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**SUBSTITUTE HOUSE BILL 1789**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Goodman, Pedersen, Roberts, and Miloscia)

READ FIRST TIME 02/25/11.

1       AN ACT Relating to accountability for persons driving under the  
2 influence of alcohol or drugs; amending RCW 46.20.385, 46.61.502,  
3 46.61.504, 46.61.500, 46.61.5249, 46.20.720, 46.61.5055, 10.05.140,  
4 10.05.010, and 9.94A.533; and prescribing penalties.

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

6       **Sec. 1.** RCW 46.20.385 and 2010 c 269 s 1 are each amended to read  
7 as follows:

8       (1)(a) Beginning January 1, 2009, any person licensed under this  
9 chapter who is convicted of a violation of RCW 46.61.502 or 46.61.504  
10 or an equivalent local or out-of-state statute or ordinance, or a  
11 violation of RCW 46.61.520(1)(a) or 46.61.522(1)(b), or who has had or  
12 will have his or her license suspended, revoked, or denied under RCW  
13 46.20.3101, may submit to the department an application for an ignition  
14 interlock driver's license. The department, upon receipt of the  
15 prescribed fee and upon determining that the petitioner is eligible to  
16 receive the license, may issue an ignition interlock driver's license.

17       (b) A person may apply for an ignition interlock driver's license  
18 anytime, including immediately after receiving the notices under RCW

1 46.20.308 or after his or her license is suspended, revoked, or denied.  
2 A person receiving an ignition interlock driver's license waives his or  
3 her right to a hearing or appeal under RCW 46.20.308.

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

7 (i) The department shall require the person to maintain the device  
8 on all vehicles operated by the person and shall restrict the person to  
9 operating only vehicles equipped with the device, for the remainder of  
10 the period of suspension, revocation, or denial. The installation of  
11 an ignition interlock device is not necessary on vehicles owned,  
12 leased, or rented by a person's employer and on those vehicles whose  
13 care and/or maintenance is the temporary responsibility of the  
14 employer, and driven at the direction of a person's employer as a  
15 requirement of employment during working hours. The person must  
16 provide the department with a declaration pursuant to RCW 9A.72.085  
17 from his or her employer stating that the person's employment requires  
18 the person to operate a vehicle owned by the employer or other persons  
19 during working hours.

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

28 (iii) The time period during which the person is licensed under  
29 this section shall apply on a day-for-day basis toward satisfying the  
30 period of time the ignition interlock device restriction is required  
31 under RCW 46.20.720 and 46.61.5055. Beginning with incidents occurring  
32 on or after the effective date of this section, when calculating the  
33 period of time for the restriction under RCW 46.20.720(3), the  
34 department must also give the person a day-for-day credit for the time  
35 period, beginning from the date of the incident, during which the  
36 person kept an ignition interlock device installed on all vehicles the  
37 person operates. For the purposes of this subsection (1)(c)(iii), the

1 term "all vehicles" does not include vehicles that would be subject to  
2 the employer exception under RCW 46.20.720(3).

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

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

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

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

35 (6)(a) Unless costs are waived by the ignition interlock company or  
36 the person is indigent under RCW 10.101.010, the applicant shall pay  
37 the cost of installing, removing, and leasing the ignition interlock

1 device and shall pay an additional fee of twenty dollars per month.  
2 Payments shall be made directly to the ignition interlock company. The  
3 company shall remit the additional twenty-dollar fee to the department.

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

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

16 **Sec. 2.** RCW 46.61.502 and 2008 c 282 s 20 are each amended to read  
17 as follows:

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

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

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

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

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

32 (3) It is an affirmative defense to a violation of subsection  
33 (1)(a) of this section which the defendant must prove by a  
34 preponderance of the evidence that the defendant consumed a sufficient  
35 quantity of alcohol after the time of driving and before the  
36 administration of an analysis of the person's breath or blood to cause  
37 the defendant's alcohol concentration to be 0.08 or more within two

1 hours after driving. The court shall not admit evidence of this  
2 defense unless the defendant notifies the prosecution prior to the  
3 omnibus or pretrial hearing in the case of the defendant's intent to  
4 assert the affirmative defense.

5 (4) Analyses of blood or breath samples obtained more than two  
6 hours after the alleged driving may be used as evidence that within two  
7 hours of the alleged driving, a person had an alcohol concentration of  
8 0.08 or more in violation of subsection (1)(a) of this section, and in  
9 any case in which the analysis shows an alcohol concentration above  
10 0.00 may be used as evidence that a person was under the influence of  
11 or affected by intoxicating liquor or any drug in violation of  
12 subsection (1)(b) or (c) of this section.

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

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

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

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

20 (i) Vehicular homicide while under the influence of intoxicating  
21 liquor or any drug, RCW 46.61.520(1)(a)((~~7~~));

22 (ii) Vehicular assault while under the influence of intoxicating  
23 liquor or any drug, RCW 46.61.522(1)(b)((~~7-08~~));

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

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

27 **Sec. 3.** RCW 46.61.504 and 2008 c 282 s 21 are each amended to read  
28 as follows:

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

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

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

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

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

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

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

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

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

37 (i) Vehicular homicide while under the influence of intoxicating  
38 liquor or any drug, RCW 46.61.520(1)(a)((7))i

1 (ii) Vehicular assault while under the influence of intoxicating  
2 liquor or any drug, RCW 46.61.522(1)(b)(~~7-07~~);

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

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

6 **Sec. 4.** RCW 46.61.500 and 1990 c 291 s 1 are each amended to read  
7 as follows:

8 (1) Any person who drives any vehicle in willful or wanton  
9 disregard for the safety of persons or property is guilty of reckless  
10 driving. Violation of the provisions of this section is a gross  
11 misdemeanor punishable by imprisonment of not more than one year and by  
12 a fine of not more than five thousand dollars.

13 (2) The license or permit to drive or any nonresident privilege of  
14 any person convicted of reckless driving shall be suspended by the  
15 department for not less than thirty days.

16 (3) A person convicted of reckless driving shall be required, under  
17 RCW 46.20.720, to install an ignition interlock device on all vehicles  
18 operated by the person if the conviction is the result of a charge that  
19 was originally filed as a violation of RCW 46.61.502, 46.61.504, or  
20 46.61.5249, or an equivalent local ordinance, or of RCW 46.61.520 or  
21 46.61.522.

22 **Sec. 5.** RCW 46.61.5249 and 1997 c 66 s 4 are each amended to read  
23 as follows:

24 (1)(a) A person is guilty of negligent driving in the first degree  
25 if he or she operates a motor vehicle in a manner that is both  
26 negligent and endangers or is likely to endanger any person or  
27 property, and exhibits the effects of having consumed liquor or an  
28 illegal drug.

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

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

36 (2) For the purposes of this section:

1 (a) "Negligent" means the failure to exercise ordinary care, and is  
2 the doing of some act that a reasonably careful person would not do  
3 under the same or similar circumstances or the failure to do something  
4 that a reasonably careful person would do under the same or similar  
5 circumstances.

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

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

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

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

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

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

20 (d) "Illegal drug" means a controlled substance under chapter 69.50  
21 RCW for which the driver does not have a valid prescription or that is  
22 not being consumed in accordance with the prescription directions and  
23 warnings, or a legend drug under chapter 69.41 RCW for which the driver  
24 does not have a valid prescription or that is not being consumed in  
25 accordance with the prescription directions and warnings.

26 (3) Any act prohibited by this section that also constitutes a  
27 crime under any other law of this state may be the basis of prosecution  
28 under such other law notwithstanding that it may also be the basis for  
29 prosecution under this section.

30 (4) A person convicted of negligent driving in the first degree  
31 shall be required, under RCW 46.20.720, to install an ignition  
32 interlock device on all vehicles operated by the person.

33 **Sec. 6.** RCW 46.20.720 and 2010 c 269 s 3 are each amended to read  
34 as follows:

35 (1) The court may order that after a period of suspension,  
36 revocation, or denial of driving privileges, and for up to as long as  
37 the court has jurisdiction, any person convicted of any offense



1 involving the use, consumption, or possession of alcohol while  
2 operating a motor vehicle may drive only a motor vehicle equipped with  
3 a functioning ignition interlock. The court shall establish a specific  
4 calibration setting at which the interlock will prevent the vehicle  
5 from being started. The court shall also establish the period of time  
6 for which interlock use will be required.

7 (2) Under RCW 46.61.5055 and subject to the exceptions listed in  
8 that statute, the court shall order any person convicted of a violation  
9 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply  
10 for an ignition interlock driver's license from the department under  
11 RCW 46.20.385 and to have a functioning ignition interlock device  
12 installed on all motor vehicles operated by the person. The court  
13 shall order any person participating in a deferred prosecution program  
14 under RCW 10.05.020 for a violation of RCW 46.61.502 or 46.61.504 or an  
15 equivalent local ordinance to have a functioning ignition interlock  
16 device installed on all motor vehicles operated by the person.

17 (3) The department shall require that, after any applicable period  
18 of suspension, revocation, or denial of driving privileges, a person  
19 may drive only a motor vehicle equipped with a functioning ignition  
20 interlock device if the person is convicted of a violation of RCW  
21 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute  
22 or ordinance. The department shall require that a person may drive  
23 only a motor vehicle equipped with a functioning ignition interlock  
24 device if the person is convicted of a violation of RCW 46.61.5249 or  
25 if the person is convicted of a violation of RCW 46.61.500 and the  
26 conviction is the result of a charge that was originally filed as a  
27 violation of RCW 46.61.502, 46.61.504, or 46.61.5249, or an equivalent  
28 local ordinance, or of RCW 46.61.520 or 46.61.522.

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 installation of an ignition interlock device is  
32 not necessary on vehicles owned, leased, or rented by a person's  
33 employer and on those vehicles whose care and/or maintenance is the  
34 temporary responsibility of the employer, and driven at the direction  
35 of a person's employer as a requirement of employment during working  
36 hours. The person must provide the department with a declaration  
37 pursuant to RCW 9A.72.085 from his or her employer stating that the

1 person's employment requires the person to operate a vehicle owned by  
2 the employer or other persons during working hours.

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

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

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

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

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

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

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

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

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

30 **Sec. 7.** RCW 46.61.5055 and 2010 c 269 s 4 are each amended to read  
31 as follows:

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

36 (a) In the case of a person whose alcohol concentration was less

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

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

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

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

29 (i) By imprisonment for not less than two days nor more than one  
30 year. Two consecutive days of the imprisonment 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. In lieu of the mandatory minimum term  
37 of imprisonment required under this subsection (1)(b)(i), the court may  
38 order not less than thirty days of electronic home monitoring. The

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

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

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

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

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

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

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

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

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

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

28 (a) In the case of a person whose alcohol concentration was less  
29 than 0.15, or for whom for reasons other than the person's refusal to  
30 take a 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 ninety days nor more than one  
33 year and one hundred twenty days of electronic home monitoring. The  
34 offender shall pay for the cost of the electronic monitoring. The  
35 county or municipality where the penalty is being imposed shall  
36 determine the cost. The court may also require the offender's  
37 electronic home monitoring device include an alcohol detection  
38 breathalyzer, and may restrict the amount of alcohol the offender may

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

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

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

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

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

1 (4) A person who is convicted of a violation of RCW 46.61.502 or  
2 46.61.504 shall be punished under chapter 9.94A RCW if:

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

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

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

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

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

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

12 (5)(a) The court shall require any person convicted of a violation  
13 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply  
14 for an ignition interlock driver's license from the department and to  
15 have a functioning ignition interlock device installed on all motor  
16 vehicles operated by the person.

17 (b) The installation of an ignition interlock device is not  
18 necessary on vehicles owned, leased, or rented by a person's employer  
19 and on those vehicles whose care and/or maintenance is the temporary  
20 responsibility of the employer, and driven at the direction of a  
21 person's employer as a requirement of employment during working hours.  
22 The person must provide the department with a declaration pursuant to  
23 RCW 9A.72.085 from his or her employer stating that the person's  
24 employment requires the person to operate a vehicle owned by the  
25 employer or other persons during working 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 apply for an  
30 ignition interlock driver's license if the court makes a specific  
31 finding in writing that:

32 (i) The person lives out-of-state and the devices are not  
33 reasonably available in the person's local area;

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

35 (iii) The person is not eligible to receive an ignition interlock  
36 driver's license under RCW 46.20.385 because the person is not a  
37 resident of Washington, is a habitual traffic offender, has already  
38 applied for or is already in possession of an ignition interlock

1 driver's license, has never had a driver's license, has been certified  
2 under chapter 74.20A RCW as noncompliant with a child support order, or  
3 is subject to any other condition or circumstance that makes the person  
4 ineligible to obtain an ignition interlock driver's license.

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

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

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

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

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

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

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



1 (6) If a person who is convicted of a violation of RCW 46.61.502 or  
2 46.61.504 committed the offense while a passenger under the age of  
3 sixteen was in the vehicle, the court shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (11)(a) In addition to any nonsuspendable and nondeferrable jail  
24 sentence required by this section, whenever the court imposes less than  
25 one year in jail, the court shall also suspend but shall not defer a  
26 period of confinement for a period not exceeding five years. The court  
27 shall impose conditions of probation that include: (i) Not driving a  
28 motor vehicle within this state without a valid license to drive and  
29 proof of financial responsibility for the future; (ii) not driving a  
30 motor vehicle within this state while having an alcohol concentration  
31 of 0.08 or more within two hours after driving; and (iii) not refusing  
32 to submit to a test of his or her breath or blood to determine alcohol  
33 concentration upon request of a law enforcement officer who has  
34 reasonable grounds to believe the person was driving or was in actual  
35 physical control of a motor vehicle within this state while under the  
36 influence of intoxicating liquor. The court may impose conditions of  
37 probation that include nonrepetition, installation of an ignition  
38 interlock device on the probationer's motor vehicle, alcohol or drug

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (c) "Within ten years" means that the arrest for a prior offense  
11 occurred within ten years before or after the arrest for the current  
12 offense.

13 **Sec. 8.** RCW 10.05.140 and 2004 c 95 s 1 are each amended to read  
14 as follows:

15 As a condition of granting a deferred prosecution petition, the  
16 court shall order that the petitioner shall not operate a motor vehicle  
17 upon the public highways without a valid operator's license and proof  
18 of liability insurance. The amount of liability insurance shall be  
19 established by the court at not less than that established by RCW  
20 46.29.490. As a condition of granting a deferred prosecution petition  
21 on any alcohol-dependency based case, the court shall also order the  
22 installation of an ignition interlock under RCW 46.20.720. The  
23 required periods of use of the interlock shall be not less than the  
24 periods provided for in RCW 46.20.720(~~((+2+))~~(3)) (a), (b), and (c). As  
25 a condition of granting a deferred prosecution petition, the court may  
26 order the petitioner to make restitution and to pay costs as defined in  
27 RCW 10.01.160. To help ensure continued sobriety and reduce the  
28 likelihood of reoffense, the court may order reasonable conditions  
29 during the period of the deferred prosecution including, but not  
30 limited to, attendance at self-help recovery support groups for  
31 alcoholism or drugs, complete abstinence from alcohol and all  
32 nonprescribed mind-altering drugs, periodic urinalysis or breath  
33 analysis, and maintaining law-abiding behavior. The court may  
34 terminate the deferred prosecution program upon violation of the  
35 deferred prosecution order.

1       **Sec. 9.** RCW 10.05.010 and 2008 c 282 s 15 are each amended to read  
2 as follows:

3       (1) In a court of limited jurisdiction a person charged with a  
4 misdemeanor or gross misdemeanor may petition the court to be  
5 considered for a deferred prosecution program. The petition shall be  
6 filed with the court at least seven days before the date set for trial  
7 but, upon a written motion and affidavit establishing good cause for  
8 the delay and failure to comply with this section, the court may waive  
9 this requirement subject to the defendant's reimbursement to the court  
10 of the witness fees and expenses due for subpoenaed witnesses who have  
11 appeared on the date set for trial.

12       (2)(a) A person charged with a traffic infraction, misdemeanor, or  
13 gross misdemeanor under Title 46 RCW shall not be eligible for a  
14 deferred prosecution program unless the court makes specific findings  
15 pursuant to RCW 10.05.020 or section 18 of this act. Except as  
16 provided in (b) of this subsection, such person shall not be eligible  
17 for a deferred prosecution program more than once; and cannot receive  
18 a deferred prosecution under both RCW 10.05.020 and section 18 of this  
19 act. Separate offenses committed more than seven days apart may not be  
20 consolidated in a single program.

21       (b) A person charged with a violation of RCW 46.61.502, 46.61.504,  
22 46.61.5249, or an equivalent local ordinance, or a violation of RCW  
23 46.61.500 or an equivalent local ordinance if the offense involved the  
24 use of alcohol or drugs, shall not be eligible for a deferred  
25 prosecution program more than once within a ten-year period, and no  
26 more than a total of two times.

27       (3) A person charged with a misdemeanor or a gross misdemeanor  
28 under chapter 9A.42 RCW shall not be eligible for a deferred  
29 prosecution program unless the court makes specific findings pursuant  
30 to RCW 10.05.020. Such person shall not be eligible for a deferred  
31 prosecution program more than once.

32       **Sec. 10.** RCW 9.94A.533 and 2009 c 141 s 2 are each amended to read  
33 as follows:

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

36       (2) For persons convicted of the anticipatory offenses of criminal  
37 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the

1 standard sentence range is determined by locating the sentencing grid  
2 sentence range defined by the appropriate offender score and the  
3 seriousness level of the completed crime, and multiplying the range by  
4 seventy-five percent.

5 (3) The following additional times shall be added to the standard  
6 sentence range for felony crimes committed after July 23, 1995, if the  
7 offender or an accomplice was armed with a firearm as defined in RCW  
8 9.41.010 and the offender is being sentenced for one of the crimes  
9 listed in this subsection as eligible for any firearm enhancements  
10 based on the classification of the completed felony crime. If the  
11 offender is being sentenced for more than one offense, the firearm  
12 enhancement or enhancements must be added to the total period of  
13 confinement for all offenses, regardless of which underlying offense is  
14 subject to a firearm enhancement. If the offender or an accomplice was  
15 armed with a firearm as defined in RCW 9.41.010 and the offender is  
16 being sentenced for an anticipatory offense under chapter 9A.28 RCW to  
17 commit one of the crimes listed in this subsection as eligible for any  
18 firearm enhancements, the following additional times shall be added to  
19 the standard sentence range determined under subsection (2) of this  
20 section based on the felony crime of conviction as classified under RCW  
21 9A.28.020:

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

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

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

31 (d) If the offender is being sentenced for any firearm enhancements  
32 under (a), (b), and/or (c) of this subsection and the offender has  
33 previously been sentenced for any deadly weapon enhancements after July  
34 23, 1995, under (a), (b), and/or (c) of this subsection or subsection  
35 (4)(a), (b), and/or (c) of this section, or both, all firearm  
36 enhancements under this subsection shall be twice the amount of the  
37 enhancement listed;

1 (e) Notwithstanding any other provision of law, all firearm  
2 enhancements under this section are mandatory, shall be served in total  
3 confinement, and shall run consecutively to all other sentencing  
4 provisions, including other firearm or deadly weapon enhancements, for  
5 all offenses sentenced under this chapter. However, whether or not a  
6 mandatory minimum term has expired, an offender serving a sentence  
7 under this subsection may be granted an extraordinary medical placement  
8 when authorized under RCW 9.94A.728(~~(+4)~~)(3);

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

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

21 (4) The following additional times shall be added to the standard  
22 sentence range for felony crimes committed after July 23, 1995, if the  
23 offender or an accomplice was armed with a deadly weapon other than a  
24 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
25 for one of the crimes listed in this subsection as eligible for any  
26 deadly weapon enhancements based on the classification of the completed  
27 felony crime. If the offender is being sentenced for more than one  
28 offense, the deadly weapon enhancement or enhancements must be added to  
29 the total period of confinement for all offenses, regardless of which  
30 underlying offense is subject to a deadly weapon enhancement. If the  
31 offender or an accomplice was armed with a deadly weapon other than a  
32 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
33 for an anticipatory offense under chapter 9A.28 RCW to commit one of  
34 the crimes listed in this subsection as eligible for any deadly weapon  
35 enhancements, the following additional times shall be added to the  
36 standard sentence range determined under subsection (2) of this section  
37 based on the felony crime of conviction as classified under RCW  
38 9A.28.020:



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

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

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

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

17 (e) Notwithstanding any other provision of law, all deadly weapon  
18 enhancements under this section are mandatory, shall be served in total  
19 confinement, and shall run consecutively to all other sentencing  
20 provisions, including other firearm or deadly weapon enhancements, for  
21 all offenses sentenced under this chapter. However, whether or not a  
22 mandatory minimum term has expired, an offender serving a sentence  
23 under this subsection may be granted an extraordinary medical placement  
24 when authorized under RCW 9.94A.728(~~(+4)~~)(3);

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

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

37 (5) The following additional times shall be added to the standard  
38 sentence range if the offender or an accomplice committed the offense

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

10 (a) Eighteen months for offenses committed under RCW 69.50.401(2)

11 (a) or (b) or 69.50.410;

12 (b) Fifteen months for offenses committed under RCW 69.50.401(2)

13 (c), (d), or (e);

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

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

18 (6) An additional twenty-four months shall be added to the standard  
19 sentence range for any ranked offense involving a violation of chapter  
20 69.50 RCW if the offense was also a violation of RCW 69.50.435 or  
21 (~~9.94A.605~~) 9.94A.827. All enhancements under this subsection shall  
22 run consecutively to all other sentencing provisions, for all offenses  
23 sentenced under this chapter.

24 (7) An additional two years shall be added to the standard sentence  
25 range for vehicular homicide committed while under the influence of  
26 intoxicating liquor or any drug as defined by RCW 46.61.502 for each  
27 prior offense as defined in RCW 46.61.5055. All enhancements under  
28 this subsection shall be mandatory, shall be served in total  
29 confinement, and shall run consecutively to all other sentencing  
30 provisions.

31 (8)(a) The following additional times shall be added to the  
32 standard sentence range for felony crimes committed on or after July 1,  
33 2006, if the offense was committed with sexual motivation, as that term  
34 is defined in RCW 9.94A.030. If the offender is being sentenced for  
35 more than one offense, the sexual motivation enhancement must be added  
36 to the total period of total confinement for all offenses, regardless  
37 of which underlying offense is subject to a sexual motivation  
38 enhancement. If the offender committed the offense with sexual

1 motivation and the offender is being sentenced for an anticipatory  
2 offense under chapter 9A.28 RCW, the following additional times shall  
3 be added to the standard sentence range determined under subsection (2)  
4 of this section based on the felony crime of conviction as classified  
5 under RCW 9A.28.020:

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

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

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

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

20 (b) Notwithstanding any other provision of law, all sexual  
21 motivation enhancements under this subsection are mandatory, shall be  
22 served in total confinement, and shall run consecutively to all other  
23 sentencing provisions, including other sexual motivation enhancements,  
24 for all offenses sentenced under this chapter. However, whether or not  
25 a mandatory minimum term has expired, an offender serving a sentence  
26 under this subsection may be granted an extraordinary medical placement  
27 when authorized under RCW 9.94A.728(~~(+4)~~)(3);

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

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

37 (e) The portion of the total confinement sentence which the

1 offender must serve under this subsection shall be calculated before  
2 any earned early release time is credited to the offender;

3 (f) Nothing in this subsection prevents a sentencing court from  
4 imposing a sentence outside the standard sentence range pursuant to RCW  
5 9.94A.535.

6 (9) An additional one-year enhancement shall be added to the  
7 standard sentence range for the felony crimes of RCW 9A.44.073,  
8 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
9 or after July 22, 2007, if the offender engaged, agreed, or offered to  
10 engage the victim in the sexual conduct in return for a fee. If the  
11 offender is being sentenced for more than one offense, the one-year  
12 enhancement must be added to the total period of total confinement for  
13 all offenses, regardless of which underlying offense is subject to the  
14 enhancement. If the offender is being sentenced for an anticipatory  
15 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,  
16 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,  
17 solicited another, or conspired to engage, agree, or offer to engage  
18 the victim in the sexual conduct in return for a fee, an additional  
19 one-year enhancement shall be added to the standard sentence range  
20 determined under subsection (2) of this section. For purposes of this  
21 subsection, "sexual conduct" means sexual intercourse or sexual  
22 contact, both as defined in chapter 9A.44 RCW.

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

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

37 (c) The increased penalty specified in (a) of this subsection is

1 unavailable in the event that the prosecution gives notice that it will  
2 seek an exceptional sentence based on an aggravating factor under RCW  
3 9.94A.535.

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

9 (12) An additional twelve months shall be added to the standard  
10 sentence range for an offense that is also a violation of RCW  
11 9.94A.831.

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