

CERTIFICATION OF ENROLLMENT

SECOND SUBSTITUTE HOUSE BILL 2443

Chapter 183, Laws of 2012

62nd Legislature
2012 Regular Session

DRIVING UNDER THE INFLUENCE

EFFECTIVE DATE: 08/01/12

Passed by the House March 8, 2012
Yeas 98 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 8, 2012
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved March 29, 2012, 7:17 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 2443** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 29, 2012

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 2443

AS AMENDED BY THE SENATE

Passed Legislature - 2012 Regular Session

State of Washington 62nd Legislature 2012 Regular Session

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

READ FIRST TIME 02/07/12.

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 prescribing penalties; and providing an effective date.

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 may establish and operate DUI courts. Municipalities
11 may enter into cooperative agreements with counties that have DUI
12 courts to provide DUI court services.

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

1 use and, if applicable, drug use; and the use of appropriate sanctions
2 and other rehabilitation services.

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

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

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

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

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

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

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

- 27 (A) That is a sex offense;
- 28 (B) That is a serious violent offense;
- 29 (C) That is vehicular homicide or vehicular assault;
- 30 (D) During which the defendant used a firearm; or
- 31 (E) During which the defendant caused substantial or great bodily
32 harm or death to another person.

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

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

- 1 (1) Any violent offense as defined in this chapter;
2 (2) Any most serious offense as defined in this chapter;
3 (3) Any felony with a deadly weapon special verdict under RCW
4 (~~9.94A.602~~) 9.94A.825;
5 (4) Any felony with any deadly weapon enhancements under RCW
6 9.94A.533 (3) or (4), or both; (~~and/or~~)
7 (5) The felony crimes of possession of a machine gun, possessing a
8 stolen firearm, drive-by shooting, theft of a firearm, unlawful
9 possession of a firearm in the first or second degree, and/or use of a
10 machine gun in a felony; or
11 (6) The felony crime of driving a motor vehicle while under the
12 influence of intoxicating liquor or any drug as defined in RCW
13 46.61.502, and felony physical control of a motor vehicle while under
14 the influence of intoxicating liquor or any drug as defined in RCW
15 46.61.504.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 guilty; or (ii) if the applicant has been convicted after a plea of not
2 guilty, the court setting aside the verdict of guilty; and (b) the
3 court dismissing the information, indictment, complaint, or citation
4 against the applicant and vacating the judgment and sentence.

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

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

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

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

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

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

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

37 (ii) The applicant has previously had a conviction for domestic

1 violence. For purposes of this subsection, however, if the current
2 application is for more than one conviction that arose out of a single
3 incident, none of those convictions counts as a previous conviction;

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

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

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

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

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

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

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

36 (4) All costs incurred by the court and probation services shall be
37 paid by the person making the motion to vacate the record unless a

1 determination is made pursuant to chapter 10.101 RCW that the person
2 making the motion is indigent, at the time the motion is brought.

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

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

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

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

1 order the defendant to reimburse the public agency. The cost
2 reimbursement shall be included in the sentencing order as an
3 additional monetary obligation of the defendant and may not be
4 substituted for any other fine or cost required or allowed by statute.
5 The court may establish a payment schedule for the payment of the cost
6 reimbursement, separate from any payment schedule imposed for other
7 finances and costs.

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

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

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

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

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

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

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

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

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

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

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

1 in RCW 46.61.502, which arrest results from an accident in which there
2 has been serious bodily injury to another person, a breath or blood
3 test may be administered without the consent of the individual so
4 arrested.

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

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

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

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

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

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

37 (d) Serve notice in writing that the marked license or permit, if
38 any, is a temporary license that is valid for sixty days from the date

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

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

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

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

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

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

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

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

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

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

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

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

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

1 treatment plan, or if the person violates any condition imposed by the
2 court, then the court shall immediately direct the department to cancel
3 the stay and any temporary marked license or extension of a temporary
4 license issued under this subsection.

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

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

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

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

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

36 (b) A person may apply for an ignition interlock driver's license
37 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.

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

30 (iii) The time period during which the person is licensed under
31 this section shall apply on a day-for-day basis toward satisfying the
32 period of time the ignition interlock device restriction is required
33 under RCW 46.20.720 and 46.61.5055. Beginning with incidents occurring
34 on or after September 1, 2011, when calculating the period of time for
35 the restriction under RCW 46.20.720(3), the department must also give
36 the person a day-for-day credit for the time period, beginning from the
37 date of the incident, during which the person kept an ignition
38 interlock device installed on all vehicles the person operates. For

1 the purposes of this subsection (1)(c)(iii), the term "all vehicles"
2 does not include vehicles that would be subject to the employer
3 exception under RCW 46.20.720(3).

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

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

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

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

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

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

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

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

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

21 (b) A person who does not have any driver's license under this
22 chapter, but who would otherwise be eligible under this section to
23 apply for an ignition interlock license, may submit to the department
24 an application for an ignition interlock license. The department may
25 require the person to take any driver's licensing examination under
26 chapter 46.20 RCW and may require the person to also apply and qualify
27 for a temporary restricted driver's license under RCW 46.20.391.

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

30 (1) The court may order that after a period of suspension,
31 revocation, or denial of driving privileges, and for up to as long as
32 the court has jurisdiction, any person convicted of any offense
33 involving the use, consumption, or possession of alcohol while
34 operating a motor vehicle may drive only a motor vehicle equipped with
35 a functioning ignition interlock. The court shall establish a specific
36 calibration setting at which the interlock will prevent the vehicle

1 from being started. The court shall also establish the period of time
2 for which interlock use will be required.

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

15 (3) The department shall require that, after any applicable period
16 of suspension, revocation, or denial of driving privileges, a person
17 may drive only a motor vehicle equipped with a functioning ignition
18 interlock device if the person is convicted of a violation of RCW
19 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute
20 or ordinance. The department shall require that a person may drive
21 only a motor vehicle equipped with a functioning ignition interlock
22 device if the person is convicted of a violation of RCW 46.61.5249 or
23 46.61.500 and is required under RCW 46.61.5249(4) or 46.61.500(3) (a)
24 or (b) to install an ignition interlock device on all vehicles operated
25 by the person.

26 The department may waive the requirement for the use of such a
27 device if it concludes that such devices are not reasonably available
28 in the local area. The installation of an ignition interlock device is
29 not necessary on vehicles owned, leased, or rented by a person's
30 employer and on those vehicles whose care and/or maintenance is the
31 temporary responsibility of the employer, and driven at the direction
32 of a person's employer as a requirement of employment during working
33 hours. The person must provide the department with a declaration
34 pursuant to RCW 9A.72.085 from his or her employer stating that the
35 person's employment requires the person to operate a vehicle owned by
36 the employer or other persons during working hours. However, when the
37 employer's vehicle is assigned exclusively to the restricted driver and

1 used solely for commuting to and from employment, the employer
2 exemption does not apply.

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

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

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

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

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

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

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

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

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

30 (6) In addition to any other costs associated with the use of an
31 ignition interlock device imposed on the person restricted under this
32 section, the person shall pay an additional fee of twenty dollars per
33 month. Payments must be made directly to the ignition interlock
34 company. The company shall remit the additional twenty dollar fee to
35 the department to be deposited into the ignition interlock device
36 revolving account.

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

3 (1) The ignition interlock device revolving account program is
4 created within the department to assist in covering the monetary costs
5 of installing, removing, and leasing an ignition interlock device, and
6 applicable licensing, for indigent persons who are required under RCW
7 46.20.385, 46.20.720, and 46.61.5055 to install an ignition interlock
8 device in all vehicles owned or operated by the person. For purposes
9 of this subsection, "indigent" has the same meaning as in RCW
10 10.101.010, as determined by the department.

11 (2) A pilot program is created within the ignition interlock device
12 revolving account program for the purpose of monitoring compliance by
13 persons required to use ignition interlock devices and by ignition
14 interlock companies and vendors.

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

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

21 (a) Review the number of ignition interlock devices that are
22 required to be installed in the targeted county and the number of
23 ignition interlock devices actually installed;

24 (b) Work to identify those persons who are not complying with
25 ignition interlock requirements or are repeatedly violating ignition
26 interlock requirements; and

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

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

32 **Sec. 11.** RCW 46.61.500 and 2011 c 293 s 4 and 2011 c 96 s 34 are
33 each reenacted and amended to read as follows:

34 (1) Any person who drives any vehicle in willful or wanton
35 disregard for the safety of persons or property is guilty of reckless
36 driving. Violation of the provisions of this section is a gross

1 misdemeanor punishable by imprisonment for up to three hundred sixty-
2 four days and by a fine of not more than five thousand dollars.

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

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

19 (3)(a) Except as provided under (b) of this subsection, a person
20 convicted of reckless driving who has one or more prior offenses as
21 defined in RCW 46.61.5055(14) within seven years shall be required,
22 under RCW 46.20.720, to install an ignition interlock device on all
23 vehicles operated by the person if the conviction is the result of a
24 charge that was originally filed as a violation of RCW 46.61.502,
25 46.61.504, or an equivalent local ordinance.

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

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

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

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

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

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

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

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

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

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

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

17 (a) In the case of a person whose alcohol concentration was less
18 than 0.15, or for whom for reasons other than the person's refusal to
19 take a 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 thirty days nor more than
22 three hundred sixty-four days and sixty days of electronic home
23 monitoring. In lieu of the mandatory minimum term of sixty days
24 electronic home monitoring, the court may order at least an additional
25 four 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. Thirty days of imprisonment and sixty days of electronic
32 home monitoring may not be suspended or deferred unless the court finds
33 that the imposition of this mandatory minimum sentence would impose a
34 substantial risk to the offender's physical or mental well-being.
35 Whenever the mandatory minimum sentence is suspended or deferred, the
36 court shall state in writing the reason for granting the suspension or
37 deferral and the facts upon which the suspension or deferral is based;
38 and

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

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

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

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

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

35 (a) In the case of a person whose alcohol concentration was less
36 than 0.15, or for whom for reasons other than the person's refusal to
37 take a 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 ninety days nor more than
2 three hundred sixty-four days and one hundred twenty days of electronic
3 home monitoring. In lieu of the mandatory minimum term of one hundred
4 twenty days of electronic home monitoring, the court may order at least
5 an additional eight days in jail. The offender shall pay for the cost
6 of the electronic monitoring. The county or municipality where the
7 penalty is being imposed shall determine the cost. The court may also
8 require the offender's electronic home monitoring device include an
9 alcohol detection breathalyzer, and may restrict the amount of alcohol
10 the offender may consume during the time the offender is on electronic
11 home monitoring. Ninety days of imprisonment and one hundred twenty
12 days of electronic home monitoring may not be suspended or deferred
13 unless the court finds that the imposition of this mandatory minimum
14 sentence would impose a substantial risk to the offender's physical or
15 mental well-being. Whenever the mandatory minimum sentence is
16 suspended or deferred, the court shall state in writing the reason for
17 granting the suspension or deferral and the facts upon which the
18 suspension or deferral is based; and

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

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

27 (i) By imprisonment for not less than one hundred twenty days nor
28 more than three hundred sixty-four days and one hundred fifty days of
29 electronic home monitoring. In lieu of the mandatory minimum term of
30 one hundred fifty days of electronic home monitoring, the court may
31 order at least an additional ten days in jail. The offender shall pay
32 for the cost of the electronic monitoring. The county or municipality
33 where the penalty is being imposed shall determine the cost. The court
34 may also require the offender's electronic home monitoring device
35 include an alcohol detection breathalyzer, and may restrict the amount
36 of alcohol the offender may consume during the time the offender is on
37 electronic home monitoring. One hundred twenty days of imprisonment
38 and one hundred fifty days of electronic home monitoring may not be

1 suspended or deferred unless the court finds that the imposition of
2 this mandatory minimum sentence would impose a substantial risk to the
3 offender's physical or mental well-being. Whenever the mandatory
4 minimum sentence is suspended or deferred, the court shall state in
5 writing the reason for granting the suspension or deferral and the
6 facts upon which the suspension or deferral is based; and

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

11 (4) A person who is convicted of a violation of RCW 46.61.502 or
12 46.61.504 shall be punished under chapter 9.94A RCW if:

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

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

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

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

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

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

22 (5)(a) The court shall require any person convicted of a violation
23 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to
24 ~~((apply for an ignition interlock driver's license from the department
25 and to have))~~ comply with the rules and requirements of the department
26 regarding the installation and use of a functioning ignition interlock
27 device installed on all motor vehicles operated by the person.

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

37 ~~(c) An ignition interlock device imposed under this section shall~~

1 ~~be calibrated to prevent a motor vehicle from being started when the~~
2 ~~breath sample provided has an alcohol concentration of 0.025 or more.~~

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

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

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

9 ~~(iii) The person is not eligible to receive an ignition interlock~~
10 ~~driver's license under RCW 46.20.385 because the person is not a~~
11 ~~resident of Washington, is a habitual traffic offender, has already~~
12 ~~applied for or is already in possession of an ignition interlock~~
13 ~~driver's license, has never had a driver's license, has been certified~~
14 ~~under chapter 74.20A RCW as noncompliant with a child support order, or~~
15 ~~is subject to any other condition or circumstance that makes the person~~
16 ~~ineligible to obtain an ignition interlock driver's license.~~

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

21 ~~(f)) If the court orders that a person refrain from consuming any~~
22 ~~alcohol ((and requires the person to apply for an ignition interlock~~
23 ~~driver's license, and the person states that he or she does not operate~~
24 ~~a motor vehicle or the person is ineligible to obtain an ignition~~
25 ~~interlock driver's license)), the court ((shall)) may order the person~~
26 ~~to submit to alcohol monitoring through an alcohol detection~~
27 ~~breathalyzer device, transdermal sensor device, or other technology~~
28 ~~designed to detect alcohol in a person's system. ((Alcohol monitoring~~
29 ~~ordered under this subsection must be for the period of the mandatory~~
30 ~~license suspension or revocation.)) The person shall pay for the cost~~
31 ~~of the monitoring, unless the court specifies that the cost of~~
32 ~~monitoring will be paid with funds that are available from an~~
33 ~~alternative source identified by the court. The county or municipality~~
34 ~~where the penalty is being imposed shall determine the cost.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (a) If the person's alcohol concentration was less than 0.15, or if
37 for reasons other than the person's refusal to take a test offered

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (11)(a) In addition to any nonsuspendable and nondeferrable jail
37 sentence required by this section, whenever the court imposes up to
38 three hundred sixty-four days in jail, the court shall also suspend but

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

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

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

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

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

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

37 (c) The court determines that there is reason to believe that the

1 offender would violate the conditions of the electronic home monitoring
2 penalty.

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

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

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

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

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

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

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

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

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

37 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
38 9A.36.050 or an equivalent local ordinance, if the conviction is the

1 result of a charge that was originally filed as a violation of RCW
2 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
3 46.61.520 or 46.61.522;

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

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

10 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
11 prosecution for a violation of RCW 46.61.5249, or an equivalent local
12 ordinance, if the charge under which the deferred prosecution was
13 granted was originally filed as a violation of RCW 46.61.502 or
14 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
15 46.61.522; or

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

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

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

29 (c) "Within ten years" means that the arrest for a prior offense
30 occurred within ten years before or after the arrest for the current
31 offense.

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

34 (1)(a) A person is guilty of negligent driving in the first degree
35 if he or she operates a motor vehicle in a manner that is both
36 negligent and endangers or is likely to endanger any person or
37 property, and exhibits the effects of having consumed liquor or an

1 illegal drug or exhibits the effects of having inhaled or ingested any
2 chemical, whether or not a legal substance, for its intoxicating or
3 hallucinatory effects.

4 (b) It is an affirmative defense to negligent driving in the first
5 degree by means of exhibiting the effects of having consumed an illegal
6 drug that must be proved by the defendant by a preponderance of the
7 evidence, that the driver has a valid prescription for the drug
8 consumed, and has been consuming it according to the prescription
9 directions and warnings.

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

11 (2) For the purposes of this section:

12 (a) "Negligent" means the failure to exercise ordinary care, and is
13 the doing of some act that a reasonably careful person would not do
14 under the same or similar circumstances or the failure to do something
15 that a reasonably careful person would do under the same or similar
16 circumstances.

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

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

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

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

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

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

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

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

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

3 (e) "Illegal drug" means a controlled substance under chapter 69.50
4 RCW for which the driver does not have a valid prescription or that is
5 not being consumed in accordance with the prescription directions and
6 warnings, or a legend drug under chapter 69.41 RCW for which the driver
7 does not have a valid prescription or that is not being consumed in
8 accordance with the prescription directions and warnings.

9 (3) Any act prohibited by this section that also constitutes a
10 crime under any other law of this state may be the basis of prosecution
11 under such other law notwithstanding that it may also be the basis for
12 prosecution under this section.

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

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

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

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

25 (1) As part of the state patrol's authority to provide standards
26 for certification, installation, repair, maintenance, monitoring,
27 inspection, and removal of ignition interlock devices, the state patrol
28 shall by rule establish a fee schedule and collect fees from ignition
29 interlock manufacturers, technicians, providers, and persons required
30 under RCW 46.20.385, 46.20.720, and 46.61.5055 to install an ignition
31 interlock device in all vehicles owned or operated by the person. At
32 a minimum, the fees must be set at a level necessary to support
33 effective performance of the duties identified in this section. The
34 state patrol must report back to the transportation committees of the
35 legislature and the office of financial management by December 1st of

1 each year on the level of the fees that have been adopted and whether
2 those fees are sufficient to cover the cost of performing the duties
3 listed in this section.

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

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

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

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

27 (b) A certified service provider or individual installer whose
28 certification is suspended or revoked for noncompliance has a right to
29 an administrative hearing under chapter 34.05 RCW to contest the
30 suspension or revocation, or both. For the administrative hearing, the
31 procedure and rules of evidence are as specified in chapter 34.05 RCW,
32 except as otherwise provided in this chapter. Any request for an
33 administrative hearing must be made in writing and must be received by
34 the state patrol within twenty days after the receipt of the notice of
35 suspension or revocation.

36 (3)(a) An ignition interlock device must employ fuel cell
37 technology. For the purposes of this subsection, "fuel cell

1 technology" consists of the following electrochemical method: An
2 electrolyte designed to oxidize the alcohol and release electrons to be
3 collected by an active electrode; a current flow is generated within
4 the electrode proportional to the amount of alcohol oxidized on the
5 fuel cell surface; and the electrical current is measured and reported
6 as breath alcohol concentration. Fuel cell technology is highly
7 specific for alcohols.

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

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

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

20 "Two samples of _(model name)_, manufactured by (manufacturer)
21 were tested by (laboratory) certified by the Internal Organization of
22 Standardization. They do meet or exceed all specifications listed in
23 the Federal Register, Volume 71, Number 31 (57 FR 11772), Breath
24 Alcohol Ignition Interlock Devices (BAIID), NHTSA 2005-23470."; and

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

27 **NEW SECTION. Sec. 17.** This act takes effect August 1, 2012.
Passed by the House March 8, 2012.
Passed by the Senate March 8, 2012.
Approved by the Governor March 29, 2012.
Filed in Office of Secretary of State March 29, 2012.