
SUBSTITUTE HOUSE BILL 2443

State of Washington

62nd Legislature

2012 Regular Session

By House Judiciary (originally sponsored by Representatives Goodman, Pedersen, Hurst, Kelley, Blake, Fitzgibbon, Ormsby, Hasegawa, and Miloscia)

READ FIRST TIME 01/25/12.

1 AN ACT Relating to increasing accountability of persons who drive
2 impaired; amending RCW 2.28.175, 9.94A.475, 9.94A.640, 9.95.210,
3 9.96.060, 38.52.430, 46.20.308, 46.20.385, 46.20.720, 46.20.745,
4 46.61.5249, 46.61.540, and 43.43.395; reenacting and amending RCW
5 46.61.500 and 46.61.5055; adding a new section to chapter 43.43 RCW;
6 and prescribing penalties.

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

8 **Sec. 1.** RCW 2.28.175 and 2011 c 293 s 10 are each amended to read
9 as follows:

10 (1) Counties and municipalities may establish and operate DUI
11 courts.

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

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

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

5 (ii) Match, on a dollar-for-dollar basis, state moneys allocated
6 for DUI court programs with local cash or in-kind resources. Moneys
7 allocated by the state must be used to supplement, not supplant, other
8 federal, state, and local funds for DUI court operations and associated
9 services. However, until June 30, 2014, no match is required for state
10 moneys expended for the administrative and overhead costs associated
11 with the operation of a DUI court established as of January 1, 2011.

12 (b) Any ((county)) jurisdiction that establishes a DUI court
13 pursuant to this section shall establish minimum requirements for the
14 participation of offenders in the program. The DUI court may adopt
15 local requirements that are more stringent than the minimum. The
16 minimum requirements are:

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

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

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

25 (A) That is a sex offense;

26 (B) That is a serious violent offense;

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

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

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

31 **Sec. 2.** RCW 9.94A.475 and 2002 c 290 s 15 are each amended to read
32 as follows:

33 Any and all recommended sentencing agreements or plea agreements
34 and the sentences for any and all felony crimes shall be made and
35 retained as public records if the felony crime involves:

36 (1) Any violent offense as defined in this chapter;

37 (2) Any most serious offense as defined in this chapter;

1 (3) Any felony with a deadly weapon special verdict under RCW
2 (~~9.94A.602~~) 9.94A.825;

3 (4) Any felony with any deadly weapon enhancements under RCW
4 9.94A.533 (3) or (4), or both; (~~and/or~~)

5 (5) The felony crimes of possession of a machine gun, possessing a
6 stolen firearm, drive-by shooting, theft of a firearm, unlawful
7 possession of a firearm in the first or second degree, and/or use of a
8 machine gun in a felony; or

9 (6) The felony crime of driving a motor vehicle while under the
10 influence of intoxicating liquor or any drug as defined in RCW
11 46.61.502, and felony physical control of a motor vehicle while under
12 the influence of intoxicating liquor or any drug as defined in RCW
13 46.61.504.

14 **Sec. 3.** RCW 9.94A.640 and 2006 c 73 s 8 are each amended to read
15 as follows:

16 (1) Every offender who has been discharged under RCW 9.94A.637 may
17 apply to the sentencing court for a vacation of the offender's record
18 of conviction. If the court finds the offender meets the tests
19 prescribed in subsection (2) of this section, the court may clear the
20 record of conviction by: (a) Permitting the offender to withdraw the
21 offender's plea of guilty and to enter a plea of not guilty; or (b) if
22 the offender has been convicted after a plea of not guilty, by the
23 court setting aside the verdict of guilty; and (c) by the court
24 dismissing the information or indictment against the offender.

25 (2) An offender may not have the record of conviction cleared if:
26 (a) There are any criminal charges against the offender pending in any
27 court of this state or another state, or in any federal court; (b) the
28 offense was a violent offense as defined in RCW 9.94A.030; (c) the
29 offense was a crime against persons as defined in RCW 43.43.830; (d)
30 the offender has been convicted of a new crime in this state, another
31 state, or federal court since the date of the offender's discharge
32 under RCW 9.94A.637; (e) the offense is a class B felony and less than
33 ten years have passed since the date the applicant was discharged under
34 RCW 9.94A.637; (f) the offense was a class C felony, other than a class
35 C felony described in RCW 46.61.502(6) or 46.61.504(6), and less than
36 five years have passed since the date the applicant was discharged

1 under RCW 9.94A.637; or (g) the offense was a class C felony described
2 in RCW 46.61.502(6) or 46.61.504(6) (~~and less than ten years have~~
3 ~~passed since the applicant was discharged under RCW 9.94A.637~~)).

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

14 **Sec. 4.** RCW 9.95.210 and 2011 1st sp.s. c 40 s 7 are each amended
15 to read as follows:

16 (1)(a) Except as provided in (b) of this subsection in granting
17 probation, the superior court may suspend the imposition or the
18 execution of the sentence and may direct that the suspension may
19 continue upon such conditions and for such time as it shall designate,
20 not exceeding the maximum term of sentence or two years, whichever is
21 longer.

22 (b) For a defendant sentenced under RCW 46.61.5055, the superior
23 court may suspend the imposition or the execution of the sentence and
24 may direct that the suspension continue upon such conditions and for
25 such time as the court shall designate, not to exceed five years. The
26 court shall have continuing jurisdiction and authority to suspend the
27 execution of all or any part of the sentence upon stated terms,
28 including installment payment of fines. A defendant who has been
29 sentenced, and who then fails to appear for any hearing to address the
30 defendant's compliance with the terms of probation when ordered to do
31 so by the court shall have the term of probation tolled until such time
32 as the defendant makes his or her presence known to the court on the
33 record. Any time before entering an order terminating probation, the
34 court may modify or revoke its order suspending the imposition or
35 execution of the sentence.

36 (2) In the order granting probation and as a condition thereof, the
37 superior court may in its discretion imprison the defendant in the

1 county jail for a period not exceeding one year and may fine the
2 defendant any sum not exceeding the statutory limit for the offense
3 committed, and court costs. As a condition of probation, the superior
4 court shall require the payment of the penalty assessment required by
5 RCW 7.68.035. The superior court may also require the defendant to
6 make such monetary payments, on such terms as it deems appropriate
7 under the circumstances, as are necessary: (a) To comply with any
8 order of the court for the payment of family support; (b) to make
9 restitution to any person or persons who may have suffered loss or
10 damage by reason of the commission of the crime in question or when the
11 offender pleads guilty to a lesser offense or fewer offenses and agrees
12 with the prosecutor's recommendation that the offender be required to
13 pay restitution to a victim of an offense or offenses which are not
14 prosecuted pursuant to a plea agreement; (c) to pay such fine as may be
15 imposed and court costs, including reimbursement of the state for costs
16 of extradition if return to this state by extradition was required; (d)
17 following consideration of the financial condition of the person
18 subject to possible electronic monitoring, to pay for the costs of
19 electronic monitoring if that monitoring was required by the court as
20 a condition of release from custody or as a condition of probation; (e)
21 to contribute to a county or interlocal drug fund; and (f) to make
22 restitution to a public agency for the costs of an emergency response
23 under RCW 38.52.430, and may require bonds for the faithful observance
24 of any and all conditions imposed in the probation.

25 (3) The superior court shall order restitution in all cases where
26 the victim is entitled to benefits under the crime victims'
27 compensation act, chapter 7.68 RCW. If the superior court does not
28 order restitution and the victim of the crime has been determined to be
29 entitled to benefits under the crime victims' compensation act, the
30 department of labor and industries, as administrator of the crime
31 victims' compensation program, may petition the superior court within
32 one year of imposition of the sentence for entry of a restitution
33 order. Upon receipt of a petition from the department of labor and
34 industries, the superior court shall hold a restitution hearing and
35 shall enter a restitution order.

36 (4) In granting probation, the superior court may order the
37 probationer to report to the secretary of corrections or such officer
38 as the secretary may designate and as a condition of the probation to

1 follow the instructions of the secretary. If the county legislative
2 authority has elected to assume responsibility for the supervision of
3 superior court misdemeanor probationers within its jurisdiction, the
4 superior court misdemeanor probationer shall report to a probation
5 officer employed or contracted for by the county. In cases where a
6 superior court misdemeanor probationer is sentenced in one county, but
7 resides within another county, there must be provisions for the
8 probationer to report to the agency having supervision responsibility
9 for the probationer's county of residence.

10 (5) If the probationer has been ordered to make restitution and the
11 superior court has ordered supervision, the officer supervising the
12 probationer shall make a reasonable effort to ascertain whether
13 restitution has been made. If the superior court has ordered
14 supervision and restitution has not been made as ordered, the officer
15 shall inform the prosecutor of that violation of the terms of probation
16 not less than three months prior to the termination of the probation
17 period. The secretary of corrections will promulgate rules and
18 regulations for the conduct of the person during the term of probation.
19 For defendants found guilty in district court, like functions as the
20 secretary performs in regard to probation may be performed by probation
21 officers employed for that purpose by the county legislative authority
22 of the county wherein the court is located.

23 (6) The provisions of RCW 9.94A.501 and 9.94A.5011 apply to
24 sentences imposed under this section.

25 **Sec. 5.** RCW 9.96.060 and 2001 c 140 s 1 are each amended to read
26 as follows:

27 (1) Every person convicted of a misdemeanor or gross misdemeanor
28 offense who has completed all of the terms of the sentence for the
29 misdemeanor or gross misdemeanor offense may apply to the sentencing
30 court for a vacation of the applicant's record of conviction for the
31 offense. If the court finds the applicant meets the tests prescribed
32 in subsection (2) of this section, the court may in its discretion
33 vacate the record of conviction by: (a)(i) Permitting the applicant to
34 withdraw the applicant's plea of guilty and to enter a plea of not
35 guilty; or (ii) if the applicant has been convicted after a plea of not
36 guilty, the court setting aside the verdict of guilty; and (b) the

1 court dismissing the information, indictment, complaint, or citation
2 against the applicant and vacating the judgment and sentence.

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

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

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

10 (c) The offense was a violation of RCW 46.61.502 (driving while
11 under the influence), 46.61.504 (actual physical control while under
12 the influence), (~~or~~) 9.91.020 (operating a railroad, etc. while
13 intoxicated), or the offense is considered a "prior offense" under RCW
14 46.61.5055 and the applicant has had a subsequent alcohol or drug
15 violation within ten years of the date of conviction of the prior
16 offense;

17 (d) The offense was any misdemeanor or gross misdemeanor violation,
18 including attempt, of chapter 9.68 RCW (obscenity and pornography),
19 chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44
20 RCW (sex offenses);

21 (e) The applicant was convicted of a misdemeanor or gross
22 misdemeanor offense as defined in RCW 10.99.020, or the court
23 determines after a review of the court file that the offense was
24 committed by one family member or household member against another, or
25 the court, after considering the damage to person or property that
26 resulted in the conviction, any prior convictions for crimes defined in
27 RCW 10.99.020, or for comparable offenses in another state or in
28 federal court, and the totality of the records under review by the
29 court regarding the conviction being considered for vacation,
30 determines that the offense involved domestic violence, and any one of
31 the following factors exist:

32 (i) The applicant has not provided written notification of the
33 vacation petition to the prosecuting attorney's office that prosecuted
34 the offense for which vacation is sought, or has not provided that
35 notification to the court;

36 (ii) The applicant has previously had a conviction for domestic
37 violence. For purposes of this subsection, however, if the current

1 application is for more than one conviction that arose out of a single
2 incident, none of those convictions counts as a previous conviction;

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

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

11 (f) For any offense other than those described in (e) of this
12 subsection, less than three years have passed since the person
13 completed the terms of the sentence, including any financial
14 obligations;

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

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

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

24 (3) Once the court vacates a record of conviction under subsection
25 (1) of this section, the person shall be released from all penalties
26 and disabilities resulting from the offense and the fact that the
27 person has been convicted of the offense shall not be included in the
28 person's criminal history for purposes of determining a sentence in any
29 subsequent conviction. For all purposes, including responding to
30 questions on employment or housing applications, a person whose
31 conviction has been vacated under subsection (1) of this section may
32 state that he or she has never been convicted of that crime. Nothing
33 in this section affects or prevents the use of an offender's prior
34 conviction in a later criminal prosecution.

35 (4) All costs incurred by the court and probation services shall be
36 paid by the person making the motion to vacate the record unless a
37 determination is made pursuant to chapter 10.101 RCW that the person
38 making the motion is indigent, at the time the motion is brought.

1 (5) The clerk of the court in which the vacation order is entered
2 shall immediately transmit the order vacating the conviction to the
3 Washington state patrol identification section and to the local police
4 agency, if any, which holds criminal history information for the person
5 who is the subject of the conviction. The Washington state patrol and
6 any such local police agency shall immediately update their records to
7 reflect the vacation of the conviction, and shall transmit the order
8 vacating the conviction to the federal bureau of investigation. A
9 conviction that has been vacated under this section may not be
10 disseminated or disclosed by the state patrol or local law enforcement
11 agency to any person, except other criminal justice enforcement
12 agencies.

13 **Sec. 6.** RCW 38.52.430 and 1993 c 251 s 2 are each amended to read
14 as follows:

15 A person whose intoxication causes an incident resulting in an
16 appropriate emergency response, and who, in connection with the
17 incident, has been found guilty of or has had their prosecution
18 deferred for (1) driving while under the influence of intoxicating
19 liquor or any drug, RCW 46.61.502; (2) operating an aircraft under the
20 influence of intoxicants or drugs, RCW 47.68.220; (3) use of a vessel
21 while under the influence of alcohol or drugs, RCW (~~88.12.100~~)
22 79A.60.040; (4) vehicular homicide while under the influence of
23 intoxicating liquor or any drug, RCW 46.61.520(1)(a); or (5) vehicular
24 assault while under the influence of intoxicating liquor or any drug,
25 RCW 46.61.522(1)(b), is liable for the expense of an emergency response
26 by a public agency to the incident.

27 The expense of an emergency response is a charge against the person
28 liable for expenses under this section. The charge constitutes a debt
29 of that person and is collectible by the public agency incurring those
30 costs in the same manner as in the case of an obligation under a
31 contract, expressed or implied. Following a conviction of an offense
32 listed in this section, and prior to sentencing, the prosecution may
33 present to the court information setting forth the expenses incurred by
34 the public agency for its emergency response to the incident. Upon a
35 finding by the court that the expenses are reasonable, the court shall
36 order the defendant to reimburse the public agency. The cost
37 reimbursement shall be included in the sentencing order as an

1 additional monetary obligation of the defendant and may not be
2 substituted for any other fine or cost required or allowed by statute.
3 The court may establish a payment schedule for the payment of the cost
4 reimbursement, separate from any payment schedule imposed for other
5 finances and costs.

6 In no event shall a person's liability under this section for the
7 expense of an emergency response exceed ((one)) five thousand dollars
8 for a particular incident.

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

15 **Sec. 7.** RCW 46.20.308 and 2008 c 282 s 2 are each amended to read
16 as follows:

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

28 (2) The test or tests of breath shall be administered at the
29 direction of a law enforcement officer having reasonable grounds to
30 believe the person to have been driving or in actual physical control
31 of a motor vehicle within this state while under the influence of
32 intoxicating liquor or any drug or the person to have been driving or
33 in actual physical control of a motor vehicle while having alcohol in
34 a concentration in violation of RCW 46.61.503 in his or her system and
35 being under the age of twenty-one. However, in those instances where
36 the person is incapable due to physical injury, physical incapacity, or
37 other physical limitation, of providing a breath sample or where the

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

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

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

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

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

28 (3) Except as provided in this section, the test administered shall
29 be of the breath only. If an individual is unconscious or is under
30 arrest for the crime of felony driving under the influence of
31 intoxicating liquor or drugs under RCW 46.61.502(6), felony physical
32 control of a motor vehicle while under the influence of intoxicating
33 liquor or any drug under RCW 46.61.504(6), vehicular homicide as
34 provided in RCW 46.61.520, or vehicular assault as provided in RCW
35 46.61.522, or if an individual is under arrest for the crime of driving
36 while under the influence of intoxicating liquor or drugs as provided
37 in RCW 46.61.502, which arrest results from an accident in which there

1 has been serious bodily injury to another person, a breath or blood
2 test may be administered without the consent of the individual so
3 arrested.

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

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

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

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

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

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

36 (d) Serve notice in writing that the marked license or permit, if
37 any, is a temporary license that is valid for sixty days from the date
38 of arrest or from the date notice has been given in the event notice is

1 given by the department following a blood test, or until the
2 suspension, revocation, or denial of the person's license, permit, or
3 privilege to drive is sustained at a hearing pursuant to subsection (8)
4 of this section, whichever occurs first. No temporary license is valid
5 to any greater degree than the license or permit that it replaces; and

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

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

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

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

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

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

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

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

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

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

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

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

1 court, then the court shall immediately direct the department to cancel
2 the stay and any temporary marked license or extension of a temporary
3 license issued under this subsection.

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

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

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

23 **Sec. 8.** RCW 46.20.385 and 2011 c 293 s 1 are each amended to read
24 as follows:

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

35 (b) A person may apply for an ignition interlock driver's license
36 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. However, when the employer's vehicle is assigned
20 exclusively to the restricted driver and used solely for commuting to
21 and from employment, the employer exemption does not apply. For the
22 purposes of this subsection, "employer" does not include an entity
23 owned or controlled in whole or in part by the restricted driver or any
24 member of the restricted driver's immediate family, unless the entity
25 is a corporation or other similar business entity and the restricted
26 driver and the restricted driver's immediate family own a total of less
27 than five percent of the outstanding shares of stock in the corporation
28 or other similar business entity.

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

37 (iii) The time period during which the person is licensed under
38 this section shall apply on a day-for-day basis toward satisfying the

1 period of time the ignition interlock device restriction is required
2 under RCW 46.20.720 and 46.61.5055. Beginning with incidents occurring
3 on or after September 1, 2011, when calculating the period of time for
4 the restriction under RCW 46.20.720(3), the department must also give
5 the person a day-for-day credit for the time period, beginning from the
6 date of the incident, during which the person kept an ignition
7 interlock device installed on all vehicles the person operates. For
8 the purposes of this subsection (1)(c)(iii), the term "all vehicles"
9 does not include vehicles that would be subject to the employer
10 exception under RCW 46.20.720(3).

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

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

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

31 (5) The director shall cancel an ignition interlock driver's
32 license after receiving notice that the holder thereof has been
33 convicted of operating a motor vehicle in violation of its
34 restrictions, no longer meets the eligibility requirements, or has been
35 convicted of or found to have committed a separate offense or any other
36 act or omission that under this chapter would warrant suspension or
37 revocation of a regular driver's license. The department must give
38 notice of the cancellation as provided under RCW 46.20.245. A person

1 whose ignition interlock driver's license has been canceled under this
2 section may reapply for a new ignition interlock driver's license if he
3 or she is otherwise qualified under this section and pays the fee
4 required under RCW 46.20.380.

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

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

35 **Sec. 9.** RCW 46.20.720 and 2011 c 293 s 6 are each amended to read
36 as follows:

37 (1) The court may order that after a period of suspension,

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

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

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

32 The department may waive the requirement for the use of such a
33 device if it concludes that such devices are not reasonably available
34 in the local area. The installation of an ignition interlock device is
35 not necessary on vehicles owned, leased, or rented by a person's
36 employer and on those vehicles whose care and/or maintenance is the
37 temporary responsibility of the employer, and driven at the direction
38 of a person's employer as a requirement of employment during working

1 hours. The person must provide the department with a declaration
2 pursuant to RCW 9A.72.085 from his or her employer stating that the
3 person's employment requires the person to operate a vehicle owned by
4 the employer or other persons during working hours. However, when the
5 employer's vehicle is assigned exclusively to the restricted driver and
6 used solely for commuting to and from employment, the employer
7 exemption does not apply. For the purposes of this subsection,
8 "employer" does not include an entity owned or controlled in whole or
9 in part by the restricted driver or any member of the restricted
10 driver's immediate family, unless the entity is a corporation or other
11 similar business entity and the restricted driver and the restricted
12 driver's immediate family own a total of less than five percent of the
13 outstanding shares of stock in the corporation or other similar
14 business entity.

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

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

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

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

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

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

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

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

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

5 (6) In addition to any other costs associated with the use of an
6 ignition interlock device imposed on the person restricted under this
7 section, the person shall pay an additional fee of twenty dollars per
8 month. Payments must be made directly to the ignition interlock
9 company. The company shall remit the additional twenty dollar fee to
10 the department to be deposited into the ignition interlock device
11 revolving account.

12 **Sec. 10.** RCW 46.20.745 and 2008 c 282 s 10 are each amended to
13 read as follows:

14 (1) The ignition interlock device revolving account program is
15 created within the department to assist in covering the monetary costs
16 of installing, removing, and leasing an ignition interlock device, and
17 applicable licensing, for indigent persons who are required under RCW
18 46.20.385, 46.20.720, and 46.61.5055 to install an ignition interlock
19 device in all vehicles owned or operated by the person. For purposes
20 of this subsection, "indigent" has the same meaning as in RCW
21 10.101.010, as determined by the department.

22 (2) A pilot program is created within the ignition interlock device
23 revolving account program for the purpose of monitoring compliance by
24 persons required to use ignition interlock devices and by ignition
25 interlock companies and vendors.

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

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

32 (a) Review the number of ignition interlock devices that are
33 required to be installed in the targeted county and the number of
34 ignition interlock devices actually installed;

35 (b) Work to identify those persons who are not complying with
36 ignition interlock requirements or are repeatedly violating ignition
37 interlock requirements; and

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

2 (5) As part of monitoring compliance, the Washington traffic safety
3 commission shall also track recidivism for violations of RCW 46.61.502
4 and 46.61.504 by persons required to have an ignition interlock
5 driver's license under RCW 46.20.385 and 46.20.720.

6 **Sec. 11.** RCW 46.61.500 and 2011 c 293 s 4 and 2011 c 96 s 34 are
7 each reenacted and amended to read 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 for up to three hundred sixty-
12 four days and by a fine of not more than five thousand dollars.

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

17 (b) When a reckless driving conviction is a result of a charge that
18 was originally filed as a violation of RCW 46.61.502 or 46.61.504, or
19 an equivalent local ordinance, the department shall grant credit on a
20 day-for-day basis for any portion of a suspension, revocation, or
21 denial already served under an administrative action arising out of the
22 same incident. During any period of suspension, revocation, or denial
23 due to a conviction for reckless driving as the result of a charge
24 originally filed as a violation of RCW 46.61.502 or 46.61.504, any
25 person who has obtained an ignition interlock driver's license under
26 RCW 46.20.385 may continue to drive a motor vehicle pursuant to the
27 provision of the ignition interlock driver's license without obtaining
28 a separate temporary restricted driver's license under RCW 46.20.391.

29 (3)(a) Except as provided under (b) of this subsection, a person
30 convicted of reckless driving who has one or more prior offenses as
31 defined in RCW 46.61.5055(14) within seven years shall be required,
32 under RCW 46.20.720, to install an ignition interlock device on all
33 vehicles operated by the person if the conviction is the result of a
34 charge that was originally filed as a violation of RCW 46.61.502,
35 46.61.504, or an equivalent local ordinance.

36 (b) A person convicted of reckless driving shall be required, under
37 RCW 46.20.720, to install an ignition interlock device on all vehicles

1 operated by the person if the conviction is the result of a charge that
2 was originally filed as a violation of RCW 46.61.520 committed while
3 under the influence of intoxicating liquor or any drug or RCW 46.61.522
4 committed while under the influence of intoxicating liquor or any drug.

5 **Sec. 12.** RCW 46.61.5055 and 2011 c 293 s 7 and 2011 c 96 s 35 are
6 each reenacted and amended to read as follows:

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

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

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

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

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

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

4 (i) By imprisonment for not less than two days nor more than three
5 hundred sixty-four days. Two consecutive days of the imprisonment may
6 not be suspended or deferred unless the court finds that the imposition
7 of this mandatory minimum sentence would impose a substantial risk to
8 the 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)(b)(i), the court may order not less than thirty 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 five hundred dollars nor more than
22 five thousand dollars. Five hundred dollars of the fine may not be
23 suspended or deferred unless the court finds the offender to be
24 indigent.

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

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

33 (i) By imprisonment for not less than thirty days nor more than
34 three hundred sixty-four days and sixty days of electronic home
35 monitoring. In lieu of the mandatory minimum term of sixty days
36 electronic home monitoring, the court may order at least an additional
37 four days in jail. The offender shall pay for the cost of the
38 electronic monitoring. The county or municipality where the penalty is

1 being imposed shall determine the cost. The court may also require the
2 offender's electronic home monitoring device include an alcohol
3 detection breathalyzer, and may restrict the amount of alcohol the
4 offender may consume during the time the offender is on electronic home
5 monitoring. Thirty days of imprisonment and sixty 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 five hundred dollars nor more than
14 five thousand dollars. Five hundred 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 forty-five days nor more than
22 three hundred sixty-four days and ninety days of electronic home
23 monitoring. In lieu of the mandatory minimum term of ninety days
24 electronic home monitoring, the court may order at least an additional
25 six days in jail. The offender shall pay for the cost of the
26 electronic monitoring. The county or municipality where the penalty is
27 being imposed shall determine the cost. The court may also require the
28 offender's electronic home monitoring device include an alcohol
29 detection breathalyzer, and may restrict the amount of alcohol the
30 offender may consume during the time the offender is on electronic home
31 monitoring. Forty-five days of imprisonment and ninety days of
32 electronic home monitoring may not be suspended or deferred unless the
33 court finds that the imposition of this mandatory minimum sentence
34 would impose a substantial risk to the offender's physical or mental
35 well-being. Whenever the mandatory minimum sentence is suspended or
36 deferred, the court shall state in writing the reason for granting the
37 suspension or deferral and the facts upon which the suspension or
38 deferral is based; and

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

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

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

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

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

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

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

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

23 (4) A person who is convicted of a violation of RCW 46.61.502 or
24 46.61.504 shall be punished under chapter 9.94A RCW if:

- 25 (a) The person has four or more prior offenses within ten years; or
- 26 (b) The person has ever previously been convicted of:

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

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

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

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

34 (5)(a) The court shall require any person convicted of a violation
35 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to
36 (~~apply for an ignition interlock driver's license from the department~~
37 ~~and to have~~) comply with the rules and requirements of the department

1 regarding the installation and use of a functioning ignition interlock
2 device installed on all motor vehicles operated by the person.

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

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

15 ~~(d) The court may waive the requirement that a person apply for an
16 ignition interlock driver's license if the court makes a specific
17 finding in writing that:~~

18 ~~(i) The person lives out of state and the devices are not
19 reasonably available in the person's local area;~~

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

21 ~~(iii) The person is not eligible to receive an ignition interlock
22 driver's license under RCW 46.20.385 because the person is not a
23 resident of Washington, is a habitual traffic offender, has already
24 applied for or is already in possession of an ignition interlock
25 driver's license, has never had a driver's license, has been certified
26 under chapter 74.20A RCW as noncompliant with a child support order, or
27 is subject to any other condition or circumstance that makes the person
28 ineligible to obtain an ignition interlock driver's license.~~

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

33 ~~(f))~~ If the court orders that a person refrain from consuming any
34 alcohol ((and requires the person to apply for an ignition interlock
35 driver's license, and the person states that he or she does not operate
36 a motor vehicle or the person is ineligible to obtain an ignition
37 interlock driver's license)), the court ((shall)) may order the person
38 to submit to alcohol monitoring through an alcohol detection

1 breathalyzer device, transdermal sensor device, or other technology
2 designed to detect alcohol in a person's system. (~~Alcohol monitoring~~
3 ~~ordered under this subsection must be for the period of the mandatory~~
4 ~~license suspension or revocation.)) The person shall pay for the cost
5 of the monitoring, unless the court specifies that the cost of
6 monitoring will be paid with funds that are available from an
7 alternative source identified by the court. The county or municipality
8 where the penalty is being imposed shall determine the cost.~~

9 ~~((g) The period of time for which ignition interlock use is~~
10 ~~required will be as follows:~~

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

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

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

17 ~~(h) Beginning with incidents occurring on or after September 1,~~
18 ~~2011, when calculating the period of time for the restriction under RCW~~
19 ~~46.20.720(3), the department must also give the person a day for day~~
20 ~~credit for the time period, beginning from the date of the incident,~~
21 ~~during which the person kept an ignition interlock device installed on~~
22 ~~all vehicles the person operates. For the purposes of this subsection~~
23 ~~(5)(h), the term "all vehicles" does not include vehicles that would be~~
24 ~~subject to the employer exception under RCW 46.20.720(3).)~~

25 (6) If a person who is convicted of a violation of RCW 46.61.502 or
26 46.61.504 committed the offense while a passenger under the age of
27 sixteen was in the vehicle, the court shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 The department shall grant credit on a day-for-day basis for any
37 portion of a suspension, revocation, or denial already served under

1 this subsection for a suspension, revocation, or denial imposed under
2 RCW 46.20.3101 arising out of the same incident.

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

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

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

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

34 (c) For each incident involving a violation of a mandatory
35 condition of probation imposed under this subsection, the license,
36 permit, or privilege to drive of the person shall be suspended by the
37 court for thirty days or, if such license, permit, or privilege to
38 drive already is suspended, revoked, or denied at the time the finding

1 of probation violation is made, the suspension, revocation, or denial
2 then in effect shall be extended by thirty days. The court shall
3 notify the department of any suspension, revocation, or denial or any
4 extension of a suspension, revocation, or denial imposed under this
5 subsection.

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

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

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

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

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

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

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

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

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

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

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

36 (iii) A conviction for a violation of RCW 46.61.520 committed while
37 under the influence of intoxicating liquor or any drug, or a conviction
38 for a violation of RCW 46.61.520 committed in a reckless manner or with

1 the disregard for the safety of others if the conviction is the result
2 of a charge that was originally filed as a violation of RCW 46.61.520
3 committed while under the influence of intoxicating liquor or any drug;

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

10 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
11 9A.36.050 or an equivalent local ordinance, if the conviction is the
12 result of a charge that was originally filed as a violation of RCW
13 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
14 46.61.520 or 46.61.522;

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

18 (vii) A deferred prosecution under chapter 10.05 RCW granted in a
19 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
20 equivalent local ordinance; (~~(e)~~)

21 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
22 prosecution for a violation of RCW 46.61.5249, or an equivalent local
23 ordinance, if the charge under which the deferred prosecution was
24 granted was originally filed as a violation of RCW 46.61.502 or
25 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
26 46.61.522; or

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

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

37 (b) "Within seven years" means that the arrest for a prior offense

1 occurred within seven years before or after the arrest for the current
2 offense; and

3 (c) "Within ten years" means that the arrest for a prior offense
4 occurred within ten years before or after the arrest for the current
5 offense.

6 **Sec. 13.** RCW 46.61.5249 and 2011 c 293 s 5 are each amended to
7 read as follows:

8 (1)(a) A person is guilty of negligent driving in the first degree
9 if he or she operates a motor vehicle in a manner that is both
10 negligent and endangers or is likely to endanger any person or
11 property, and exhibits the effects of having consumed liquor or an
12 illegal drug or exhibits the effects of having inhaled or ingested any
13 chemical, whether or not a legal substance, for its intoxicating or
14 hallucinatory effects.

15 (b) It is an affirmative defense to negligent driving in the first
16 degree by means of exhibiting the effects of having consumed an illegal
17 drug that must be proved by the defendant by a preponderance of the
18 evidence, that the driver has a valid prescription for the drug
19 consumed, and has been consuming it according to the prescription
20 directions and warnings.

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

22 (2) For the purposes of this section:

23 (a) "Negligent" means the failure to exercise ordinary care, and is
24 the doing of some act that a reasonably careful person would not do
25 under the same or similar circumstances or the failure to do something
26 that a reasonably careful person would do under the same or similar
27 circumstances.

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

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

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

35 (c) "Exhibiting the effects of having consumed an illegal drug"
36 means that a person by speech, manner, appearance, behavior, lack of

1 coordination, or otherwise exhibits that he or she has consumed an
2 illegal drug and either:

- 3 (i) Is in possession of an illegal drug; or
- 4 (ii) Is shown by other evidence to have recently consumed an
5 illegal drug.

6 (d) "Exhibiting the effects of having inhaled or ingested any
7 chemical, whether or not a legal substance, for its intoxicating or
8 hallucinatory effects" means that a person by speech, manner,
9 appearance, behavior, or lack of coordination or otherwise exhibits
10 that he or she has inhaled or ingested a chemical and either:

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

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

15 (e) "Illegal drug" means a controlled substance under chapter 69.50
16 RCW for which the driver does not have a valid prescription or that is
17 not being consumed in accordance with the prescription directions and
18 warnings, or a legend drug under chapter 69.41 RCW for which the driver
19 does not have a valid prescription or that is not being consumed in
20 accordance with the prescription directions and warnings.

21 (3) Any act prohibited by this section that also constitutes a
22 crime under any other law of this state may be the basis of prosecution
23 under such other law notwithstanding that it may also be the basis for
24 prosecution under this section.

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

29 **Sec. 14.** RCW 46.61.540 and 1975 1st ex.s. c 287 s 5 are each
30 amended to read as follows:

31 The word "drugs", as used in RCW 46.61.500 through 46.61.535, shall
32 include but not be limited to those drugs and substances regulated by
33 chapters 69.41 and 69.50 RCW and any chemical inhaled or ingested for
34 its intoxicating or hallucinatory effects.

35 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.43 RCW
36 to read as follows:

1 (1) As part of the state patrol's authority to provide standards
2 for certification, installation, repair, maintenance, monitoring,
3 inspection, and removal of ignition interlock devices, the state patrol
4 shall by rule establish a fee schedule and collect fees from ignition
5 interlock manufacturers, technicians, providers, and persons required
6 under RCW 46.20.385, 46.20.720, and 46.61.5055 to install an ignition
7 interlock device in all vehicles owned or operated by the person.

8 (2) Fees collected under this section must be deposited into the
9 highway safety account to be used solely to fund the Washington state
10 patrol impaired driving section projects.

11 **Sec. 16.** RCW 43.43.395 and 2010 c 268 s 2 are each amended to read
12 as follows:

13 (1) The state patrol shall by rule provide standards for the
14 certification, installation, repair, maintenance, monitoring,
15 inspection, and removal of ignition interlock devices, as defined under
16 RCW 46.04.215, and equipment as outlined under this section, and may
17 inspect the records and equipment of manufacturers and vendors during
18 regular business hours for compliance with statutes and rules and may
19 suspend or revoke certification for any noncompliance. The state
20 patrol may only inspect ignition interlock devices in the vehicles of
21 customers for proper installation and functioning when installation is
22 being done at the vendors' place of business.

23 (2)(a) When a certified service provider or individual installer of
24 ignition interlock devices is found to be out of compliance, the
25 installation privileges of that certified service provider or
26 individual installer may be suspended or revoked until the certified
27 service provider or individual installer comes into compliance. During
28 any suspension or revocation period, the certified service provider or
29 individual installer is responsible for notifying affected customers of
30 any changes in their service agreement.

31 (b) A certified service provider or individual installer whose
32 certification is suspended or revoked for noncompliance has a right to
33 an administrative hearing under chapter 34.05 RCW to contest the
34 suspension or revocation, or both. For the administrative hearing, the
35 procedure and rules of evidence are as specified in chapter 34.05 RCW,
36 except as otherwise provided in this chapter. Any request for an

1 administrative hearing must be made in writing and must be received by
2 the state patrol within twenty days after the receipt of the notice of
3 suspension or revocation.

4 (3)(a) An ignition interlock device must employ fuel cell
5 technology. For the purposes of this subsection, "fuel cell
6 technology" consists of the following electrochemical method: An
7 electrolyte designed to oxidize the alcohol and release electrons to be
8 collected by an active electrode; a current flow is generated within
9 the electrode proportional to the amount of alcohol oxidized on the
10 fuel cell surface; and the electrical current is measured and reported
11 as breath alcohol concentration. Fuel cell technology is highly
12 specific for alcohols.

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

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

18 (i) Meet or exceed the minimum test standards according to rules
19 adopted by the state patrol. Only a notarized statement from a
20 laboratory that is certified by the international organization of
21 standardization and is capable of performing the tests specified will
22 be accepted as proof of meeting or exceeding the standards. The
23 notarized statement must include the name and signature of the person
24 in charge of the tests under the following statement:

25 "Two samples of (model name), manufactured by (manufacturer)
26 were tested by (laboratory) certified by the International Organization of
27 Standardization. They do meet or exceed all specifications listed in
28 the Federal Register, Volume 71, Number 31 (57 FR 11772), Breath
29 Alcohol Ignition Interlock Devices (BAIID), NHTSA 2005-23470."; and

30 (ii) Be maintained in accordance with the rules and standards
31 adopted by the state patrol.

--- END ---