

E2SHB 3254 - S COMM AMD
By Committee on Transportation

ADOPTED AND ENGROSSED 03/07/08

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 46.04 RCW
4 to read as follows:

5 "Ignition interlock driver's license" means a permit issued to a
6 person by the department that allows the person to operate a
7 noncommercial motor vehicle with an ignition interlock device while the
8 person's regular driver's license is suspended, revoked, or denied.

9 **Sec. 2.** RCW 46.20.308 and 2005 c 314 s 307 and 2005 c 269 s 1 are
10 each reenacted and amended to read as follows:

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

22 (2) The test or tests of breath shall be administered at the
23 direction of a law enforcement officer having reasonable grounds to
24 believe the person to have been driving or in actual physical control
25 of a motor vehicle within this state while under the influence of
26 intoxicating liquor or any drug or the person to have been driving or
27 in actual physical control of a motor vehicle while having alcohol in
28 a concentration in violation of RCW 46.61.503 in his or her system and
29 being under the age of twenty-one. However, in those instances where

1 the person is incapable due to physical injury, physical incapacity, or
2 other physical limitation, of providing a breath sample or where the
3 person is being treated in a hospital, clinic, doctor's office,
4 emergency medical vehicle, ambulance, or other similar facility or
5 where the officer has reasonable grounds to believe that the person is
6 under the influence of a drug, a blood test shall be administered by a
7 qualified person as provided in RCW 46.61.506(5). The officer shall
8 inform the person of his or her right to refuse the breath or blood
9 test, and of his or her right to have additional tests administered by
10 any qualified person of his or her choosing as provided in RCW
11 46.61.506. The officer shall warn the driver, in substantially the
12 following language, that:

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

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

18 (c) If the driver submits to the test and the test is administered,
19 the driver's license, permit, or privilege to drive will be suspended,
20 revoked, or denied for at least ninety days if the driver is age
21 twenty-one or over and the test indicates the alcohol concentration of
22 the driver's breath or blood is 0.08 or more, or if the driver is under
23 age twenty-one and the test indicates the alcohol concentration of the
24 driver's breath or blood is 0.02 or more, or if the driver is under age
25 twenty-one and the driver is in violation of RCW 46.61.502 or
26 46.61.504; and

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

30 (3) Except as provided in this section, the test administered shall
31 be of the breath only. If an individual is unconscious or is under
32 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
33 or vehicular assault as provided in RCW 46.61.522, or if an individual
34 is under arrest for the crime of driving while under the influence of
35 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
36 results from an accident in which there has been serious bodily injury
37 to another person, a breath or blood test may be administered without
38 the consent of the individual so arrested.

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

7 (5) If, following his or her arrest and receipt of warnings under
8 subsection (2) of this section, the person arrested refuses upon the
9 request of a law enforcement officer to submit to a test or tests of
10 his or her breath or blood, no test shall be given except as authorized
11 under subsection (3) or (4) of this section.

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

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

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

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

33 (d) Serve notice in writing that the marked license or permit, if
34 any, is a temporary license that is valid for sixty days from the date
35 of arrest or from the date notice has been given in the event notice is
36 given by the department following a blood test, or until the
37 suspension, revocation, or denial of the person's license, permit, or

1 privilege to drive is sustained at a hearing pursuant to subsection (8)
2 of this section, whichever occurs first. No temporary license is valid
3 to any greater degree than the license or permit that it replaces; and

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

8 (i) That the officer had reasonable grounds to believe the arrested
9 person had been driving or was in actual physical control of a motor
10 vehicle within this state while under the influence of intoxicating
11 liquor or drugs, or both, or was under the age of twenty-one years and
12 had been driving or was in actual physical control of a motor vehicle
13 while having an alcohol concentration in violation of RCW 46.61.503;

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

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

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

31 (8) A person receiving notification under subsection (6)(b) of this
32 section may, within (~~thirty~~) twenty days after the notice has been
33 given, request in writing a formal hearing before the department. The
34 person shall pay a fee of two hundred dollars as part of the request.
35 If the request is mailed, it must be postmarked within (~~thirty~~)
36 twenty days after receipt of the notification. Upon timely receipt of
37 such a request for a formal hearing, including receipt of the required
38 two hundred dollar fee, the department shall afford the person an

1 opportunity for a hearing. The department may waive the required two
2 hundred dollar fee if the person is an indigent as defined in RCW
3 10.101.010. Except as otherwise provided in this section, the hearing
4 is subject to and shall be scheduled and conducted in accordance with
5 RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the
6 county of the arrest, except that all or part of the hearing may, at
7 the discretion of the department, be conducted by telephone or other
8 electronic means. The hearing shall be held within sixty days
9 following the arrest or following the date notice has been given in the
10 event notice is given by the department following a blood test, unless
11 otherwise agreed to by the department and the person, in which case the
12 action by the department shall be stayed, and any valid temporary
13 license marked under subsection (6)(c) of this section extended, if the
14 person is otherwise eligible for licensing. For the purposes of this
15 section, the scope of the hearing shall cover the issues of whether a
16 law enforcement officer had reasonable grounds to believe the person
17 had been driving or was in actual physical control of a motor vehicle
18 within this state while under the influence of intoxicating liquor or
19 any drug or had been driving or was in actual physical control of a
20 motor vehicle within this state while having alcohol in his or her
21 system in a concentration of 0.02 or more if the person was under the
22 age of twenty-one, whether the person was placed under arrest, and (a)
23 whether the person refused to submit to the test or tests upon request
24 of the officer after having been informed that such refusal would
25 result in the revocation of the person's license, permit, or privilege
26 to drive, or (b) if a test or tests were administered, whether the
27 applicable requirements of this section were satisfied before the
28 administration of the test or tests, whether the person submitted to
29 the test or tests, or whether a test was administered without express
30 consent as permitted under this section, and whether the test or tests
31 indicated that the alcohol concentration of the person's breath or
32 blood was 0.08 or more if the person was age twenty-one or over at the
33 time of the arrest, or 0.02 or more if the person was under the age of
34 twenty-one at the time of the arrest. The sworn report or report under
35 a declaration authorized by RCW 9A.72.085 submitted by a law
36 enforcement officer is prima facie evidence that the officer had
37 reasonable grounds to believe the person had been driving or was in
38 actual physical control of a motor vehicle within this state while

1 under the influence of intoxicating liquor or drugs, or both, or the
2 person had been driving or was in actual physical control of a motor
3 vehicle within this state while having alcohol in his or her system in
4 a concentration of 0.02 or more and was under the age of twenty-one and
5 that the officer complied with the requirements of this section.

6 A hearing officer shall conduct the hearing, may issue subpoenas
7 for the attendance of witnesses and the production of documents, and
8 shall administer oaths to witnesses. The hearing officer shall not
9 issue a subpoena for the attendance of a witness at the request of the
10 person unless the request is accompanied by the fee required by RCW
11 5.56.010 for a witness in district court. The sworn report or report
12 under a declaration authorized by RCW 9A.72.085 of the law enforcement
13 officer and any other evidence accompanying the report shall be
14 admissible without further evidentiary foundation and the
15 certifications authorized by the criminal rules for courts of limited
16 jurisdiction shall be admissible without further evidentiary
17 foundation. The person may be represented by counsel, may question
18 witnesses, may present evidence, and may testify. The department shall
19 order that the suspension, revocation, or denial either be rescinded or
20 sustained.

21 (9) If the suspension, revocation, or denial is sustained after
22 such a hearing, the person whose license, privilege, or permit is
23 suspended, revoked, or denied has the right to file a petition in the
24 superior court of the county of arrest to review the final order of
25 revocation by the department in the same manner as an appeal from a
26 decision of a court of limited jurisdiction. Notice of appeal must be
27 filed within thirty days after the date the final order is served or
28 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
29 1.1, or other statutes or rules referencing de novo review, the appeal
30 shall be limited to a review of the record of the administrative
31 hearing. The appellant must pay the costs associated with obtaining
32 the record of the hearing before the hearing officer. The filing of
33 the appeal does not stay the effective date of the suspension,
34 revocation, or denial. A petition filed under this subsection must
35 include the petitioner's grounds for requesting review. Upon granting
36 petitioner's request for review, the court shall review the
37 department's final order of suspension, revocation, or denial as
38 expeditiously as possible. The review must be limited to a

1 determination of whether the department has committed any errors of
2 law. The superior court shall accept those factual determinations
3 supported by substantial evidence in the record: (a) That were
4 expressly made by the department; or (b) that may reasonably be
5 inferred from the final order of the department. The superior court
6 may reverse, affirm, or modify the decision of the department or remand
7 the case back to the department for further proceedings. The decision
8 of the superior court must be in writing and filed in the clerk's
9 office with the other papers in the case. The court shall state the
10 reasons for the decision. If judicial relief is sought for a stay or
11 other temporary remedy from the department's action, the court shall
12 not grant such relief unless the court finds that the appellant is
13 likely to prevail in the appeal and that without a stay the appellant
14 will suffer irreparable injury. If the court stays the suspension,
15 revocation, or denial it may impose conditions on such stay.

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

1 the stay and any temporary marked license or extension of a temporary
2 license issued under this subsection.

3 (b) A suspension, revocation, or denial imposed under this section,
4 other than as a result of a breath or blood test refusal, shall be
5 stayed if the person is accepted for deferred prosecution as provided
6 in chapter 10.05 RCW for the incident upon which the suspension,
7 revocation, or denial is based. If the deferred prosecution is
8 terminated, the stay shall be lifted and the suspension, revocation, or
9 denial reinstated. If the deferred prosecution is completed, the stay
10 shall be lifted and the suspension, revocation, or denial canceled.

11 (c) The provisions of (b) of this subsection relating to a stay of
12 a suspension, revocation, or denial and the cancellation of any
13 suspension, revocation, or denial do not apply to the suspension,
14 revocation, denial, or disqualification of a person's commercial
15 driver's license or privilege to operate a commercial motor vehicle.

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

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 46.68 RCW
23 to read as follows:

24 The ignition interlock device revolving account is created in the
25 state treasury. All receipts from the fee assessed under section 9(6)
26 of this act must be deposited into the account. Moneys in the account
27 may be spent only after appropriation. Expenditures from the account
28 may be used only for administering and operating the ignition interlock
29 device revolving account program.

30 **Sec. 4.** RCW 46.20.342 and 2004 c 95 s 5 are each amended to read
31 as follows:

32 (1) It is unlawful for any person to drive a motor vehicle in this
33 state while that person is in a suspended or revoked status or when his
34 or her privilege to drive is suspended or revoked in this or any other
35 state. Any person who has a valid Washington driver's license is not
36 guilty of a violation of this section.

1 (a) A person found to be an habitual offender under chapter 46.65
2 RCW, who violates this section while an order of revocation issued
3 under chapter 46.65 RCW prohibiting such operation is in effect, is
4 guilty of driving while license suspended or revoked in the first
5 degree, a gross misdemeanor. Upon the first such conviction, the
6 person shall be punished by imprisonment for not less than ten days.
7 Upon the second conviction, the person shall be punished by
8 imprisonment for not less than ninety days. Upon the third or
9 subsequent conviction, the person shall be punished by imprisonment for
10 not less than one hundred eighty days. If the person is also convicted
11 of the offense defined in RCW 46.61.502 or 46.61.504, when both
12 convictions arise from the same event, the minimum sentence of
13 confinement shall be not less than ninety days. The minimum sentence
14 of confinement required shall not be suspended or deferred. A
15 conviction under this subsection does not prevent a person from
16 petitioning for reinstatement as provided by RCW 46.65.080.

17 (b) A person who violates this section while an order of suspension
18 or revocation prohibiting such operation is in effect and while the
19 person is not eligible to reinstate his or her driver's license or
20 driving privilege, other than for a suspension for the reasons
21 described in (c) of this subsection, is guilty of driving while license
22 suspended or revoked in the second degree, a gross misdemeanor. This
23 subsection applies when a person's driver's license or driving
24 privilege has been suspended or revoked by reason of:

25 (i) A conviction of a felony in the commission of which a motor
26 vehicle was used;

27 (ii) A previous conviction under this section;

28 (iii) A notice received by the department from a court or diversion
29 unit as provided by RCW 46.20.265, relating to a minor who has
30 committed, or who has entered a diversion unit concerning an offense
31 relating to alcohol, legend drugs, controlled substances, or imitation
32 controlled substances;

33 (iv) A conviction of RCW 46.20.410, relating to the violation of
34 restrictions of an occupational ((~~or~~)) driver's license, a temporary
35 restricted driver's license, or an ignition interlock driver's license;

36 (v) A conviction of RCW 46.20.345, relating to the operation of a
37 motor vehicle with a suspended or revoked license;

1 (vi) A conviction of RCW 46.52.020, relating to duty in case of
2 injury to or death of a person or damage to an attended vehicle;
3 (vii) A conviction of RCW 46.61.024, relating to attempting to
4 elude pursuing police vehicles;
5 (viii) A conviction of RCW 46.61.500, relating to reckless driving;
6 (ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a
7 person under the influence of intoxicating liquor or drugs;
8 (x) A conviction of RCW 46.61.520, relating to vehicular homicide;
9 (xi) A conviction of RCW 46.61.522, relating to vehicular assault;
10 (xii) A conviction of RCW 46.61.527(4), relating to reckless
11 endangerment of roadway workers;
12 (xiii) A conviction of RCW 46.61.530, relating to racing of
13 vehicles on highways;
14 (xiv) A conviction of RCW 46.61.685, relating to leaving children
15 in an unattended vehicle with motor running;
16 (xv) A conviction of RCW 46.61.740, relating to theft of motor
17 vehicle fuel;
18 (xvi) A conviction of RCW 46.64.048, relating to attempting,
19 aiding, abetting, coercing, and committing crimes;
20 (xvii) An administrative action taken by the department under
21 chapter 46.20 RCW; or
22 (xviii) A conviction of a local law, ordinance, regulation, or
23 resolution of a political subdivision of this state, the federal
24 government, or any other state, of an offense substantially similar to
25 a violation included in this subsection.
26 (c) A person who violates this section when his or her driver's
27 license or driving privilege is, at the time of the violation,
28 suspended or revoked solely because (i) the person must furnish proof
29 of satisfactory progress in a required alcoholism or drug treatment
30 program, (ii) the person must furnish proof of financial responsibility
31 for the future as provided by chapter 46.29 RCW, (iii) the person has
32 failed to comply with the provisions of chapter 46.29 RCW relating to
33 uninsured accidents, (iv) the person has failed to respond to a notice
34 of traffic infraction, failed to appear at a requested hearing,
35 violated a written promise to appear in court, or has failed to comply
36 with the terms of a notice of traffic infraction or citation, as
37 provided in RCW 46.20.289, (v) the person has committed an offense in
38 another state that, if committed in this state, would not be grounds

1 for the suspension or revocation of the person's driver's license, (vi)
2 the person has been suspended or revoked by reason of one or more of
3 the items listed in (b) of this subsection, but was eligible to
4 reinstate his or her driver's license or driving privilege at the time
5 of the violation, or (vii) the person has received traffic citations or
6 notices of traffic infraction that have resulted in a suspension under
7 RCW 46.20.267 relating to intermediate drivers' licenses, or any
8 combination of (i) through (vii), is guilty of driving while license
9 suspended or revoked in the third degree, a misdemeanor.

10 (2) Upon receiving a record of conviction of any person or upon
11 receiving an order by any juvenile court or any duly authorized court
12 officer of the conviction of any juvenile under this section, the
13 department shall:

14 (a) For a conviction of driving while suspended or revoked in the
15 first degree, as provided by subsection (1)(a) of this section, extend
16 the period of administrative revocation imposed under chapter 46.65 RCW
17 for an additional period of one year from and after the date the person
18 would otherwise have been entitled to apply for a new license or have
19 his or her driving privilege restored; or

20 (b) For a conviction of driving while suspended or revoked in the
21 second degree, as provided by subsection (1)(b) of this section, not
22 issue a new license or restore the driving privilege for an additional
23 period of one year from and after the date the person would otherwise
24 have been entitled to apply for a new license or have his or her
25 driving privilege restored; or

26 (c) Not extend the period of suspension or revocation if the
27 conviction was under subsection (1)(c) of this section. If the
28 conviction was under subsection (1)(a) or (b) of this section and the
29 court recommends against the extension and the convicted person has
30 obtained a valid driver's license, the period of suspension or
31 revocation shall not be extended.

32 **Sec. 5.** RCW 46.20.380 and 2004 c 95 s 6 are each amended to read
33 as follows:

34 No person may file an application for an occupational ((~~or~~)
35 driver's license, a temporary restricted driver's license, or an
36 ignition interlock driver's license as provided in RCW 46.20.391 and
37 section 9 of this act unless he or she first pays to the director or

1 other person authorized to accept applications and fees for driver's
2 licenses a fee of one hundred dollars. The applicant shall receive
3 upon payment an official receipt for the payment of such fee. All such
4 fees shall be forwarded to the director who shall transmit such fees to
5 the state treasurer in the same manner as other driver's license fees.

6 **Sec. 6.** RCW 46.20.391 and 2004 c 95 s 7 are each amended to read
7 as follows:

8 (1)~~((a))~~ Any person licensed under this chapter who is convicted
9 of an offense relating to motor vehicles for which suspension or
10 revocation of the driver's license is mandatory, other than vehicular
11 homicide ~~((or))~~, vehicular assault, ~~((or who has had his or her license
12 suspended, revoked, or denied under RCW 46.20.3101))~~ driving while
13 under the influence of intoxicating liquor or any drug, or being in
14 actual physical control of a motor vehicle while under the influence of
15 intoxicating liquor or any drug, may submit to the department an
16 application for a temporary restricted driver's license. The
17 department, upon receipt of the prescribed fee and upon determining
18 that the petitioner is eligible to receive the license, may issue a
19 temporary restricted driver's license and may set definite restrictions
20 as provided in RCW 46.20.394. ~~((No person may petition for, and the
21 department shall not issue, a temporary restricted driver's license
22 that is effective during the first thirty days of any suspension or
23 revocation imposed for a violation of RCW 46.61.502 or 46.61.504 or,
24 for a suspension, revocation, or denial imposed under RCW 46.20.3101,
25 during the required minimum portion of the periods of suspension,
26 revocation, or denial established under (c) of this subsection.~~

27 ~~(b) An applicant under this subsection whose driver's license is
28 suspended or revoked for an alcohol related offense shall provide proof
29 to the satisfaction of the department that a functioning ignition
30 interlock device has been installed on a vehicle owned or operated by
31 the person.~~

32 ~~(i) The department shall require the person to maintain such a
33 device on a vehicle owned or operated by the person and shall restrict
34 the person to operating only vehicles equipped with such a device, for
35 the remainder of the period of suspension, revocation, or denial.~~

36 ~~(ii) Subject to any periodic renewal requirements established by
37 the department pursuant to this section and subject to any applicable~~

1 ~~compliance requirements under this chapter or other law, a temporary~~
2 ~~restricted driver's license granted after a suspension or revocation~~
3 ~~under RCW 46.61.5055 or 46.20.3101 extends through the remaining~~
4 ~~portion of any concurrent or consecutive suspension or revocation that~~
5 ~~may be imposed as the result of administrative action and criminal~~
6 ~~conviction arising out of the same incident.~~

7 ~~(iii) The time period during which the person is licensed under~~
8 ~~this section shall apply on a day for day basis toward satisfying the~~
9 ~~period of time the ignition interlock device restriction is required~~
10 ~~under RCW 46.20.720 (1) and (2) (a), (b), and (c).~~

11 ~~(c) The department shall provide by rule the minimum portions of~~
12 ~~the periods of suspension, revocation, or denial set forth in RCW~~
13 ~~46.20.3101 after which a person may apply for a temporary restricted~~
14 ~~driver's license under this section. In establishing the minimum~~
15 ~~portions of the periods of suspension, revocation, or denial, the~~
16 ~~department shall consider the requirements of federal law regarding~~
17 ~~state eligibility for grants or other funding, and shall establish such~~
18 ~~periods so as to ensure that the state will maintain its eligibility,~~
19 ~~or establish eligibility, to obtain incentive grants or any other~~
20 ~~federal funding.))~~

21 (2)(a) A person licensed under this chapter whose driver's license
22 is suspended administratively due to failure to appear or pay a traffic
23 ticket under RCW 46.20.289; a violation of the financial responsibility
24 laws under chapter 46.29 RCW; or for multiple violations within a
25 specified period of time under RCW 46.20.291, may apply to the
26 department for an occupational driver's license.

27 (b) If the suspension is for failure to respond, pay, or comply
28 with a notice of traffic infraction or conviction, the applicant must
29 enter into a payment plan with the court.

30 (c) An occupational driver's license issued to an applicant
31 described in (a) of this subsection shall be valid for the period of
32 the suspension or revocation.

33 (3) An applicant for an occupational or temporary restricted
34 driver's license who qualifies under subsection (1) or (2) of this
35 section is eligible to receive such license only if:

36 (a) Within seven years immediately preceding the date of the
37 offense that gave rise to the present conviction or incident, the

1 applicant has not committed vehicular homicide under RCW 46.61.520 or
2 vehicular assault under RCW 46.61.522; and

3 (b) The applicant demonstrates that it is necessary for him or her
4 to operate a motor vehicle because he or she:

5 (i) Is engaged in an occupation or trade that makes it essential
6 that he or she operate a motor vehicle;

7 (ii) Is undergoing continuing health care or providing continuing
8 care to another who is dependent upon the applicant;

9 (iii) Is enrolled in an educational institution and pursuing a
10 course of study leading to a diploma, degree, or other certification of
11 successful educational completion;

12 (iv) Is undergoing substance abuse treatment or is participating in
13 meetings of a twelve-step group such as Alcoholics Anonymous that
14 requires the petitioner to drive to or from the treatment or meetings;

15 (v) Is fulfilling court-ordered community service responsibilities;

16 (vi) Is in a program that assists persons who are enrolled in a
17 WorkFirst program pursuant to chapter 74.08A RCW to become gainfully
18 employed and the program requires a driver's license;

19 (vii) Is in an apprenticeship, on-the-job training, or welfare-to-
20 work program; or

21 (viii) Presents evidence that he or she has applied for a position
22 in an apprenticeship or on-the-job training program for which a
23 driver's license is required to begin the program, provided that a
24 license granted under this provision shall be in effect for no longer
25 than fourteen days; and

26 (c) The applicant files satisfactory proof of financial
27 responsibility under chapter 46.29 RCW; and

28 (d) Upon receipt of evidence that a holder of an occupational
29 driver's license granted under this subsection is no longer enrolled in
30 an apprenticeship or on-the-job training program, the director shall
31 give written notice by first-class mail to the driver that the
32 occupational driver's license shall be canceled. The effective date of
33 cancellation shall be fifteen days from the date of mailing the notice.
34 If at any time before the cancellation goes into effect the driver
35 submits evidence of continued enrollment in the program, the
36 cancellation shall be stayed. If the cancellation becomes effective,
37 the driver may obtain, at no additional charge, a new occupational

1 driver's license upon submittal of evidence of enrollment in another
2 program that meets the criteria set forth in this subsection; and

3 (e) The department shall not issue an occupational driver's license
4 under (b)(iv) of this subsection if the applicant is able to receive
5 transit services sufficient to allow for the applicant's participation
6 in the programs referenced under (b)(iv) of this subsection.

7 (4) A person aggrieved by the decision of the department on the
8 application for an occupational or temporary restricted driver's
9 license may request a hearing as provided by rule of the department.

10 (5) The director shall cancel an occupational or temporary
11 restricted driver's license upon receipt of notice that the holder
12 thereof has been convicted of operating a motor vehicle in violation of
13 its restrictions, or of a separate offense that under chapter 46.20 RCW
14 would warrant suspension or revocation of a regular driver's license.
15 The cancellation is effective as of the date of the conviction, and
16 continues with the same force and effect as any suspension or
17 revocation under this title.

18 **Sec. 7.** RCW 46.20.400 and 2004 c 95 s 9 are each amended to read
19 as follows:

20 If an occupational ((~~or~~)) driver's license, a temporary restricted
21 driver's license, or an ignition interlock driver's license is issued
22 and is not revoked during the period for which issued the licensee may
23 obtain a new driver's license at the end of such period, but no new
24 driver's license may be issued to such person until he or she
25 surrenders his or her occupational ((~~or~~)) driver's license, temporary
26 restricted driver's license, or ignition interlock driver's license and
27 his or her copy of the order, and the director is satisfied that the
28 person complies with all other provisions of law relative to the
29 issuance of a driver's license.

30 **Sec. 8.** RCW 46.20.410 and 2004 c 95 s 10 are each amended to read
31 as follows:

32 Any person convicted for violation of any restriction of an
33 occupational ((~~or~~)) driver's license, a temporary restricted driver's
34 license, or an ignition interlock driver's license shall in addition to
35 the immediate revocation of such license and any other penalties

1 provided by law be fined not less than fifty nor more than two hundred
2 dollars or imprisoned for not more than six months or both such fine
3 and imprisonment.

4 NEW SECTION. **Sec. 9.** A new section is added to chapter 46.20 RCW
5 to read as follows:

6 (1)(a) Beginning January 1, 2009, any person licensed under this
7 chapter who is convicted of any offense involving the use, consumption,
8 or possession of alcohol while operating a motor vehicle in violation
9 of RCW 46.61.502 or 46.61.504, other than vehicular homicide or
10 vehicular assault, or who has had or will have his or her license
11 suspended, revoked, or denied under RCW 46.20.3101, may submit to the
12 department an application for an ignition interlock driver's license.
13 The department, upon receipt of the prescribed fee and upon determining
14 that the petitioner is eligible to receive the license, may issue an
15 ignition interlock driver's license.

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

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

24 (i) The department shall require the person to maintain the device
25 on all vehicles operated by the person and shall restrict the person to
26 operating only vehicles equipped with the device, for the remainder of
27 the period of suspension, revocation, or denial. The installation of
28 an ignition interlock device is not necessary on vehicles owned by a
29 person's employer and driven as a requirement of employment during
30 working hours. The person must provide the department with a
31 declaration pursuant to RCW 9A.72.085 from his or her employer stating
32 that the person's employment requires the person to operate a vehicle
33 owned by the employer during working hours.

34 (ii) Subject to any periodic renewal requirements established by
35 the department under this section and subject to any applicable
36 compliance requirements under this chapter or other law, an ignition
37 interlock driver's license granted upon a suspension or revocation

1 under RCW 46.61.5055 or 46.20.3101 extends through the remaining
2 portion of any concurrent or consecutive suspension or revocation that
3 may be imposed as the result of administrative action and criminal
4 conviction arising out of the same incident.

5 (iii) The time period during which the person is licensed under
6 this section shall apply on a day-for-day basis toward satisfying the
7 period of time the ignition interlock device restriction is required
8 under RCW 46.20.720 and 46.61.5055.

9 (2) An applicant for an ignition interlock driver's license who
10 qualifies under subsection (1) of this section is eligible to receive
11 a license only if:

12 (a) Within seven years immediately preceding the date of the
13 offense that gave rise to the present conviction or incident, the
14 applicant has not committed vehicular homicide under RCW 46.61.520 or
15 vehicular assault under RCW 46.61.522; and

16 (b) The applicant files satisfactory proof of financial
17 responsibility under chapter 46.29 RCW.

18 (3) Upon receipt of evidence that a holder of an ignition interlock
19 driver's license granted under this subsection no longer has a
20 functioning ignition interlock device installed on all vehicles
21 operated by the driver, the director shall give written notice by
22 first-class mail to the driver that the ignition interlock driver's
23 license shall be canceled. The effective date of cancellation shall be
24 fifteen days from the date of mailing the notice. If at any time
25 before the cancellation goes into effect the driver submits evidence
26 that a functioning ignition interlock device has been installed on all
27 vehicles operated by the driver, the cancellation shall be stayed. If
28 the cancellation becomes effective, the driver may obtain, at no
29 additional charge, a new ignition interlock driver's license upon
30 submittal of evidence that a functioning ignition interlock device has
31 been installed on all vehicles operated by the driver.

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

35 (5) The director shall cancel an ignition interlock driver's
36 license upon receipt of notice that the holder thereof has been
37 convicted of operating a motor vehicle in violation of its
38 restrictions, or of a separate offense that under this chapter would

1 warrant suspension or revocation of a regular driver's license. The
2 cancellation is effective as of the date of the conviction, and
3 continues with the same force and effect as any suspension or
4 revocation under this title.

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

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

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

23 NEW SECTION. **Sec. 10.** A new section is added to chapter 46.20 RCW
24 to read as follows:

25 (1) The ignition interlock device revolving account program is
26 created within the department to assist in covering the monetary costs
27 of installing, removing, and leasing an ignition interlock device, and
28 applicable licensing, for indigent persons who are required under
29 section 9 of this act and RCW 46.61.5055 to install an ignition
30 interlock device in all vehicles owned or operated by the person. For
31 purposes of this subsection, "indigent" has the same meaning as in RCW
32 10.101.010, as determined by the department.

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

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

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

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

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

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

14 (5) As part of monitoring compliance, the Washington traffic safety
15 commission shall also track recidivism for violations of RCW 46.61.502
16 and 46.61.504 by persons required to have an ignition interlock
17 driver's license under section 9 of this act.

18 **Sec. 11.** RCW 46.63.020 and 2005 c 431 s 2, 2005 c 323 s 3, and
19 2005 c 183 s 10 are each reenacted and amended to read as follows:

20 Failure to perform any act required or the performance of any act
21 prohibited by this title or an equivalent administrative regulation or
22 local law, ordinance, regulation, or resolution relating to traffic
23 including parking, standing, stopping, and pedestrian offenses, is
24 designated as a traffic infraction and may not be classified as a
25 criminal offense, except for an offense contained in the following
26 provisions of this title or a violation of an equivalent administrative
27 regulation or local law, ordinance, regulation, or resolution:

28 (1) RCW 46.09.120(2) relating to the operation of a nonhighway
29 vehicle while under the influence of intoxicating liquor or a
30 controlled substance;

31 (2) RCW 46.09.130 relating to operation of nonhighway vehicles;

32 (3) RCW 46.10.090(2) relating to the operation of a snowmobile
33 while under the influence of intoxicating liquor or narcotics or habit-
34 forming drugs or in a manner endangering the person of another;

35 (4) RCW 46.10.130 relating to the operation of snowmobiles;

36 (5) Chapter 46.12 RCW relating to certificates of ownership and

1 registration and markings indicating that a vehicle has been destroyed
2 or declared a total loss;

3 (6) RCW 46.16.010 relating to the nonpayment of taxes and fees by
4 failure to register a vehicle and falsifying residency when registering
5 a motor vehicle;

6 (7) RCW 46.16.011 relating to permitting unauthorized persons to
7 drive;

8 (8) RCW 46.16.160 relating to vehicle trip permits;

9 (9) RCW 46.16.381(2) relating to knowingly providing false
10 information in conjunction with an application for a special placard or
11 license plate for disabled persons' parking;

12 (10) RCW 46.20.005 relating to driving without a valid driver's
13 license;

14 (11) RCW 46.20.091 relating to false statements regarding a
15 driver's license or instruction permit;

16 (12) RCW 46.20.0921 relating to the unlawful possession and use of
17 a driver's license;

18 (13) RCW 46.20.342 relating to driving with a suspended or revoked
19 license or status;

20 (14) RCW 46.20.345 relating to the operation of a motor vehicle
21 with a suspended or revoked license;

22 (15) RCW 46.20.410 relating to the violation of restrictions of an
23 occupational ((~~or~~)) driver's license, temporary restricted driver's
24 license, or ignition interlock driver's license;

25 (16) RCW 46.20.740 relating to operation of a motor vehicle without
26 an ignition interlock device in violation of a license notation that
27 the device is required;

28 (17) RCW 46.20.750 relating to ((~~assisting another person to start~~
29 ~~a vehicle equipped with~~)) circumventing an ignition interlock device;

30 (18) RCW 46.25.170 relating to commercial driver's licenses;

31 (19) Chapter 46.29 RCW relating to financial responsibility;

32 (20) RCW 46.30.040 relating to providing false evidence of
33 financial responsibility;

34 (21) RCW 46.37.435 relating to wrongful installation of
35 sunscreening material;

36 (22) RCW 46.37.650 relating to the sale, resale, distribution, or
37 installation of a previously deployed air bag;

1 (23) RCW 46.37.671 through 46.37.675 relating to signal preemption
2 devices;
3 (24) RCW 46.44.180 relating to operation of mobile home pilot
4 vehicles;
5 (~~(24)~~) (25) RCW 46.48.175 relating to the transportation of
6 dangerous articles;
7 (~~(25)~~) (26) RCW 46.52.010 relating to duty on striking an
8 unattended car or other property;
9 (~~(26)~~) (27) RCW 46.52.020 relating to duty in case of injury to
10 or death of a person or damage to an attended vehicle;
11 (~~(27)~~) (28) RCW 46.52.090 relating to reports by repairmen,
12 storagemen, and appraisers;
13 (~~(28)~~) (29) RCW 46.52.130 relating to confidentiality of the
14 driving record to be furnished to an insurance company, an employer,
15 and an alcohol/drug assessment or treatment agency;
16 (~~(29)~~) (30) RCW 46.55.020 relating to engaging in the activities
17 of a registered tow truck operator without a registration certificate;
18 (~~(30)~~) (31) RCW 46.55.035 relating to prohibited practices by tow
19 truck operators;
20 (~~(31)~~) (32) RCW 46.55.300 relating to vehicle immobilization;
21 (33) RCW 46.61.015 relating to obedience to police officers,
22 flaggers, or firefighters;
23 (~~(32)~~) (34) RCW 46.61.020 relating to refusal to give information
24 to or cooperate with an officer;
25 (~~(33)~~) (35) RCW 46.61.022 relating to failure to stop and give
26 identification to an officer;
27 (~~(34)~~) (36) RCW 46.61.024 relating to attempting to elude
28 pursuing police vehicles;
29 (~~(35)~~) (37) RCW 46.61.500 relating to reckless driving;
30 (~~(36)~~) (38) RCW 46.61.502 and 46.61.504 relating to persons under
31 the influence of intoxicating liquor or drugs;
32 (~~(37)~~) (39) RCW 46.61.503 relating to a person under age twenty-
33 one driving a motor vehicle after consuming alcohol;
34 (~~(38)~~) (40) RCW 46.61.520 relating to vehicular homicide by motor
35 vehicle;
36 (~~(39)~~) (41) RCW 46.61.522 relating to vehicular assault;
37 (~~(40)~~) (42) RCW 46.61.5249 relating to first degree negligent
38 driving;

1 ~~((41))~~ (43) RCW 46.61.527(4) relating to reckless endangerment of
2 roadway workers;

3 ~~((42))~~ (44) RCW 46.61.530 relating to racing of vehicles on
4 highways;

5 ~~((43))~~ (45) RCW 46.61.655(7) (a) and (b) relating to failure to
6 secure a load;

7 ~~((44))~~ (46) RCW 46.61.685 relating to leaving children in an
8 unattended vehicle with the motor running;

9 ~~((45))~~ (47) RCW 46.61.740 relating to theft of motor vehicle
10 fuel;

11 ~~((46)) RCW 46.37.671 through 46.37.675 relating to signal~~
12 ~~preemption devices;~~

13 ~~(47))~~ (48) RCW 46.64.010 relating to unlawful cancellation of or
14 attempt to cancel a traffic citation;

15 ~~((48))~~ (49) RCW 46.64.048 relating to attempting, aiding,
16 abetting, coercing, and committing crimes;

17 ~~((49))~~ (50) Chapter 46.65 RCW relating to habitual traffic
18 offenders;

19 ~~((50))~~ (51) RCW 46.68.010 relating to false statements made to
20 obtain a refund;

21 ~~((51))~~ (52) Chapter 46.70 RCW relating to unfair motor vehicle
22 business practices, except where that chapter provides for the
23 assessment of monetary penalties of a civil nature;

24 ~~((52))~~ (53) Chapter 46.72 RCW relating to the transportation of
25 passengers in for hire vehicles;

26 ~~((53))~~ (54) RCW 46.72A.060 relating to limousine carrier
27 insurance;

28 ~~((54))~~ (55) RCW 46.72A.070 relating to operation of a limousine
29 without a vehicle certificate;

30 ~~((55))~~ (56) RCW 46.72A.080 relating to false advertising by a
31 limousine carrier;

32 ~~((56))~~ (57) Chapter 46.80 RCW relating to motor vehicle wreckers;

33 ~~((57))~~ (58) Chapter 46.82 RCW relating to driver's training
34 schools;

35 ~~((58))~~ (59) RCW 46.87.260 relating to alteration or forgery of a
36 cab card, letter of authority, or other temporary authority issued
37 under chapter 46.87 RCW;

1 (~~(59)~~) (60) RCW 46.87.290 relating to operation of an
2 unregistered or unlicensed vehicle under chapter 46.87 RCW.

3 **Sec. 12.** RCW 46.20.720 and 2004 c 95 s 11 are each amended to read
4 as follows:

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

14 (2) Under RCW 46.61.5055, 10.05.020, or section 18 of this act, the
15 court shall order any person convicted of an alcohol-related violation
16 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance or
17 participating in a deferred prosecution program under RCW 10.05.020 or
18 section 18 of this act for an alcohol-related violation of RCW
19 46.61.502 or 46.61.504 or an equivalent local ordinance to apply for an
20 ignition interlock driver's license from the department under section
21 9 of this act and to have a functioning ignition interlock device
22 installed on all motor vehicles operated by the person.

23 (3) The department shall require that, after any applicable period
24 of suspension, revocation, or denial of driving privileges, a person
25 may drive only a motor vehicle equipped with a functioning ignition
26 interlock device if the person is convicted of an alcohol-related
27 violation of RCW 46.61.502 or 46.61.504 or an equivalent local
28 ordinance.

29 The department may waive the requirement for the use of such a
30 device if it concludes that such devices are not reasonably available
31 in the local area. The device is not necessary on vehicles owned by a
32 person's employer and driven as a requirement of employment during
33 working hours. The person must provide the department with a
34 declaration pursuant to RCW 9A.72.085 from his or her employer stating
35 that the person's employment requires the person to operate a vehicle
36 owned by the employer during working hours.

1 The ignition interlock device shall be calibrated to prevent the
2 motor vehicle from being started when the breath sample provided has an
3 alcohol concentration of 0.025 or more. The period of time of the
4 restriction will be as follows:

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

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

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

11 **Sec. 13.** RCW 46.20.740 and 2004 c 95 s 12 are each amended to read
12 as follows:

13 (1) The department shall attach or imprint a notation on the
14 driving record of any person restricted under RCW 46.20.720 or
15 46.61.5055 stating that the person may operate only a motor vehicle
16 equipped with a functioning ignition interlock device. The department
17 shall determine the person's eligibility for licensing based upon
18 written verification by a company doing business in the state that it
19 has installed the required device on a vehicle owned or operated by the
20 person seeking reinstatement. If, based upon notification from the
21 interlock provider or otherwise, the department determines that an
22 ignition interlock required under this section is no longer installed
23 or functioning as required, the department shall suspend the person's
24 license or privilege to drive. Whenever the license or driving
25 privilege of any person is suspended or revoked as a result of
26 noncompliance with an ignition interlock requirement, the suspension
27 shall remain in effect until the person provides notice issued by a
28 company doing business in the state that a vehicle owned or operated by
29 the person is equipped with a functioning ignition interlock device.

30 (2) It is a misdemeanor for a person with such a notation on his or
31 her driving record to operate a motor vehicle that is not so equipped.

32 **Sec. 14.** RCW 46.61.5055 and 2007 c 474 s 1 are each amended to
33 read as follows:

34 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
35 person who is convicted of a violation of RCW 46.61.502 or 46.61.504

1 and who has no prior offense within seven years shall be punished as
2 follows:

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

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

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

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

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

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

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

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

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

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

37 (ii) By a fine of not less than five hundred dollars nor more than

1 five thousand dollars. Five hundred dollars of the fine may not be
2 suspended or deferred unless the court finds the offender to be
3 indigent; or

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

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

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

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

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

35 (i) By imprisonment for not less than ninety days nor more than one
36 year and one hundred twenty days of electronic home monitoring. The
37 offender shall pay for the cost of the electronic monitoring. The
38 county or municipality where the penalty is being imposed shall

1 determine the cost. The court may also require the offender's
2 electronic home monitoring device include an alcohol detection
3 breathalyzer, and may restrict the amount of alcohol the offender may
4 consume during the time the offender is on electronic home monitoring.
5 Ninety days of imprisonment and one hundred twenty days of electronic
6 home monitoring may not be suspended or deferred unless the court finds
7 that the imposition of this mandatory minimum sentence would impose a
8 substantial risk to the offender's physical or mental well-being.
9 Whenever the mandatory minimum sentence is suspended or deferred, the
10 court shall state in writing the reason for granting the suspension or
11 deferral and the facts upon which the suspension or deferral is based;
12 and

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

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

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

37 (ii) By a fine of not less than one thousand five hundred dollars

1 nor more than five thousand dollars. One thousand five hundred dollars
2 of the fine may not be suspended or deferred unless the court finds the
3 offender to be indigent.

4 (4) A person who is convicted of a violation of RCW 46.61.502 or
5 46.61.504 (~~and who~~) shall be punished under chapter 9.94A RCW if:
6 (a) The person has four or more prior offenses within ten years(~~7~~);
7 or (~~who~~) (b) the person has ever previously been convicted of: (i)
8 A violation of RCW 46.61.520 committed while under the influence of
9 intoxicating liquor or any drug (~~or~~); (ii) a violation of RCW
10 46.61.522 committed while under the influence of intoxicating liquor or
11 any drug(~~, shall be punished in accordance with chapter 9.94A RCW~~);
12 or (iii) an out-of-state offense comparable to the offense specified in
13 (b)(i) or (ii) of this subsection.

14 (5)(a) The court shall require any person convicted of an
15 alcohol-related violation of RCW 46.61.502 or 46.61.504 to apply for an
16 ignition interlock driver's license from the department under section
17 9 of this act and to have a functioning ignition interlock device
18 installed on all motor vehicles operated by the person.

19 (b) The installation of an ignition interlock device is not
20 necessary on vehicles owned by a person's employer and driven as a
21 requirement of employment during working hours. The person must
22 provide the department with a declaration pursuant to RCW 9A.72.085
23 from his or her employer stating that the person's employment requires
24 the person to operate a vehicle owned by the employer during working
25 hours.

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

29 (d) The court may waive the requirement that a person obtain an
30 ignition interlock driver's license and operate only vehicles equipped
31 with a functioning ignition interlock device if the court makes a
32 specific finding in writing that the devices are not reasonably
33 available in the local area, that the person does not operate a
34 vehicle, or the person is not eligible to receive an ignition interlock
35 driver's license under section 9 of this act.

36 (e) When the requirement that a person obtain an ignition interlock
37 driver's license and operate only vehicles equipped with a functioning
38 ignition interlock device is waived by the court, the court shall order

1 the person to submit to alcohol monitoring through an alcohol detection
2 breathalyzer device, transdermal sensor device, or other technology
3 designed to detect alcohol in a person's system. The person shall pay
4 for the cost of the monitoring. The county or municipality where the
5 penalty is being imposed shall determine the cost.

6 (f) The period of time for which ignition interlock use or alcohol
7 monitoring is required will be as follows:

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

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

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

14 (6) If a person who is convicted of a violation of RCW 46.61.502 or
15 46.61.504 committed the offense while a passenger under the age of
16 sixteen was in the vehicle, the court shall:

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

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

25 ~~((+6))~~ (7) In exercising its discretion in setting penalties
26 within the limits allowed by this section, the court shall particularly
27 consider the following:

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

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

32 ~~((+7))~~ (8) An offender punishable under this section is subject to
33 the alcohol assessment and treatment provisions of RCW 46.61.5056.

34 ~~((+8))~~ (9) The license, permit, or nonresident privilege of a
35 person convicted of driving or being in physical control of a motor
36 vehicle while under the influence of intoxicating liquor or drugs must:

37 (a) If the person's alcohol concentration was less than 0.15, or if

1 for reasons other than the person's refusal to take a test offered
2 under RCW 46.20.308 there is no test result indicating the person's
3 alcohol concentration:

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

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

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

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

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

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

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

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

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

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

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

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

30 For purposes of this subsection (~~((+8))~~) (9), the department shall
31 refer to the driver's record maintained under RCW 46.52.120 when
32 determining the existence of prior offenses.

33 (~~((+9))~~) (10) After expiration of any period of suspension,
34 revocation, or denial of the offender's license, permit, or privilege
35 to drive required by this section, the department shall place the
36 offender's driving privilege in probationary status pursuant to RCW
37 46.20.355.

1 (~~(10)~~) (11)(a) In addition to any nonsuspendable and
2 nondeferrable jail sentence required by this section, whenever the
3 court imposes less than one year in jail, the court shall also suspend
4 but shall not defer a period of confinement for a period not exceeding
5 five years. The court shall impose conditions of probation that
6 include: (i) Not driving a motor vehicle within this state without a
7 valid license to drive and proof of financial responsibility for the
8 future; (ii) not driving a motor vehicle within this state while having
9 an alcohol concentration of 0.08 or more within two hours after
10 driving; and (iii) not refusing to submit to a test of his or her
11 breath or blood to determine alcohol concentration upon request of a
12 law enforcement officer who has reasonable grounds to believe the
13 person was driving or was in actual physical control of a motor vehicle
14 within this state while under the influence of intoxicating liquor.
15 The court may impose conditions of probation that include
16 nonrepetition, installation of an ignition interlock device on the
17 probationer's motor vehicle, alcohol or drug treatment, supervised
18 probation, or other conditions that may be appropriate. The sentence
19 may be imposed in whole or in part upon violation of a condition of
20 probation during the suspension period.

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

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

35 (~~(11)~~) (12) A court may waive the electronic home monitoring
36 requirements of this chapter when:

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

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

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

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

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

17 (~~(12)~~) (13) An offender serving a sentence under this section,
18 whether or not a mandatory minimum term has expired, may be granted an
19 extraordinary medical placement by the jail administrator subject to
20 the standards and limitations set forth in RCW 9.94A.728(4).

21 (~~(13)~~) (14) For purposes of this section and RCW 46.61.502 and
22 46.61.504:

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

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

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

28 (iii) A conviction for a violation of RCW 46.61.520 committed while
29 under the influence of intoxicating liquor or any drug;

30 (iv) A conviction for a violation of RCW 46.61.522 committed while
31 under the influence of intoxicating liquor or any drug;

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

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

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

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

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

12 (b) "Within seven years" means that the arrest for a prior offense
13 occurred within seven years of the arrest for the current offense; and

14 (c) "Within ten years" means that the arrest for a prior offense
15 occurred within ten years of the arrest for the current offense.

16 **Sec. 15.** RCW 10.05.010 and 2002 c 219 s 6 are each amended to read
17 as follows:

18 (1) In a court of limited jurisdiction a person charged with a
19 misdemeanor or gross misdemeanor may petition the court to be
20 considered for a deferred prosecution program. The petition shall be
21 filed with the court at least seven days before the date set for trial
22 but, upon a written motion and affidavit establishing good cause for
23 the delay and failure to comply with this section, the court may waive
24 this requirement subject to the defendant's reimbursement to the court
25 of the witness fees and expenses due for subpoenaed witnesses who have
26 appeared on the date set for trial.

27 (2) A person charged with a traffic infraction, misdemeanor, or
28 gross misdemeanor under Title 46 RCW shall not be eligible for a
29 deferred prosecution program unless the court makes specific findings
30 pursuant to RCW 10.05.020 or section 18 of this act. Such person shall
31 not be eligible for a deferred prosecution program more than once; and
32 cannot receive a deferred prosecution under both RCW 10.05.020 and
33 section 18 of this act. Separate offenses committed more than seven
34 days apart may not be consolidated in a single program.

35 (3) A person charged with a misdemeanor or a gross misdemeanor
36 under chapter 9A.42 RCW shall not be eligible for a deferred

1 prosecution program unless the court makes specific findings pursuant
2 to RCW 10.05.020. Such person shall not be eligible for a deferred
3 prosecution program more than once.

4 **Sec. 16.** RCW 10.05.020 and 2002 c 219 s 7 are each amended to read
5 as follows:

6 (1) Except as provided in subsection (2) of this section or section
7 18 of this act, the petitioner shall allege under oath in the petition
8 that the wrongful conduct charged is the result of or caused by
9 alcoholism, drug addiction, or mental problems for which the person is
10 in need of treatment and unless treated the probability of future
11 recurrence is great, along with a statement that the person agrees to
12 pay the cost of a diagnosis and treatment of the alleged problem or
13 problems if financially able to do so. The petition shall also contain
14 a case history and written assessment prepared by an approved
15 alcoholism treatment program as designated in chapter 70.96A RCW if the
16 petition alleges alcoholism, an approved drug program as designated in
17 chapter 71.24 RCW if the petition alleges drug addiction, or by an
18 approved mental health center if the petition alleges a mental problem.

19 (2) In the case of a petitioner charged with a misdemeanor or gross
20 misdemeanor under chapter 9A.42 RCW, the petitioner shall allege under
21 oath in the petition that the petitioner is the natural or adoptive
22 parent of the alleged victim; that the wrongful conduct charged is the
23 result of parenting problems for which the petitioner is in need of
24 services; that the petitioner is in need of child welfare services
25 under chapter 74.13 RCW to improve his or her parenting skills in order
26 to better provide his or her child or children with the basic
27 necessities of life; that the petitioner wants to correct his or her
28 conduct to reduce the likelihood of harm to his or her minor children;
29 that in the absence of child welfare services the petitioner may be
30 unable to reduce the likelihood of harm to his or her minor children;
31 and that the petitioner has cooperated with the department of social
32 and health services to develop a plan to receive appropriate child
33 welfare services; along with a statement that the person agrees to pay
34 the cost of the services if he or she is financially able to do so.
35 The petition shall also contain a case history and a written service
36 plan from the department of social and health services.

1 (3) Before entry of an order deferring prosecution, a petitioner
2 shall be advised of his or her rights as an accused and execute, as a
3 condition of receiving treatment, a statement that contains: (a) An
4 acknowledgment of his or her rights; (b) an acknowledgment and waiver
5 of the right to testify, the right to a speedy trial, the right to call
6 witnesses to testify, the right to present evidence in his or her
7 defense, and the right to a jury trial; (c) a stipulation to the
8 admissibility and sufficiency of the facts contained in the written
9 police report; and (d) an acknowledgment that the statement will be
10 entered and used to support a finding of guilty if the court finds
11 cause to revoke the order granting deferred prosecution. The
12 petitioner shall also be advised that he or she may, if he or she
13 proceeds to trial and is found guilty, be allowed to seek suspension of
14 some or all of the fines and incarceration that may be ordered upon the
15 condition that he or she seek treatment and, further, that he or she
16 may seek treatment from public and private agencies at any time without
17 regard to whether or not he or she is found guilty of the offense
18 charged. He or she shall also be advised that the court will not
19 accept a petition for deferred prosecution from a person who: (i)
20 Sincerely believes that he or she is innocent of the charges ((~~or~~));
21 (ii) sincerely believes that he or she does not, in fact, suffer from
22 alcoholism, drug addiction, or mental problems, unless the petition for
23 deferred prosecution is under section 18 of this act; or (iii) in the
24 case of a petitioner charged under chapter 9A.42 RCW, sincerely
25 believes that he or she does not need child welfare services.

26 (4) Before entering an order deferring prosecution, the court shall
27 make specific findings that: (a) The petitioner has stipulated to the
28 admissibility and sufficiency of the facts as contained in the written
29 police report; (b) the petitioner has acknowledged the admissibility of
30 the stipulated facts in any criminal hearing on the underlying offense
31 or offenses held subsequent to revocation of the order granting
32 deferred prosecution; (c) the petitioner has acknowledged and waived
33 the right to testify, the right to a speedy trial, the right to call
34 witnesses to testify, the right to present evidence in his or her
35 defense, and the right to a jury trial; and (d) the petitioner's
36 statements were made knowingly and voluntarily. Such findings shall be
37 included in the order granting deferred prosecution.

1 **Sec. 17.** RCW 10.05.090 and 1997 c 229 s 1 are each amended to read
2 as follows:

3 If a petitioner, who has been accepted for a deferred prosecution,
4 fails or neglects to carry out and fulfill any term or condition of the
5 petitioner's treatment plan or any term or condition imposed in
6 connection with the installation of an interlock or other device under
7 RCW 46.20.720 or section 9 of this act, the facility, center,
8 institution, or agency administering the treatment or the entity
9 administering the use of the device, shall immediately report such
10 breach to the court, the prosecutor, and the petitioner or petitioner's
11 attorney of record, together with its recommendation. The court upon
12 receiving such a report shall hold a hearing to determine whether the
13 petitioner should be removed from the deferred prosecution program. At
14 the hearing, evidence shall be taken of the petitioner's alleged
15 failure to comply with the treatment plan or device installation and
16 the petitioner shall have the right to present evidence on his or her
17 own behalf. The court shall either order that the petitioner continue
18 on the treatment plan or be removed from deferred prosecution. If the
19 petitioner's noncompliance is based on a violation of a term or
20 condition imposed in connection with the installation of an ignition
21 interlock device under section 9 of this act, the court shall either
22 order that the petitioner comply with the term or condition or be
23 removed from deferred prosecution. If removed from deferred
24 prosecution, the court shall enter judgment pursuant to RCW 10.05.020
25 and, if the charge for which the deferred prosecution was granted was
26 a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify the
27 department of licensing of the removal and entry of judgment.

28 NEW SECTION. **Sec. 18.** A new section is added to chapter 10.05 RCW
29 to read as follows:

30 (1) A person charged with a misdemeanor or gross misdemeanor under
31 RCW 46.61.502 or 46.61.504 who has had no prior offenses as defined in
32 RCW 46.61.5055 and has been assessed pursuant to subsection (3) of this
33 section shall be eligible for a one-time deferred prosecution program.

34 (2) Before entering an order deferring prosecution under this
35 section, the court shall make a specific finding that the petitioner
36 has no prior offenses as defined in RCW 46.61.5055 and has been
37 assessed by a certified chemical dependency counselor and a licensed

1 mental health professional, and found not to need treatment for
2 alcoholism, drug addiction, or mental problems. As a condition of
3 granting a deferral prosecution petition, the court shall order the
4 petitioner to satisfy the conditions in RCW 10.05.140 and shall order
5 the petitioner to apply for an ignition interlock driver's license from
6 the department of licensing and have a functioning ignition interlock
7 device installed on all motor vehicles operated by the person. The
8 required period of use of the ignition interlock device shall be one
9 year. The court may order supervision of the petitioner during the
10 period of deferral pursuant to RCW 10.05.170.

11 (3) A petitioner seeking a deferral of prosecution under this
12 section shall undergo an assessment by a certified chemical dependency
13 counselor and a licensed mental health professional to determine
14 whether the petitioner is or is not in need of treatment for
15 alcoholism, drug addiction, or mental problems.

16 **Sec. 19.** RCW 10.05.160 and 1999 c 143 s 44 are each amended to
17 read as follows:

18 The prosecutor may appeal an order granting deferred prosecution on
19 any or all of the following grounds:

20 (1) Prior deferred prosecution has been granted to the defendant;

21 (2) Failure of the court to obtain proof of insurance or a
22 treatment plan conforming to the requirements of this chapter;

23 (3) Failure of the court to comply with the requirements of RCW
24 10.05.100;

25 (4) Failure of the evaluation facility to provide the information
26 required in RCW 10.05.040 and 10.05.050, if the defendant has been
27 referred to the facility for treatment. If an appeal on such basis is
28 successful, the trial court may consider the use of another treatment
29 program;

30 (5) Failure of the court to order the installation of an ignition
31 interlock or other device under RCW 46.20.720 or section 9 of this act.

32 **Sec. 20.** RCW 46.61.502 and 2006 c 73 s 1 are each amended to read
33 as follows:

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

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

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

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

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

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

22 (4) Analyses of blood or breath samples obtained more than two
23 hours after the alleged driving may be used as evidence that within two
24 hours of the alleged driving, a person had an alcohol concentration of
25 0.08 or more in violation of subsection (1)(a) of this section, and in
26 any case in which the analysis shows an alcohol concentration above
27 0.00 may be used as evidence that a person was under the influence of
28 or affected by intoxicating liquor or any drug in violation of
29 subsection (1)(b) or (c) of this section.

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

32 (6) It is a class C felony punishable under chapter 9.94A RCW, or
33 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has
34 four or more prior offenses within ten years as defined in RCW
35 46.61.5055; or (b) the person has ever previously been convicted of (i)
36 vehicular homicide while under the influence of intoxicating liquor or
37 any drug, RCW 46.61.520(1)(a), (~~(e)~~) (ii) vehicular assault while

1 under the influence of intoxicating liquor or any drug, RCW
2 46.61.522(1)(b), or (iii) an out-of-state offense comparable to the
3 offense specified in (b)(i) or (ii) of this subsection.

4 **Sec. 21.** RCW 46.61.504 and 2006 c 73 s 2 are each amended to read
5 as follows:

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

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

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

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

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

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

34 (4) Analyses of blood or breath samples obtained more than two
35 hours after the alleged being in actual physical control of a vehicle
36 may be used as evidence that within two hours of the alleged being in
37 such control, a person had an alcohol concentration of 0.08 or more in

1 violation of subsection (1)(a) of this section, and in any case in
2 which the analysis shows an alcohol concentration above 0.00 may be
3 used as evidence that a person was under the influence of or affected
4 by intoxicating liquor or any drug in violation of subsection (1)(b) or
5 (c) of this section.

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

8 (6) It is a class C felony punishable under chapter 9.94A RCW, or
9 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has
10 four or more prior offenses within ten years as defined in RCW
11 46.61.5055; or (b) the person has ever previously been convicted of (i)
12 vehicular homicide while under the influence of intoxicating liquor or
13 any drug, RCW 46.61.520(1)(a), (~~(e)~~) (ii) vehicular assault while
14 under the influence of intoxicating liquor or any drug, RCW
15 46.61.522(1)(b), or (iii) an out-of-state offense comparable to the
16 offense specified in (b)(i) or (ii) of this subsection.

17 NEW SECTION. Sec. 22. If specific funding for the purposes of
18 this act, referencing this act by bill or chapter number, is not
19 provided by June 30, 2008, in the omnibus transportation appropriations
20 act, this act is null and void.

21 NEW SECTION. Sec. 23. Sections 2, 4 through 8, and 11 through 14
22 of this act take effect January 1, 2009."

E2SHB 3254 - S COMM AMD
By Committee on Transportation

ADOPTED AND ENGROSSED 03/07/08

23 On page 1, line 2 of the title, after "drugs;" strike the remainder
24 of the title and insert "amending RCW 46.20.342, 46.20.380, 46.20.391,
25 46.20.400, 46.20.410, 46.20.720, 46.20.740, 46.61.5055, 10.05.010,
26 10.05.020, 10.05.090, 10.05.160, 46.61.502, and 46.61.504; reenacting
27 and amending RCW 46.20.308 and 46.63.020; adding a new section to
28 chapter 46.04 RCW; adding a new section to chapter 46.68 RCW; adding

1 new sections to chapter 46.20 RCW; adding a new section to chapter
2 10.05 RCW; creating a new section; and providing an effective date."

--- END ---