

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

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

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

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

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

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

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

(11) An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction included a finding by special allegation of endangering one or more persons under RCW 9.94A.834.

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

(13) An additional twelve months shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)) or felony physical control under the influence (RCW 46.61.504(6)) for each child passenger under the age of sixteen who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other minor child enhancements, for all offenses sentenced under this chapter. If the addition of a minor child enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(14) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.832.

**Sec.**  RCW 9.94A.729 and 2015 c 134 s 4 are each amended to read as follows:

(1)(a) The term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and adopted by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits.

(b) Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the number of days of early release credits lost or not earned. The department may approve a jail certification from a correctional agency that calculates early release time based on the actual amount of confinement time served by the offender before sentencing when an erroneous calculation of confinement time served by the offender before sentencing appears on the judgment and sentence. The department must adjust an offender's rate of early release listed on the jail certification to be consistent with the rate applicable to offenders in the department's facilities. However, the department is not authorized to adjust the number of presentence early release days that the jail has certified as lost or not earned.

(2)(a) An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(b) An offender whose sentence includes any impaired driving enhancements under RCW 9.94A.533(7), minor child enhancements under RCW 9.94A.533(13), or both, shall not receive any good time credits or earned release time for any portion of his or her sentence that results from those enhancements.

(3) An offender may earn early release time as follows:

(a) In the case of an offender sentenced pursuant to RCW 10.95.030(3) or 10.95.035, the offender may not receive any earned early release time during the minimum term of confinement imposed by the court; for any remaining portion of the sentence served by the offender, the aggregate earned release time may not exceed ten percent of the sentence.

(b) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence.

(c) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(d) An offender is qualified to earn up to fifty percent of aggregate earned release time if he or she:

(i) Is not classified as an offender who is at a high risk to reoffend as provided in subsection (4) of this section;

(ii) Is not confined pursuant to a sentence for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(iii) Has no prior conviction for the offenses listed in (d)(ii) of this subsection;

(iv) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and

(v) Has not committed a new felony after July 22, 2007, while under community custody.

(e) In no other case shall the aggregate earned release time exceed one-third of the total sentence.

(4) The department shall perform a risk assessment of each offender who may qualify for earned early release under subsection (3)(d) of this section utilizing the risk assessment tool recommended by the Washington state institute for public policy. Subsection (3)(d) of this section does not apply to offenders convicted after July 1, 2010.

(5)(a) A person who is eligible for earned early release as provided in this section and who will be supervised by the department pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to community custody in lieu of earned release time;

(b) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community custody terms eligible for release to community custody in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(c) The department may deny transfer to community custody in lieu of earned release time if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody;

(d) If the department is unable to approve the offender's release plan, the department may do one or more of the following:

(i) Transfer an offender to partial confinement in lieu of earned early release for a period not to exceed three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in RCW 9.94A.728((~~(5)~~)) (1)(e);

(ii) Provide rental vouchers to the offender for a period not to exceed three months if rental assistance will result in an approved release plan.

A voucher must be provided in conjunction with additional transition support programming or services that enable an offender to participate in services including, but not limited to, substance abuse treatment, mental health treatment, sex offender treatment, educational programming, or employment programming;

(e) The department shall maintain a list of housing providers that meets the requirements of RCW 72.09.285. If more than two voucher recipients will be residing per dwelling unit, as defined in RCW 59.18.030, rental vouchers for those recipients may only be paid to a housing provider on the department's list;

(f) For each offender who is the recipient of a rental voucher, the department shall gather data as recommended by the Washington state institute for public policy in order to best demonstrate whether rental vouchers are effective in reducing recidivism.

(6) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section.

**Sec.**  RCW 10.21.055 and 2016 c 203 s 16 are each amended to read as follows:

(1)(a) When any person charged with a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, in which the person has a prior offense as defined in RCW 46.61.5055 and the current offense involves alcohol, is released from custody at arraignment or trial on bail or personal recognizance, the court authorizing the release shall require, as a condition of release that person comply with one of the following four requirements:

(i) Have a functioning ignition interlock device installed on all motor vehicles operated by the person, with proof of installation filed with the court by the person or the certified interlock provider within five business days of the date of release from custody or as soon thereafter as determined by the court based on availability within the jurisdiction; or

(ii) Comply with 24/7 sobriety program monitoring, as defined in RCW 36.28A.330; or

(iii) Have an ignition interlock device on all motor vehicles operated by the person pursuant to (a)(i) of this subsection and submit to 24/7 sobriety program monitoring pursuant to (a)(ii) of this subsection, if available, or alcohol monitoring, at the expense of the person, as provided in RCW 46.61.5055(5) (b) and (c); or

(iv) Have an ignition interlock device on all motor vehicles operated by the person and that such person agrees not to operate any motor vehicle without an ignition interlock device as required by the court. Under this subsection (1)(a)(iv), the person must file a sworn statement with the court upon release at arraignment that states the person will not operate any motor vehicle without an ignition interlock device while the ignition interlock restriction is imposed by the court. Such person must also submit to 24/7 sobriety program monitoring pursuant to (a)(ii) of this subsection, if available, or alcohol monitoring, at the expense of the person, as provided in RCW 46.61.5055(5) (b) and (c).

(b) The court shall immediately notify the department of licensing when an ignition interlock restriction is imposed((~~: (i)~~)) as a condition of release ((~~pursuant to (a) of this subsection;~~)) or ((~~(ii)~~)) after conviction in instances where a person is charged with, or convicted of, a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522((~~, and the offense involves alcohol~~)). If the court imposes an ignition interlock restriction, the department of licensing shall attach or imprint a notation on the driving record of any person restricted under this section stating that the person may operate only a motor vehicle equipped with a functioning ignition interlock device.

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

(b) If the court authorizes removal of an ignition interlock device imposed under this section, the court shall immediately notify the department of licensing regarding the lifting of the ignition interlock restriction and the department of licensing shall release any attachment, imprint, or notation on such person's driving record relating to the ignition interlock requirement imposed under this section.

(3) When an ignition interlock restriction imposed as a condition of release is canceled, the court shall provide a defendant with a written order confirming release of the restriction. The written order shall serve as proof of release of the restriction until which time the department of licensing updates the driving record.

**Sec.**  RCW 18.360.030 and 2017 c 336 s 16 are each amended to read as follows:

(1) The secretary shall adopt rules specifying the minimum qualifications for a medical assistant-certified, medical assistant-hemodialysis technician, medical assistant-phlebotomist, and forensic phlebotomist.

((~~(a)~~)) The qualifications for a medical assistant-hemodialysis technician must be equivalent to the qualifications for hemodialysis technicians regulated pursuant to chapter 18.135 RCW as of January 1, 2012.

((~~(b) The qualifications for a forensic phlebotomist must include training consistent with the occupational safety and health administration guidelines and must include between twenty and thirty hours of work in a clinical setting with the completion of more than one hundred successful venipunctures. The secretary may not require more than forty hours of classroom training for initial training, which may include online preclass homework.~~))

(2) The secretary shall adopt rules that establish the minimum requirements necessary for a health care practitioner, clinic, or group practice to endorse a medical assistant as qualified to perform the duties authorized by this chapter and be able to file an attestation of that endorsement with the department.

(3) The medical quality assurance commission, the board of osteopathic medicine and surgery, the podiatric medical board, the nursing care quality assurance commission, the board of naturopathy, and the optometry board shall each review and identify other specialty assistive personnel not included in this chapter and the tasks they perform. The department of health shall compile the information from each disciplining authority listed in this subsection and submit the compiled information to the legislature no later than December 15, 2012.

**Sec.**  RCW 38.52.430 and 2012 c 183 s 6 are each amended to read as follows:

A person whose intoxication causes an incident resulting in an appropriate emergency response, and who, in connection with the incident, has been found guilty of or has had their prosecution deferred for (1) driving while under the influence of intoxicating liquor or any drug, RCW 46.61.502; (2) physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, RCW 46.61.504; (3) operating an aircraft under the influence of intoxicants or drugs, RCW 47.68.220; ((~~(3)~~)) (4) use of a vessel while under the influence of alcohol or drugs, RCW 79A.60.040; ((~~(4)~~)) (5) vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a); or ((~~(5)~~)) (6) vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), is liable for the expense of an emergency response by a public agency to the incident.

The expense of an emergency response is a charge against the person liable for expenses under this section. The charge constitutes a debt of that person and is collectible by the public agency incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied. Following a conviction of an offense listed in this section, and prior to sentencing, the prosecution may present to the court information setting forth the expenses incurred by the public agency for its emergency response to the incident. Upon a finding by the court that the expenses are reasonable, the court shall order the defendant to reimburse the public agency. The cost reimbursement shall be included in the sentencing order as an additional monetary obligation of the defendant and may not be substituted for any other fine or cost required or allowed by statute. The court may establish a payment schedule for the payment of the cost reimbursement, separate from any payment schedule imposed for other fines and costs. All payments for the cost reimbursement must be remitted directly to the public agency or agencies that incurred the cost associated with the emergency response.

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

If more than one public agency makes a claim for payment from an individual for an emergency response to a single incident under the provisions of this section, and the sum of the claims exceeds the amount recovered, the division of the amount recovered shall be determined by an interlocal agreement consistent with the requirements of chapter 39.34 RCW.

**Sec.**  RCW 46.20.245 and 2005 c 288 s 1 are each amended to read as follows:

(1) Whenever the department proposes to withhold the driving privilege of a person or disqualify a person from operating a commercial motor vehicle and this action is made mandatory by the provisions of this chapter or other law, the department must give notice to the person in writing by posting in the United States mail, appropriately addressed, postage prepaid, or by personal service. Notice by mail is given upon deposit in the United States mail. Notice given under this subsection must specify the date upon which the driving privilege is to be withheld which shall not be less than forty-five days after the original notice is given.

(2) For persons subject to suspension, revocation, or denial of a driver's license who are eligible for full credit under RCW 46.61.5055(9)(b)(ii), the notice in subsection (1) of this section must also notify the person of the obligation to complete the requirements under RCW 46.20.311 and pay the probationary license fee under RCW 46.20.355 by the date specified in the notice in order to avoid license suspension.

(3) Within fifteen days after notice has been given to a person under subsection (1) of this section, the person may request in writing an administrative review before the department. If the request is mailed, it must be postmarked within fifteen days after the date the department has given notice. If a person fails to request an administrative review within fifteen days after the date the department gives notice, the person is considered to have defaulted and loses his or her right to an administrative review unless the department finds good cause for a request after the fifteen-day period.

(a) An administrative review under this subsection shall consist solely of an internal review of documents and records submitted or available to the department, unless the person requests an interview before the department, in which case all or any part of the administrative review may, at the discretion of the department, be conducted by telephone or other electronic means.

(b) The only issues to be addressed in the administrative review are:

(i) Whether the records relied on by the department identify the correct person; and

(ii) Whether the information transmitted from the court or other reporting agency or entity regarding the person accurately describes the action taken by the court or other reporting agency or entity.

(c) For the purposes of this section, the notice received from a court or other reporting agency or entity, regardless of form or format, is prima facie evidence that the information from the court or other reporting agency or entity regarding the person is accurate. A person requesting administrative review has the burden of showing by a preponderance of the evidence that the person is not subject to the withholding of the driving privilege.

(d) The action subject to the notification requirements of subsection (1) of this section shall be stayed during the administrative review process.

(e) Judicial review of a department order affirming the action subject to the notification requirements of subsection (1) of this section after an administrative review shall be available in the same manner as provided in RCW 46.20.308((~~(9)~~)) (8). The department shall certify its record to the court within thirty days after service upon the department of the petition for judicial review. The action subject to the notification requirements of subsection (1) of this section shall not automatically be stayed during the judicial review. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury.

((~~(3)~~)) (4) The department may adopt rules that are considered necessary or convenient by the department for purposes of administering this section, including, but not limited to, rules regarding expedited procedures for issuing orders and expedited notice procedures.

((~~(4)~~)) (5) This section does not apply where an opportunity for an informal settlement, driver improvement interview, or formal hearing is otherwise provided by law or rule of the department.

**Sec.**  RCW 46.20.3101 and 2016 c 203 s 18 are each amended to read as follows:

Pursuant to RCW 46.20.308, the department shall suspend, revoke, or deny the arrested person's license, permit, or privilege to drive as follows:

(1) In the case of a person who has refused a test or tests:

(a) For a first refusal within seven years, where there has not been a previous incident within seven years that resulted in administrative action under this section, revocation or denial for one year;

(b) For a second or subsequent refusal within seven years, or for a first refusal where there has been one or more previous incidents within seven years that have resulted in administrative action under this section, revocation or denial for two years or until the person reaches age twenty-one, whichever is longer.

(2) In the case of an incident where a person has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was 0.08 or more, or that the THC concentration of the person's blood was 5.00 or more:

(a) For a first incident within seven years, where there has not been a previous incident within seven years that resulted in administrative action under this section, suspension for ninety days, unless the person successfully completes or is enrolled in a pretrial 24/7 sobriety program;

(b) For a second or subsequent incident within seven years, revocation or denial for two years.

(3) In the case of an incident where a person under age twenty-one has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was 0.02 or more, or that the THC concentration of the person's blood was above 0.00:

(a) For a first incident within seven years, suspension or denial for ninety days;

(b) For a second or subsequent incident within seven years, revocation or denial for one year or until the person reaches age twenty-one, whichever is longer.

(4) The department shall grant credit on a day-for-day basis for ((~~any portion of~~)) a suspension, revocation, or denial ((~~already served~~)) imposed under this section for any portion of a suspension, revocation, or denial ((~~imposed~~)) already served under RCW 46.61.5055 arising out of the same incident. If a person has already served a suspension, revocation, or denial under RCW 46.61.5055 for a period equal to or greater than the period imposed under this section, the department shall provide notice of full credit, shall provide for no further suspension or revocation under this section, and shall impose no additional reissue fees for this credit.

**Sec.**  RCW 46.20.355 and 1998 c 209 s 3 and 1998 c 41 s 5 are each reenacted and amended to read as follows:

(1) Upon receipt of an abstract indicating a deferred prosecution has been granted under RCW 10.05.060, or upon receipt of a notice of conviction of RCW 46.61.502 or 46.61.504, the department of licensing shall order the person to surrender any nonprobationary Washington state driver's license that may be in his or her possession. The department shall revoke the license, permit, or privilege to drive of any person who fails to surrender it as required by this section for one year, unless the license has been previously surrendered to the department, a law enforcement officer, or a court, or the person has completed an affidavit of lost, stolen, destroyed, or previously surrendered license, such revocation to take effect thirty days after notice is given of the requirement for license surrender.

(2) The department shall place a person's driving privilege in probationary status as required by RCW 10.05.060 or 46.61.5055 for a period of five years from the date the probationary status is required to go into effect.

(3) Following receipt of an abstract indicating a deferred prosecution has been granted under RCW 10.05.060, or upon reinstatement or reissuance of a driver's license suspended or revoked as the result of a conviction of RCW 46.61.502 or 46.61.504, the department shall require the person to obtain a probationary license in order to operate a motor vehicle in the state of Washington, except as otherwise exempt under RCW 46.20.025. The department shall not issue the probationary license unless the person is otherwise qualified for licensing, and the person must renew the probationary license on the same cycle as the person's regular license would have been renewed until the expiration of the five-year probationary status period imposed under subsection (2) of this section.

(4) If a person is eligible for full credit under RCW 46.61.5055(9)(b)(ii) and, by the date specified in the notice issued under RCW 46.20.245, has completed the requirements under RCW 46.20.311 and paid the fee under subsection (5) of this section, the department shall issue a probationary license on the date specified in the notice with no further action required of the person.

(5) For each original issue or renewal of a probationary license under this section, the department shall charge a fee of fifty dollars in addition to any other licensing fees required. Except for when renewing a probationary license, the department shall waive the requirement to obtain an additional probationary license and the fifty dollar fee if the person has a probationary license in his or her possession at the time a new probationary license is required.

((~~(5)~~)) (6) A probationary license shall enable the department and law enforcement personnel to determine that the person is on probationary status. The fact that a person's driving privilege is in probationary status or that the person has been issued a probationary license shall not be a part of the person's record that is available to insurance companies.

**Sec.**  RCW 46.20.720 and 2017 c 336 s 5 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

(2) **Calibration.** Unless otherwise specified by the court for a restriction imposed under subsection (1)(e) of this section, the ignition interlock device shall be calibrated to prevent the motor vehicle from being started when the breath sample provided has an alcohol concentration of ((~~0.025~~)) 0.020 or more.

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

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

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

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

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

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

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

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

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

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

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

(e) The period of restriction under (c) or (d) of this subsection shall be extended by one hundred eighty days whenever the department receives notice that the restricted person has been convicted under RCW 46.20.740 or 46.20.750.

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

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

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

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

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

(c) Failure to pass any random retest with a breath alcohol concentration of ((~~0.025~~)) 0.020 or lower unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than ((~~0.025~~)) 0.020, and the digital image confirms the same person provided both samples; or

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

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

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

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

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

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

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

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

**Sec.**  RCW 46.20.740 and 2015 2nd sp.s. c 3 s 4 are each amended to read as follows:

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

(2) It is a gross misdemeanor for a person with such a notation on his or her driving record to operate a motor vehicle that is not so equipped, unless the notation resulted from a restriction imposed as a condition of release and the restriction has been released by the court prior to driving. Any time a person is convicted under this section, the court shall immediately notify the department for purposes of RCW 46.20.720(3)(e).

(3) Any sentence imposed for a violation of subsection (2) of this section shall be served consecutively with any sentence imposed under RCW 46.20.750, 46.61.502, 46.61.504, or 46.61.5055.

**Sec.**  RCW 46.20.750 and 2015 2nd sp.s. c 3 s 6 are each amended to read as follows:

(1) A person who is restricted to the use of a vehicle equipped with an ignition interlock device is guilty of a gross misdemeanor if the restricted driver:

(a) Tampers with the device by modifying, detaching, disconnecting, or otherwise disabling it to allow the restricted driver to operate the vehicle;

(b) Uses or requests another person to use a filter or other device to circumvent the ignition interlock or to start or operate the vehicle to allow the restricted driver to operate the vehicle;

(c) Has, directs, authorizes, or requests another person to tamper with the device by modifying, detaching, disconnecting, or otherwise disabling it to allow the restricted driver to operate the vehicle; or

(d) Has, allows, directs, authorizes, or requests another person to blow or otherwise exhale into the device in order to circumvent the device to allow the restricted driver to operate the vehicle.

(2) A person who knowingly assists another person who is restricted to the use of a vehicle equipped with an ignition interlock device to circumvent the device or to start and operate that vehicle is guilty of a gross misdemeanor. The provisions of this subsection do not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle and the person subject to the court order does not operate the vehicle.

(3) Any sentence imposed for a violation of subsection (1) of this section shall be served consecutively with any sentence imposed under RCW 46.20.740, 46.61.502, 46.61.504, 46.61.5055, 46.61.520(1)(a), or 46.61.522(1)(b).

(4) Any time a person is convicted under subsection (1) of this section, the court shall immediately notify the department for purposes of RCW 46.20.720(3)(e).

**Sec.**  RCW 46.55.113 and 2011 c 167 s 6 are each amended to read as follows:

(1) Whenever the driver of a vehicle is arrested for a violation of RCW 46.20.342 or 46.20.345, the vehicle is subject to summary impoundment, pursuant to the terms and conditions of an applicable local ordinance or state agency rule at the direction of a law enforcement officer.

(2) In addition, a police officer may take custody of a vehicle, at his or her discretion, and provide for its prompt removal to a place of safety under any of the following circumstances:

(a) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

(b) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

(c) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

(d) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

(e) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(f) Whenever a vehicle without a special license plate, placard, or decal indicating that the vehicle is being used to transport a person with disabilities under RCW 46.19.010 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property;

(g) Upon determining that a person is operating a motor vehicle without a valid and, if required, a specially endorsed driver's license or with a license that has been expired for ninety days or more;

(h) When a vehicle is illegally occupying a truck, commercial loading zone, restricted parking zone, bus, loading, hooded-meter, taxi, street construction or maintenance, or other similar zone where, by order of the director of transportation or chiefs of police or fire or their designees, parking is limited to designated classes of vehicles or is prohibited during certain hours, on designated days or at all times, if the zone has been established with signage for at least twenty-four hours and where the vehicle is interfering with the proper and intended use of the zone. Signage must give notice to the public that a vehicle will be removed if illegally parked in the zone;

(i) When a vehicle with an expired registration of more than forty‑five days is parked on a public street;

(j) Upon determining that a person restricted to use of only a motor vehicle equipped with a functioning ignition interlock device is operating a motor vehicle that is not equipped with such a device in violation of RCW 46.20.740(2).

(3) When an arrest is made for a violation of RCW 46.20.342, if the vehicle is a commercial vehicle or farm transport vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest and the owner has not received a prior release under this subsection or RCW 46.55.120(1)((~~(a)~~)) (b)(ii).

(4) Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator.

(5) For purposes of this section "farm transport vehicle" means a motor vehicle owned by a farmer and that is being actively used in the transportation of the farmer's or another farmer's farm, orchard, aquatic farm, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal, or supplies or commodities to be used on the farm, orchard, aquatic farm, or dairy, and that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more.

**Sec.**  RCW 46.61.500 and 2012 c 183 s 11 are each amended to read as follows:

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

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

(b) When a reckless driving conviction is a result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, the department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under an administrative action arising out of the same incident. In the case of a person whose day-for-day credit is for a period equal to or greater than the period of suspension required under this section, the department shall provide notice of full credit, shall provide for no further suspension under this section, and shall impose no additional reissue fees for this credit. During any period of suspension, revocation, or denial due to a conviction for reckless driving as the result of a charge originally filed as a violation of RCW 46.61.502 or 46.61.504, any person who has obtained an ignition interlock driver's license under RCW 46.20.385 may continue to drive a motor vehicle pursuant to the provision of the ignition interlock driver's license without obtaining a separate temporary restricted driver's license under RCW 46.20.391.

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

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

**Sec.**  RCW 46.61.503 and 2015 2nd sp.s. c 3 s 14 are each amended to read as follows:

(1) Notwithstanding any other provision of this title, a person is guilty of driving or being in physical control of a motor vehicle after consuming alcohol or marijuana if the person operates or is in physical control of a motor vehicle within this state and the person:

(a) Is under the age of twenty-one; and

(b) Has, within two hours after operating or being in physical control of the motor vehicle, either:

(i) An alcohol concentration of at least 0.02 but less than the concentration specified in RCW 46.61.502, as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(ii) A THC concentration above 0.00 but less than the concentration specified in RCW 46.61.502, as shown by analysis of the person's blood made under RCW 46.61.506.

(2) It is an affirmative defense to a violation of subsection (1) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of alcohol or marijuana after the time of driving or being in physical control and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol or THC concentration to be in violation of subsection (1) of this section within two hours after driving or being in physical control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the earlier of: (a) Seven days prior to trial; or (b) the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(3) No person may be convicted under this section for being in physical control of a motor vehicle and it is an affirmative defense to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny the privilege to drive, if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway as described in RCW 46.61.504(2).

(4) Analyses of blood or breath samples obtained more than two hours after the alleged driving or being in physical control may be used as evidence that within two hours of the alleged driving or being in physical control, a person had an alcohol or THC concentration in violation of subsection (1) of this section.

(5) A violation of this section is a misdemeanor.

**Sec.**  RCW 46.61.504 and 2017 c 335 s 2 are each amended to read as follows:

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

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

(b) The person has, within two hours after being in actual physical control of a vehicle, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

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

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

(2)(a) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state does not constitute a defense against any charge of violating this section. No person may be convicted under this section and it is an affirmative defense to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny the privilege to drive if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway. A vehicle is safely off the roadway if:

(i) The suspected impaired person is not in the driver's seat of the vehicle;

(ii) The vehicle is not parked in an area designated for through traffic or in any place not authorized for motor vehicle traffic or parking; and

(iii) The vehicle's engine is off.

(b) For purposes of (a)(i) of this subsection, the requirement that the suspected impaired person is not in the driver's seat of the vehicle does not apply to an individual who has current approved disability parking privileges from the department.

(3)(a) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after being in such control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after being in control of the vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

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

(b) Analyses of blood samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in control of the vehicle, a person had a THC concentration of 5.00 or more in violation of subsection (1)(b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

**Sec.**  RCW 46.61.5055 and 2018 c 201 s 9009 are each amended to read as follows:

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

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

(i) By imprisonment for not less than one day nor more than three hundred sixty-four days. Twenty-four consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring or a ninety-day period of 24/7 sobriety program monitoring. The court may consider the offender's pretrial 24/7 sobriety program monitoring as fulfilling a portion of posttrial sentencing. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device or other separate alcohol monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

(i) By imprisonment for not less than two days nor more than three hundred sixty-four days. Forty-eight consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring or a one hundred twenty day period of 24/7 sobriety program monitoring. The court may consider the offender's pretrial 24/7 sobriety program testing as fulfilling a portion of posttrial sentencing. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer or other separate alcohol monitoring device, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

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

(i) By imprisonment for not less than thirty days nor more than three hundred sixty-four days and sixty days of electronic home monitoring. In lieu of the mandatory term of imprisonment and electronic home monitoring under this subsection (2)(a)(i), the court may order a minimum of four days in jail and either one hundred eighty days of electronic home monitoring or a one hundred twenty-day period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390. The court may consider the offender's pretrial 24/7 sobriety program monitoring as fulfilling a portion of posttrial sentencing. The court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

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

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

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

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

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

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

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

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

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

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

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

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

(a) The person has three or more prior offenses within ((~~ten~~)) fifteen years; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) **Conditions of probation.** (a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes up to three hundred sixty-four days in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive; (ii) not driving a motor vehicle within this state without proof of liability insurance or other financial responsibility for the future pursuant to RCW 46.30.020; (iii) not driving or being in physical control of a motor vehicle within this state while having an alcohol concentration of 0.08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher, within two hours after driving; (iv) not refusing to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drug; and (v) not driving a motor vehicle in this state without a functioning ignition interlock device as required by the department under RCW 46.20.720. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Treatment" means substance use disorder treatment licensed or certified by the department of health;

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

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

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

**Sec.**  RCW 46.61.5055 and 2019 c ... s 16 (section 16 of this act) are each amended to read as follows:

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

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

(i) By imprisonment for not less than ((~~one day~~)) twenty-four consecutive hours nor more than three hundred sixty-four days. ((~~Twenty-four consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based.~~)) In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court, in its discretion, may order not less than fifteen days of electronic home monitoring or a ninety-day period of 24/7 sobriety program monitoring. The court may consider the offender's pretrial 24/7 sobriety program monitoring as fulfilling a portion of posttrial sentencing. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device or other separate alcohol monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

(i) By imprisonment for not less than ((~~two days~~)) forty-eight consecutive hours nor more than three hundred sixty-four days. ((~~Forty-eight consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based.~~)) In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court, in its discretion, may order not less than thirty days of electronic home monitoring or a one hundred twenty day period of 24/7 sobriety program monitoring. The court may consider the offender's pretrial 24/7 sobriety program testing as fulfilling a portion of posttrial sentencing. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer or other separate alcohol monitoring device, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

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

(i) By imprisonment for not less than thirty days nor more than three hundred sixty-four days and sixty days of electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. If the offender shows that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being, in lieu of the mandatory term of imprisonment and electronic home monitoring under this subsection (2)(a)(i), the court may order a minimum of ((~~four days in jail and~~)) either one hundred eighty days of electronic home monitoring or a one hundred twenty-day period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. The court may consider the offender's pretrial 24/7 sobriety program monitoring as fulfilling a portion of posttrial sentencing. The court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring((~~. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based~~)); and

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

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

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

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

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

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

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

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

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

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

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

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

(a) The person has three or more prior offenses within fifteen years; or

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

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

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

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

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

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

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

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

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

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

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

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

(a) Order the use of an ignition interlock or other device for an additional ((~~six~~)) twelve months for each passenger under the age of sixteen when the person is subject to the penalties under subsection (1)(a), (2)(a), or (3)(a) of this section; and order the use of an ignition interlock device for an additional eighteen months for each passenger under the age of sixteen when the person is subject to the penalties under subsection (1)(b), (2)(b), (3)(b), or (4) of this section;

(b) In any case in which the person has no prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional twenty-four hours of imprisonment to be served consecutively for each passenger under the age of sixteen, and a fine of not less than one thousand dollars and not more than five thousand dollars for each passenger under the age of sixteen. One thousand dollars of the fine for each passenger under the age of sixteen may not be suspended unless the court finds the offender to be indigent;

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

(d) In any case in which the person has two prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional ten days of imprisonment to be served consecutively for each passenger under the age of sixteen, and a fine of not less than three thousand dollars and not more than ten thousand dollars for each passenger under the age of sixteen. One thousand dollars of the fine for each passenger under the age of sixteen may not be suspended unless the court finds the offender to be indigent.

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

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

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

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

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

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

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

((~~(a)~~)) (i) **Penalty for alcohol concentration less than 0.15.** If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

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

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

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

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

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

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

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

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

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

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

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

(b)(i) The department shall grant credit on a day-for-day basis for ((~~any portion of~~)) a suspension, revocation, or denial ((~~already served~~)) imposed under this subsection (9) for any portion of a suspension, revocation, or denial ((~~imposed~~)) already served under RCW 46.20.3101 arising out of the same incident.

(ii) If a person has already served a suspension, revocation, or denial under RCW 46.20.3101 for a period equal to or greater than the period imposed under this subsection (9), the department shall provide notice of full credit, shall provide for no further suspension or revocation under this subsection provided the person has completed the requirements under RCW 46.20.311 and paid the probationary license fee under RCW 46.20.355 by the date specified in the notice under RCW 46.20.245, and shall impose no additional reissue fees for this credit.

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

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

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

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

(11) **Conditions of probation.** (a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes up to three hundred sixty-four days in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive; (ii) not driving a motor vehicle within this state without proof of liability insurance or other financial responsibility for the future pursuant to RCW 46.30.020; (iii) not driving or being in physical control of a motor vehicle within this state while having an alcohol concentration of 0.08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher, within two hours after driving; (iv) not refusing to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drug; and (v) not driving a motor vehicle in this state without a functioning ignition interlock device as required by the department under RCW 46.20.720. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Treatment" means substance use disorder treatment licensed or certified by the department of health;

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

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

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

**Sec.**  RCW 46.61.502 and 2017 c 335 s 1 are each amended to read as follows:

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

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

(b) The person has, within two hours after driving, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) While the person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or

(d) While the person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.

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

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

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of driving and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

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

(b) Analyses of blood samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had a THC concentration of 5.00 or more in violation of subsection (1)(b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

(a) The person has three or more prior offenses within ((~~ten~~)) fifteen years as defined in RCW 46.61.5055; or

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

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

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

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

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

**Sec.**  RCW 46.61.504 and 2017 c 335 s 2 are each amended to read as follows:

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

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

(b) The person has, within two hours after being in actual physical control of a vehicle, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

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

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

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state does not constitute a defense against any charge of violating this section. No person may be convicted under this section and it is an affirmative defense to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny the privilege to drive if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(3)(a) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after being in such control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after being in control of the vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

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

(b) Analyses of blood samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in control of the vehicle, a person had a THC concentration of 5.00 or more in violation of subsection (1)(b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

(a) The person has three or more prior offenses within ((~~ten~~)) fifteen years as defined in RCW 46.61.5055; or

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

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

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

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

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

**Sec.**  RCW 9.94A.525 and 2017 c 272 s 3 are each amended to read as follows:

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

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

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

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

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

(c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

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

(e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate crimes for the offense as defined by RCW 46.61.5055(14) shall be included in the offender score, and prior convictions for felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)) shall always be included in the offender score. All other convictions of the defendant shall be scored according to this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for operation of a vessel while under the influence of intoxicating liquor or any drug.

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

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

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

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

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

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

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

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

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

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

(a) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after August 1, 2011, for any of the following offenses: A felony violation of a no‑contact or protection order RCW 26.50.110, felony Harassment (RCW 9A.46.020(2)(b)), felony Stalking (RCW 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020), Kidnapping 1 (RCW 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful imprisonment (RCW 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2 (RCW 9A.56.210), Assault 1 (RCW 9A.36.011), Assault 2 (RCW 9A.36.021), Assault 3 (RCW 9A.36.031), Arson 1 (RCW 9A.48.020), or Arson 2 (RCW 9A.48.030);

(b) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after July 23, 2017, for any of the following offenses: Assault of a child in the first degree, RCW 9A.36.120; Assault of a child in the second degree, RCW 9A.36.130; Assault of a child in the third degree, RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW 9A.42.020; or Criminal Mistreatment in the second degree, RCW 9A.42.030;

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

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

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

NEW SECTION. **Sec.**  (1) Within existing resources, the Washington association of sheriffs and police chiefs shall review current laws and regulations regarding the sentencing structure for impaired driving offenses in an effort to reduce fatalities from individuals driving under the influence. The review must include looking at lookback periods, number of previous offenses, and other possible recommendations to reduce these fatalities. The Washington association of sheriffs and police chiefs shall provide its recommendations to the governor and appropriate committees of the legislature by December 1, 2019.

(2) This section expires June 30, 2020.

NEW SECTION. **Sec.**  RCW 43.43.3951 (Ignition interlock devices—Limited exemption for companies not using devices employing fuel cell technology) and 2010 c 268 s 3 are each repealed.

NEW SECTION. **Sec.**  Sections 2, 3, 6 through 11, 13, and 17 of this act take effect January 1, 2020."

**ESHB 1504** - S COMM AMD

By Committee on Law & Justice

**OUT OF ORDER 04/17/2019**

On page 1, line 1 of the title, after "driving;" strike the remainder of the title and insert "amending RCW 9.94A.533, 9.94A.729, 10.21.055, 18.360.030, 38.52.430, 46.20.245, 46.20.3101, 46.20.720, 46.20.740, 46.20.750, 46.55.113, 46.61.500, 46.61.503, 46.61.504, 46.61.5055, 46.61.5055, 46.61.502, 46.61.504, and 9.94A.525; reenacting and amending RCW 46.20.355; creating a new section; repealing RCW 43.43.3951; prescribing penalties; providing an effective date; and providing an expiration date."

EFFECT: (1) Revises the lookback provision for prior offenses from a ten-year lookback to a fifteen-year lookback when a person has three or more prior convictions for driving under the influence or physical control of a motor vehicle under the influence.

(2) Excludes a driver who has disability parking privileges from the Department of Licensing from the requirement of moving out of the driver's seat for purposes of an affirmative defense to physical control of a vehicle under the influence.