

**SHB 2030 - H AMD 533**

By Representative Hunter

**NOT CONSIDERED**

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

3           "NEW SECTION. **Sec. 1.** A new section is added to chapter 10.21 RCW  
4 to read as follows:

5           (1) Unless waived by the court, when any person charged with or  
6 arrested for a violation of RCW 46.61.502, 46.61.504, 46.61.520,  
7 46.61.522, or equivalent local ordinance, in which the person has one  
8 or more prior offenses as defined in RCW 46.61.5055 and the current  
9 offense involves alcohol, is released from custody before arraignment  
10 or trial on bail or personal recognizance, the court authorizing the  
11 release shall require, as a condition of release, that person to: (a)  
12 Have a functioning ignition interlock device installed on all motor  
13 vehicles operated by the person, with proof of installation filed with  
14 the court by the person or the certified interlock provider within five  
15 business days of the date of release from custody; (b) comply with 24/7  
16 alcohol/drug monitoring, as defined in RCW 46.61.5055; (c) or comply  
17 with both (a) and (b) of this subsection.

18           (2) Upon acquittal or dismissal of all pending or current charges  
19 relating to a violation of RCW 46.61.502, 46.61.504, 46.61.520, or  
20 46.61.522, or equivalent local ordinance, or if charges are not filed  
21 against the person, the court shall authorize removal of the ignition  
22 interlock device and lift any requirement to comply with electronic  
23 24/7 alcohol/drug monitoring imposed under subsection (1) of this  
24 section. Nothing in this section limits the authority of the court or  
25 department under RCW 46.20.720.

26           **Sec. 2.** RCW 2.28.175 and 2013 c 257 s 6 are each amended to read  
27 as follows:

28           (1) Jurisdictions and municipalities may establish and operate DUI

1 courts. Municipalities may enter into cooperative agreements with  
2 counties or other municipalities that have DUI courts to provide DUI  
3 court services.

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

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

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

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

23 (b) Any jurisdiction that establishes a DUI court pursuant to this  
24 section shall establish minimum requirements for the participation of  
25 offenders in the program. The DUI court may adopt local requirements  
26 that are more stringent than the minimum. The minimum requirements  
27 are:

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

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

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

36 (A) That is a sex offense;

37 (B) That is a serious violent offense;

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

- 1 (D) During which the defendant used a firearm; or  
2 (E) During which the defendant caused substantial or great bodily  
3 harm or death to another person.

4 **Sec. 3.** RCW 3.66.068 and 2010 c 274 s 405 are each amended to read  
5 as follows:

6 (1) A court has continuing jurisdiction and authority to suspend  
7 the execution of all or any part of its sentence upon stated terms,  
8 including installment payment of fines for a period not to exceed:

9 (a) Five years after imposition of sentence for a defendant  
10 sentenced for a domestic violence offense or under RCW 46.61.5055; and

11 (b) Two years after imposition of sentence for all other  
12 offenses(~~(, the)~~).

13 (2)(a) Except as provided in (b) of this subsection, a court has  
14 continuing jurisdiction and authority to (~~suspend or~~) defer the  
15 execution of all or any part of its sentence upon stated terms,  
16 including installment payment of fines for a period not to exceed:

17 (i) Five years after imposition of sentence for a defendant  
18 sentenced for a domestic violence offense; and

19 (ii) Two years after imposition of sentence for all other offenses.

20 (b) A court shall not defer sentence for an offense sentenced under  
21 RCW 46.61.5055.

22 (3) A defendant who has been sentenced, or whose sentence has been  
23 deferred, and who then fails to appear for any hearing to address the  
24 defendant's compliance with the terms of probation when ordered to do  
25 so by the court, shall have the term of probation tolled until such  
26 time as the defendant makes his or her presence known to the court on  
27 the record.

28 (4) However, the court's jurisdiction period in this section does  
29 not apply to the enforcement of orders issued under RCW 46.20.720.

30 (5) For the purposes of this section, "domestic violence offense"  
31 means a crime listed in RCW 10.99.020 that is not a felony offense.

32 **Sec. 4.** RCW 3.66.067 and 2001 c 94 s 1 are each amended to read as  
33 follows:

34 After a conviction, the court may impose sentence by suspending all  
35 or a portion of the defendant's sentence or by deferring the sentence  
36 of the defendant and may place the defendant on probation for a period

1 of no longer than two years and prescribe the conditions thereof. A  
2 defendant who has been sentenced, or whose sentence has been deferred,  
3 and who then fails to appear for any hearing to address the defendant's  
4 compliance with the terms of probation when ordered to do so by the  
5 court, shall have the term of probation tolled until such time as the  
6 defendant makes his or her presence known to the court on the record.  
7 During the time of the deferral, the court may, for good cause shown,  
8 permit a defendant to withdraw the plea of guilty and to enter a plea  
9 of not guilty, and the court may dismiss the charges. A court shall  
10 not defer sentence for an offense sentenced under RCW 46.61.5055.

11 **Sec. 5.** RCW 3.50.320 and 2001 c 94 s 4 are each amended to read as  
12 follows:

13 After a conviction, the court may impose sentence by suspending all  
14 or a portion of the defendant's sentence or by deferring the sentence  
15 of the defendant and may place the defendant on probation for a period  
16 of no longer than two years and prescribe the conditions thereof. A  
17 defendant who has been sentenced, or whose sentence has been deferred,  
18 and who then fails to appear for any hearing to address the defendant's  
19 compliance with the terms of probation when ordered to do so by the  
20 court, shall have the term of probation tolled until such time as the  
21 defendant makes his or her presence known to the court on the record.  
22 During the time of the deferral, the court may, for good cause shown,  
23 permit a defendant to withdraw the plea of guilty, permit the defendant  
24 to enter a plea of not guilty, and dismiss the charges. A court shall  
25 not defer sentence for an offense sentenced under RCW 46.61.5055.

26 **Sec. 6.** RCW 3.50.330 and 2010 c 274 s 406 are each amended to read  
27 as follows:

28 (1) A court has continuing jurisdiction and authority to suspend  
29 the execution of all or any part of its sentence upon stated terms,  
30 including installment payment of fines for a period not to exceed:

31 (a) Five years after imposition of sentence for a defendant  
32 sentenced for a domestic violence offense or under RCW 46.61.5055; and

33 (b) Two years after imposition of sentence for all other  
34 offenses(~~(, the)~~).

35 (2)(a) Except as provided in (b) of this subsection, a court shall

1 have continuing jurisdiction and authority to (~~suspend or~~) defer the  
2 execution of all or any part of the sentence upon stated terms,  
3 including installment payment of fines for a period not to exceed:

4 (i) Five years after imposition of sentence for a defendant  
5 sentenced for a domestic violence offense; and

6 (ii) Two years after imposition of sentence for all other offenses.

7 (b) A court shall not defer sentence for an offense sentenced under  
8 RCW 46.61.5055.

9 (3) A defendant who has been sentenced, or whose sentence has been  
10 deferred, and who then fails to appear for any hearing to address the  
11 defendant's compliance with the terms of probation when ordered to do  
12 so by the court, shall have the term of probation tolled until such  
13 time as the defendant makes his or her presence known to the court on  
14 the record.

15 (4) However, the court's jurisdiction period in this section does  
16 not apply to the enforcement of orders issued under RCW 46.20.720.

17 (5) Any time before entering an order terminating probation, the  
18 court may modify or revoke its order suspending or deferring the  
19 imposition or execution of the sentence.

20 (6) For the purposes of this section, "domestic violence offense"  
21 means a crime listed in RCW 10.99.020 that is not a felony offense.

22 **Sec. 7.** RCW 35.20.255 and 2010 c 274 s 407 are each amended to  
23 read as follows:

24 (1) Except as provided in subsection (3) of this section, judges of  
25 the municipal court, in their discretion, shall have the power in all  
26 criminal proceedings within their jurisdiction including violations of  
27 city ordinances, to defer imposition of any sentence, suspend all or  
28 part of any sentence including installment payment of fines, fix the  
29 terms of any such deferral or suspension, and provide for such  
30 probation as in their opinion is reasonable and necessary under the  
31 circumstances of the case, but in no case shall it extend for more than  
32 five years from the date of conviction for a defendant to be sentenced  
33 for a domestic violence offense or under RCW 46.61.5055 and two years  
34 from the date of conviction for all other offenses. A defendant who  
35 has been sentenced, or whose sentence has been deferred, and who then  
36 fails to appear for any hearing to address the defendant's compliance  
37 with the terms of probation when ordered to do so by the court, shall

1 have the term of probation tolled until such time as the defendant  
2 makes his or her presence known to the court on the record. However,  
3 the jurisdiction period in this section does not apply to the  
4 enforcement of orders issued under RCW 46.20.720. Any time before  
5 entering an order terminating probation, the court may modify or revoke  
6 its order suspending or deferring the imposition or execution of the  
7 sentence. For the purposes of this subsection, "domestic violence  
8 offense" means a crime listed in RCW 10.99.020 that is not a felony  
9 offense.

10 (2)(a) If a defendant whose sentence has been deferred requests  
11 permission to travel or transfer to another state, the director of  
12 probation services or a designee thereof shall determine whether such  
13 request is subject to RCW 9.94A.745, the interstate compact for adult  
14 offender supervision. If such request is subject to the compact, the  
15 director or designee shall:

16 (i) Notify the department of corrections of the defendant's  
17 request;

18 (ii) Provide the department of corrections with the supporting  
19 documentation it requests for processing an application for transfer;

20 (iii) Notify the defendant of the fee due to the department of  
21 corrections for processing an application under the compact;

22 (iv) Cease supervision of the defendant while another state  
23 supervises the defendant pursuant to the compact;

24 (v) Resume supervision if the defendant returns to this state  
25 before the period of deferral expires.

26 (b) The defendant shall receive credit for time served while being  
27 supervised by another state.

28 (c) If the probationer is returned to the state at the request of  
29 the receiving state under rules of the interstate compact for adult  
30 offender supervision, the department of corrections is responsible for  
31 the cost of returning the probationer.

32 (d) The state of Washington, the department of corrections and its  
33 employees, and any city and its employees are not liable for civil  
34 damages resulting from any act or omission authorized or required under  
35 this section unless the act or omission constitutes gross negligence.

36 (3) Judges of the municipal court shall not defer sentence for an  
37 offense sentenced under RCW 46.61.5055.

1       **Sec. 8.** RCW 9.94A.525 and 2011 c 166 s 3 are each amended to read  
2 as follows:

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

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

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

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

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

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

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

33       (e) If the present conviction is felony driving while under the  
34 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or  
35 felony physical control of a vehicle while under the influence of  
36 intoxicating liquor or any drug (RCW 46.61.504(6)), (~~prior convictions~~  
37 ~~of felony driving while under the influence of intoxicating liquor or~~  
38 ~~any drug, felony physical control of a vehicle while under the~~

1 ~~influence of intoxicating liquor or any drug, and serious traffic~~  
2 ~~offenses shall be included in the offender score if: (i) The prior~~  
3 ~~convictions were committed within five years since the last date of~~  
4 ~~release from confinement (including full-time residential treatment) or~~  
5 ~~entry of judgment and sentence; or (ii) the prior convictions would be~~  
6 ~~considered "prior offenses within ten years" as defined in RCW~~  
7 ~~46.61.5055))~~ all predicate crimes for the offense as defined by RCW  
8 46.61.5055(14) shall be included in the offender score, and prior  
9 convictions for felony driving while under the influence of  
10 intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical  
11 control of a vehicle while under the influence of intoxicating liquor  
12 or any drug (RCW 46.61.504(6)) shall always be included in the offender  
13 score. All other convictions of the defendant shall be scored  
14 according to this section.

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

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

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

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

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

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

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

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

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

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

37 (8) If the present conviction is for a violent offense and not  
38 covered in subsection (9), (10), (11), (12), or (13) of this section,

1 count two points for each prior adult and juvenile violent felony  
2 conviction, one point for each prior adult nonviolent felony  
3 conviction, and 1/2 point for each prior juvenile nonviolent felony  
4 conviction.

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

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

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

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

36 (13) If the present conviction is for manufacture of  
37 methamphetamine count three points for each adult prior manufacture of  
38 methamphetamine conviction and two points for each juvenile manufacture

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

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

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

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

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

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

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

37 (20) If the present conviction is for Theft of a Motor Vehicle,  
38 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without

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

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

14 (a) Count two points for each adult prior conviction where domestic  
15 violence as defined in RCW 9.94A.030 was plead and proven after August  
16 1, 2011, for the following offenses: A violation of a no-contact order  
17 that is a felony offense, a violation of a protection order that is a  
18 felony offense, a felony domestic violence harassment offense, a felony  
19 domestic violence stalking offense, a domestic violence Burglary 1  
20 offense, a domestic violence Kidnapping 1 offense, a domestic violence  
21 Kidnapping 2 offense, a domestic violence unlawful imprisonment  
22 offense, a domestic violence Robbery 1 offense, a domestic violence  
23 Robbery 2 offense, a domestic violence Assault 1 offense, a domestic  
24 violence Assault 2 offense, a domestic violence Assault 3 offense, a  
25 domestic violence Arson 1 offense, or a domestic violence Arson 2  
26 offense;

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

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

35 (22) The fact that a prior conviction was not included in an  
36 offender's offender score or criminal history at a previous sentencing  
37 shall have no bearing on whether it is included in the criminal history  
38 or offender score for the current offense. Prior convictions that were

1 not counted in the offender score or included in criminal history under  
2 repealed or previous versions of the sentencing reform act shall be  
3 included in criminal history and shall count in the offender score if  
4 the current version of the sentencing reform act requires including or  
5 counting those convictions. Prior convictions that were not included  
6 in criminal history or in the offender score shall be included upon any  
7 resentencing to ensure imposition of an accurate sentence.

8 **Sec. 9.** RCW 10.31.100 and 2013 c 278 s 4 and 2013 c 84 s 32 are  
9 each reenacted and amended to read as follows:

10 A police officer having probable cause to believe that a person has  
11 committed or is committing a felony shall have the authority to arrest  
12 the person without a warrant. A police officer may arrest a person  
13 without a warrant for committing a misdemeanor or gross misdemeanor  
14 only when the offense is committed in the presence of the officer,  
15 except as provided in subsections (1) through (11) of this section.

16 (1) Any police officer having probable cause to believe that a  
17 person has committed or is committing a misdemeanor or gross  
18 misdemeanor, involving physical harm or threats of harm to any person  
19 or property or the unlawful taking of property or involving the use or  
20 possession of cannabis, or involving the acquisition, possession, or  
21 consumption of alcohol by a person under the age of twenty-one years  
22 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070  
23 or 9A.52.080, shall have the authority to arrest the person.

24 (2) A police officer shall arrest and take into custody, pending  
25 release on bail, personal recognizance, or court order, a person  
26 without a warrant when the officer has probable cause to believe that:

27 (a) An order has been issued of which the person has knowledge  
28 under RCW 26.44.063, or chapter 7.-- (the new chapter created in  
29 section 33, chapter 84, Laws of 2013), 7.90, 9A.46, 10.99, 26.09,  
30 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the person  
31 has violated the terms of the order restraining the person from acts or  
32 threats of violence, or restraining the person from going onto the  
33 grounds of or entering a residence, workplace, school, or day care, or  
34 prohibiting the person from knowingly coming within, or knowingly  
35 remaining within, a specified distance of a location or, in the case of  
36 an order issued under RCW 26.44.063, imposing any other restrictions or  
37 conditions upon the person; or

1 (b) A foreign protection order, as defined in RCW 26.52.010, has  
2 been issued of which the person under restraint has knowledge and the  
3 person under restraint has violated a provision of the foreign  
4 protection order prohibiting the person under restraint from contacting  
5 or communicating with another person, or excluding the person under  
6 restraint from a residence, workplace, school, or day care, or  
7 prohibiting the person from knowingly coming within, or knowingly  
8 remaining within, a specified distance of a location, or a violation of  
9 any provision for which the foreign protection order specifically  
10 indicates that a violation will be a crime; or

11 (c) The person is sixteen years or older and within the preceding  
12 four hours has assaulted a family or household member as defined in RCW  
13 10.99.020 and the officer believes: (i) A felonious assault has  
14 occurred; (ii) an assault has occurred which has resulted in bodily  
15 injury to the victim, whether the injury is observable by the  
16 responding officer or not; or (iii) that any physical action has  
17 occurred which was intended to cause another person reasonably to fear  
18 imminent serious bodily injury or death. Bodily injury means physical  
19 pain, illness, or an impairment of physical condition. When the  
20 officer has probable cause to believe that family or household members  
21 have assaulted each other, the officer is not required to arrest both  
22 persons. The officer shall arrest the person whom the officer believes  
23 to be the primary physical aggressor. In making this determination,  
24 the officer shall make every reasonable effort to consider: (i) The  
25 intent to protect victims of domestic violence under RCW 10.99.010;  
26 (ii) the comparative extent of injuries inflicted or serious threats  
27 creating fear of physical injury; and (iii) the history of domestic  
28 violence of each person involved, including whether the conduct was  
29 part of an ongoing pattern of abuse; or

30 (d) The person has violated RCW 46.61.502 or 46.61.504 or an  
31 equivalent local ordinance and the police officer has knowledge that  
32 the person has a prior offense as defined in RCW 46.61.5055 within ten  
33 years.

34 (3) Any police officer having probable cause to believe that a  
35 person has committed or is committing a violation of any of the  
36 following traffic laws shall have the authority to arrest the person:

37 (a) RCW 46.52.010, relating to duty on striking an unattended car  
38 or other property;

1 (b) RCW 46.52.020, relating to duty in case of injury to or death  
2 of a person or damage to an attended vehicle;

3 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or  
4 racing of vehicles;

5 (d) RCW 46.61.502 or 46.61.504, relating to persons under the  
6 influence of intoxicating liquor or drugs;

7 (e) RCW 46.61.503 or 46.25.110, relating to persons having alcohol  
8 or THC in their system;

9 (f) RCW 46.20.342, relating to driving a motor vehicle while  
10 operator's license is suspended or revoked;

11 ((+f)) (g) RCW 46.61.5249, relating to operating a motor vehicle  
12 in a negligent manner.

13 (4) A law enforcement officer investigating at the scene of a motor  
14 vehicle accident may arrest the driver of a motor vehicle involved in  
15 the accident if the officer has probable cause to believe that the  
16 driver has committed in connection with the accident a violation of any  
17 traffic law or regulation.

18 (5)(a) A law enforcement officer investigating at the scene of a  
19 motor vessel accident may arrest the operator of a motor vessel  
20 involved in the accident if the officer has probable cause to believe  
21 that the operator has committed, in connection with the accident, a  
22 criminal violation of chapter 79A.60 RCW.

23 (b) A law enforcement officer investigating at the scene of a motor  
24 vessel accident may issue a citation for an infraction to the operator  
25 of a motor vessel involved in the accident if the officer has probable  
26 cause to believe that the operator has committed, in connection with  
27 the accident, a violation of any boating safety law of chapter 79A.60  
28 RCW.

29 (6) Any police officer having probable cause to believe that a  
30 person has committed or is committing a violation of RCW 79A.60.040  
31 shall have the authority to arrest the person.

32 (7) An officer may act upon the request of a law enforcement  
33 officer in whose presence a traffic infraction was committed, to stop,  
34 detain, arrest, or issue a notice of traffic infraction to the driver  
35 who is believed to have committed the infraction. The request by the  
36 witnessing officer shall give an officer the authority to take  
37 appropriate action under the laws of the state of Washington.

1 (8) Any police officer having probable cause to believe that a  
2 person has committed or is committing any act of indecent exposure, as  
3 defined in RCW 9A.88.010, may arrest the person.

4 (9) A police officer may arrest and take into custody, pending  
5 release on bail, personal recognizance, or court order, a person  
6 without a warrant when the officer has probable cause to believe that  
7 an order has been issued of which the person has knowledge under  
8 chapter 10.14 RCW and the person has violated the terms of that order.

9 (10) Any police officer having probable cause to believe that a  
10 person has, within twenty-four hours of the alleged violation,  
11 committed a violation of RCW 9A.50.020 may arrest such person.

12 (11) A police officer having probable cause to believe that a  
13 person illegally possesses or illegally has possessed a firearm or  
14 other dangerous weapon on private or public elementary or secondary  
15 school premises shall have the authority to arrest the person.

16 For purposes of this subsection, the term "firearm" has the meaning  
17 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning  
18 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

19 (12) Except as specifically provided in subsections (2), (3), (4),  
20 and (7) of this section, nothing in this section extends or otherwise  
21 affects the powers of arrest prescribed in Title 46 RCW.

22 (13) No police officer may be held criminally or civilly liable for  
23 making an arrest pursuant to subsection (2) or (9) of this section if  
24 the police officer acts in good faith and without malice.

25 **Sec. 10.** RCW 46.61.5055 and 2012 c 183 s 12, 2012 c 42 s 2, and  
26 2012 c 28 s 1 are each reenacted and amended to read as follows:

27 (1) **No prior offenses in seven years.** Except as provided in RCW  
28 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation  
29 of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven  
30 years shall be punished as follows:

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

36 (i) By imprisonment for not less than one day nor more than three  
37 hundred sixty-four days. Twenty-four consecutive hours of the

1 imprisonment may not be suspended (~~(or deferred)~~) unless the court  
2 finds that the imposition of this mandatory minimum sentence would  
3 impose a substantial risk to the offender's physical or mental well-  
4 being. Whenever the mandatory minimum sentence is suspended (~~(or~~  
5 ~~deferred)~~), the court shall state in writing the reason for granting  
6 the suspension (~~(or deferral)~~) and the facts upon which the suspension  
7 (~~(or deferral)~~) is based. In lieu of the mandatory minimum term of  
8 imprisonment required under this subsection (1)(a)(i), the court may  
9 order not less than fifteen days of electronic home monitoring. The  
10 offender shall pay the cost of electronic home monitoring. The county  
11 or municipality in which the penalty is being imposed shall determine  
12 the cost. The court may also require the offender's electronic home  
13 monitoring device to include an alcohol detection breathalyzer or other  
14 separate alcohol monitoring device, and the court may restrict the  
15 amount of alcohol the offender may consume during the time the offender  
16 is on electronic home monitoring; and

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

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

26 (i) By imprisonment for not less than two days nor more than three  
27 hundred sixty-four days. (~~(Two consecutive days)~~) Forty-eight  
28 consecutive hours of the imprisonment may not be suspended (~~(or~~  
29 ~~deferred)~~) unless the court finds that the imposition of this mandatory  
30 minimum sentence would impose a substantial risk to the offender's  
31 physical or mental well-being. Whenever the mandatory minimum sentence  
32 is suspended (~~(or deferred)~~), the court shall state in writing the  
33 reason for granting the suspension (~~(or deferral)~~) and the facts upon  
34 which the suspension (~~(or deferral)~~) is based. In lieu of the  
35 mandatory minimum term of imprisonment required under this subsection  
36 (1)(b)(i), the court may order not less than thirty days of electronic  
37 home monitoring. The offender shall pay the cost of electronic home  
38 monitoring. The county or municipality in which the penalty is being

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

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

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

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

19 (i)(A) By imprisonment for not less than thirty days nor more than  
20 three hundred sixty-four days (~~and~~), sixty days of electronic home  
21 monitoring, and upon completion of the initial mandatory minimum  
22 sentence, if available, a minimum of ninety days of 24/7 alcohol/drug  
23 monitoring. In all instances, the court shall order an expanded  
24 alcohol and drug assessment, and shall order treatment as recommended  
25 by the agency conducting the assessment.

26 (B) In lieu of the mandatory minimum term of sixty days electronic  
27 home monitoring, the court may order at least an additional four days  
28 in jail. The offender shall pay for the cost of the electronic  
29 monitoring. The county or municipality where the penalty is being  
30 imposed shall determine the cost, and may include an additional fee to  
31 cover the cost of electronic monitoring for indigent offenders. The  
32 court may also require the offender's electronic home monitoring device  
33 include an alcohol detection breathalyzer or other separate alcohol  
34 monitoring device, and may restrict the amount of alcohol the offender  
35 may consume during the time the offender is on electronic home  
36 monitoring. Thirty days of imprisonment and sixty days of electronic  
37 home monitoring may not be suspended (~~or deferred~~) unless the court  
38 finds that the imposition of this mandatory minimum sentence would

1 impose a substantial risk to the offender's physical or mental well-  
2 being. Whenever the mandatory minimum sentence is suspended (~~or~~  
3 ~~deferred~~), the court shall state in writing the reason for granting  
4 the suspension (~~or deferral~~) and the facts upon which the suspension  
5 (~~or deferral~~) is based.

6 (C) The assessment-based treatment must be approved by the  
7 department of social and health services; and

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

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

17 (i)(A) By imprisonment for not less than forty-five days nor more  
18 than three hundred sixty-four days (~~and~~), ninety days of electronic  
19 home monitoring, and upon completion of the initial mandatory minimum  
20 sentence, if available, a minimum of ninety days of 24/7 alcohol/drug  
21 monitoring. In all instances, the court shall order an expanded  
22 alcohol and drug assessment, and shall order treatment as recommended  
23 by the agency conducting the assessment.

24 (B) In lieu of the mandatory minimum term of ninety days electronic  
25 home monitoring, the court may order at least an additional six days in  
26 jail. The offender shall pay for the cost of the electronic  
27 monitoring. The county or municipality where the penalty is being  
28 imposed shall determine the cost, and may include an additional fee to  
29 cover the cost of electronic monitoring for indigent offenders. The  
30 court may also require the offender's electronic home monitoring device  
31 include an alcohol detection breathalyzer or other separate alcohol  
32 monitoring device, and may restrict the amount of alcohol the offender  
33 may consume during the time the offender is on electronic home  
34 monitoring. Forty-five days of imprisonment and ninety days of  
35 electronic home monitoring may not be suspended (~~or deferred~~) unless  
36 the court finds that the imposition of this mandatory minimum sentence  
37 would impose a substantial risk to the offender's physical or mental  
38 well-being. Whenever the mandatory minimum sentence is suspended (~~or~~

1 ~~deferred~~)), the court shall state in writing the reason for granting  
2 the suspension (~~or deferral~~) and the facts upon which the suspension  
3 (~~or deferral~~) is based.

4 (C) The assessment-based treatment must be approved by the  
5 department of social and health services; and

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

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

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

19 (i)(A) By imprisonment for not less than ninety days nor more than  
20 three hundred sixty-four days (~~and~~), one hundred twenty days of  
21 electronic home monitoring, and upon completion of the initial  
22 mandatory minimum sentence, if available, a minimum of one hundred  
23 eighty days of 24/7 alcohol/drug monitoring. In all instances, the  
24 court shall order an expanded alcohol and drug assessment, and shall  
25 order treatment as recommended by the agency conducting the assessment.

26 (B) In lieu of the mandatory minimum term of one hundred twenty  
27 days of electronic home monitoring, the court may order at least an  
28 additional eight days in jail. The offender shall pay for the cost of  
29 the electronic monitoring. The county or municipality where the  
30 penalty is being imposed shall determine the cost, and may include an  
31 additional fee to cover the cost of electronic monitoring for indigent  
32 offenders. The court may also require the offender's electronic home  
33 monitoring device include an alcohol detection breathalyzer or other  
34 separate alcohol monitoring device, and may restrict the amount of  
35 alcohol the offender may consume during the time the offender is on  
36 electronic home monitoring. Ninety days of imprisonment and one  
37 hundred twenty days of electronic home monitoring may not be suspended  
38 (~~or deferred~~) unless the court finds that the imposition of this

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

6 (C) The assessment-based treatment must be approved by the  
7 department of social and health services; and

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

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

17 (i)(A) By imprisonment for not less than one hundred twenty days  
18 nor more than three hundred sixty-four days (~~(and)~~), one hundred fifty  
19 days of electronic home monitoring, and upon completion of the initial  
20 mandatory minimum sentence, if available, a minimum of one hundred  
21 eighty days of 24/7 alcohol/drug monitoring. In all instances, the  
22 court shall order an expanded alcohol and drug assessment, and shall  
23 order treatment as recommended by the agency conducting the assessment.

24 (B) In lieu of the mandatory minimum term of one hundred fifty days  
25 of electronic home monitoring, the court may order at least an  
26 additional ten days in jail. The offender shall pay for the cost of  
27 the electronic monitoring. The county or municipality where the  
28 penalty is being imposed shall determine the cost, and may include an  
29 additional fee to cover the cost of electronic monitoring for indigent  
30 offenders. The court may also require the offender's electronic home  
31 monitoring device include an alcohol detection breathalyzer or other  
32 separate alcohol monitoring device, and may restrict the amount of  
33 alcohol the offender may consume during the time the offender is on  
34 electronic home monitoring. One hundred twenty days of imprisonment  
35 and one hundred fifty days of electronic home monitoring may not be  
36 suspended (~~(or deferred)~~) unless the court finds that the imposition of  
37 this mandatory minimum sentence would impose a substantial risk to the  
38 offender's physical or mental well-being. Whenever the mandatory

1 minimum sentence is suspended (~~(or deferred)~~), the court shall state in  
2 writing the reason for granting the suspension (~~(or deferral)~~) and the  
3 facts upon which the suspension (~~(or deferral)~~) is based.

4 (C) The assessment-based treatment must be approved by the  
5 department of social and health services; and

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

10 (4) **Four or more prior offenses in ten years.** A person who is  
11 convicted of a violation of RCW 46.61.502 or 46.61.504 shall be  
12 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) **Mandated alcohol monitoring device.** The court shall require  
23 any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an  
24 equivalent local ordinance to comply with the rules and requirements of  
25 the department regarding the installation and use of a functioning  
26 ignition interlock device installed on all motor vehicles operated by  
27 the person.

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

37 (6) (~~(if)~~) **Penalty for having a minor passenger in vehicle.** In  
38 addition to any other penalty provided by law, if it is found by the

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

4 (a) ~~((Order))~~ The department of licensing shall require the use of  
5 an ignition interlock or other device for an additional six months;

6 (b) In any case in which the person has no prior offenses within  
7 seven years, and except as provided in RCW 46.61.502(6) or  
8 46.61.504(6), the court shall order ~~((a))~~ an additional penalty of  
9 twenty-four hours of imprisonment and by a fine of not less than one  
10 thousand dollars and not more than five thousand dollars. One thousand  
11 dollars of the fine may not be suspended ~~((or deferred))~~ unless the  
12 court finds the offender to be indigent;

13 (c) In any case in which the person has one prior offense within  
14 seven years, and except as provided in RCW 46.61.502(6) or  
15 46.61.504(6), the court shall order ~~((a))~~ an additional penalty of five  
16 days of imprisonment and by a fine of not less than two thousand  
17 dollars and not more than five thousand dollars. One thousand dollars  
18 of the fine may not be suspended ~~((or deferred))~~ unless the court finds  
19 the offender to be indigent;

20 (d) In any case in which the person has two or three prior offenses  
21 within seven years, and except as provided in RCW 46.61.502(6) or  
22 46.61.504(6), the court shall order ~~((a))~~ an additional penalty of ten  
23 days of imprisonment and by a fine of not less than three thousand  
24 dollars and not more than ten thousand dollars. One thousand dollars  
25 of the fine may not be suspended ~~((or deferred))~~ unless the court finds  
26 the offender to be indigent.

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

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

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

36 (c) Whether the driver was driving in the opposite direction of the  
37 normal flow of traffic on a multiple lane highway, as defined by RCW

1 46.04.350, with a posted speed limit of forty-five miles per hour or  
2 greater; and

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

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

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

12 (a) **Penalty for alcohol concentration less than 0.15.** If the  
13 person's alcohol concentration was less than 0.15, or if for reasons  
14 other than the person's refusal to take a test offered under RCW  
15 46.20.308 there is no test result indicating the person's alcohol  
16 concentration:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (11) Conditions of probation. (a) In addition to any  
25 nonsuspendable and nondeferrable jail sentence required by this  
26 section, whenever the court imposes up to three hundred sixty-four days  
27 in jail, the court shall also suspend (~~but shall not defer~~) a period  
28 of confinement for a period not exceeding five years. The court shall  
29 impose conditions of probation that include:

30 (i) Not driving a motor vehicle within this state without both a  
31 valid license to drive and proof of liability insurance or other  
32 financial responsibility for the future pursuant to RCW 46.30.020;

33 (ii) Not driving a motor vehicle within this state while having an  
34 alcohol concentration of 0.08 or more within two hours after driving;  
35 (~~and~~)

36 (iii) Not being in physical control of a motor vehicle within this  
37 state while having an alcohol concentration of 0.08 or more within two  
38 hours after driving;

1 (iv) Not driving a motor vehicle within this state while having a  
2 THC concentration of 5.00 nanograms per milliliter of whole blood or  
3 higher within two hours after driving;

4 (v) Not being in physical control of a motor vehicle within this  
5 state while having a THC concentration of 5.00 nanograms per milliliter  
6 of whole blood or higher within two hours after driving;

7 (vi) Not refusing to submit to a test of his or her breath or blood  
8 to determine alcohol or drug 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 or drug;  
12 and

13 (vii) Mandatory participation in 24/7 alcohol/drug monitoring for  
14 a minimum period of: (A) Three months if the person has been convicted  
15 of one prior violation of RCW 46.61.502 or 46.61.504 within seven  
16 years; or (B) six months if the person has been convicted of two or  
17 three prior violations of RCW 46.61.502 or 46.61.504 within seven  
18 years.

19 (b) The court may impose conditions of probation that include  
20 nonrepetition, installation of an ignition interlock device on the  
21 probationer's motor vehicle, alcohol or drug treatment, supervised  
22 probation, or other conditions that may be appropriate. The sentence  
23 may be imposed in whole or in part upon violation of a condition of  
24 probation during the suspension period.

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

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

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

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

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

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

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

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

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

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

33 (a) "24/7 alcohol/drug monitoring" means the monitoring by the use  
34 of any electronic instrument that is capable of determining and  
35 monitoring the presence of alcohol or drugs in a person's body and  
36 includes any associated equipment a participant needs in order for the  
37 device to properly perform;

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

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

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

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

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

17 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
18 9A.36.050 or an equivalent local ordinance, if the conviction is the  
19 result of a charge that was originally filed as a violation of RCW  
20 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
21 46.61.520 or 46.61.522;

22 (vi) An out-of-state conviction for a violation that would have  
23 been a violation of ~~((a))~~ (b)(i), (ii), (iii), (iv), or (v) of this  
24 subsection if committed in this state;

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

28 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
29 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
30 ordinance, if the charge under which the deferred prosecution was  
31 granted was originally filed as a violation of RCW 46.61.502 or  
32 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
33 46.61.522; ~~((e))~~

34 (ix) A deferred prosecution granted in another state for a  
35 violation of driving or having physical control of a vehicle while  
36 under the influence of intoxicating liquor or any drug if the out-of-  
37 state deferred prosecution is equivalent to the deferred prosecution

1 under chapter 10.05 RCW, including a requirement that the defendant  
2 participate in a chemical dependency treatment program; or

3 (x) A deferred sentence imposed in a prosecution for a violation of  
4 RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local  
5 ordinance, if the charge under which the deferred sentence was imposed  
6 was originally filed as a violation of RCW 46.61.502 or 46.61.504, or  
7 an equivalent local ordinance, or a violation of RCW 46.61.520 or  
8 46.61.522;

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

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

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

19 (15) Cost of 24/7 alcohol/drug monitoring. For purposes of this  
20 section, costs for participation in 24/7 alcohol/drug monitoring shall  
21 be paid by the offender. The county or municipality where the  
22 monitoring is being administered shall determine the cost. In addition  
23 to any other costs associated with 24/7 alcohol/drug monitoring imposed  
24 on the person restricted under this section, the person, unless  
25 indigent, shall pay an additional fee of twenty dollars per month.  
26 Payments must be made directly to the sheriff or chief, or the entity  
27 designated by the sheriff or chief, and deposited with the county or  
28 city treasurer pursuant to section 28 of this act. The county or city  
29 treasurer shall remit the additional twenty dollar fee to the  
30 department of licensing to be deposited into the ignition interlock  
31 device and alcohol/drug monitoring revolving account under RCW  
32 46.68.340.

33 **Sec. 11.** RCW 43.43.395 and 2012 c 183 s 16 are each amended to  
34 read as follows:

35 (1) The state patrol shall by rule provide standards for the  
36 certification, installation, repair, maintenance, monitoring,  
37 inspection, and removal of ignition interlock devices, as defined under

1 RCW 46.04.215, and equipment as outlined under this section, and may  
2 inspect the records and equipment of manufacturers and vendors during  
3 regular business hours for compliance with statutes and rules and may  
4 suspend or revoke certification for any noncompliance. (~~The state  
5 patrol may only inspect ignition interlock devices in the vehicles of  
6 customers for proper installation and functioning when installation is  
7 being done at the vendors' place of business.~~)

8 (2)(a) When a certified service provider or individual installer of  
9 ignition interlock devices is found to be out of compliance, the  
10 installation privileges of that certified service provider or  
11 individual installer may be suspended or revoked until the certified  
12 service provider or individual installer comes into compliance. During  
13 any suspension or revocation period, the certified service provider or  
14 individual installer is responsible for notifying affected customers of  
15 any changes in their service agreement.

16 (b) A certified service provider or individual installer whose  
17 certification is suspended or revoked for noncompliance has a right to  
18 an administrative hearing under chapter 34.05 RCW to contest the  
19 suspension or revocation, or both. For the administrative hearing, the  
20 procedure and rules of evidence are as specified in chapter 34.05 RCW,  
21 except as otherwise provided in this chapter. Any request for an  
22 administrative hearing must be made in writing and must be received by  
23 the state patrol within twenty days after the receipt of the notice of  
24 suspension or revocation.

25 (3)(a) An ignition interlock device must employ fuel cell  
26 technology. For the purposes of this subsection, "fuel cell  
27 technology" consists of the following electrochemical method: An  
28 electrolyte designed to oxidize the alcohol and release electrons to be  
29 collected by an active electrode; a current flow is generated within  
30 the electrode proportional to the amount of alcohol oxidized on the  
31 fuel cell surface; and the electrical current is measured and reported  
32 as breath alcohol concentration. Fuel cell technology is highly  
33 specific for alcohols.

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

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

1 (i) Meet or exceed the minimum test standards according to rules  
2 adopted by the state patrol. Only a notarized statement from a  
3 laboratory that is certified by the international organization of  
4 standardization and is capable of performing the tests specified will  
5 be accepted as proof of meeting or exceeding the standards. The  
6 notarized statement must include the name and signature of the person  
7 in charge of the tests under the (~~following statement:~~

8 ~~"Two samples of (model name), manufactured by (manufacturer)~~  
9 ~~were tested by (laboratory) certified by the International Organization of~~  
10 ~~Standardization. They do meet or exceed all specifications listed in~~  
11 ~~the Federal Register, Volume 71, Number 31 (57 FR 11772), Breath~~  
12 ~~Alcohol Ignition Interlock Devices (BAIID), NHTSA 2005-23470."~~)  
13 certification statement. The state patrol must adopt by rule the  
14 required language of the certification statement that must, at a  
15 minimum, outline that the testing meets or exceeds all specifications  
16 listed in the federal register adopted in rule by the state patrol; and

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

19 **Sec. 12.** RCW 46.20.720 and 2012 c 183 s 9 are each amended to read  
20 as follows:

21 (1) The court may order that after a period of suspension,  
22 revocation, or denial of driving privileges, and for up to as long as  
23 the court has jurisdiction, any person convicted of any offense  
24 involving the use, consumption, or possession of alcohol while  
25 operating a motor vehicle may drive only a motor vehicle equipped with  
26 a functioning ignition interlock. The court shall establish a specific  
27 calibration setting at which the interlock will prevent the vehicle  
28 from being started. The court shall also establish the period of time  
29 for which interlock use will be required.

30 (2) Under RCW 46.61.5055 and subject to the exceptions listed in  
31 that statute, the court shall order any person convicted of a violation  
32 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to  
33 comply with the rules and requirements of the department regarding the  
34 installation and use of a functioning ignition interlock device  
35 installed on all motor vehicles operated by the person. The court  
36 shall order any person participating in a deferred prosecution program

1 under RCW 10.05.020 for a violation of RCW 46.61.502 or 46.61.504 or an  
2 equivalent local ordinance to have a functioning ignition interlock  
3 device installed on all motor vehicles operated by the person.

4 (3)(a) The department shall require that, after any applicable  
5 period of suspension, revocation, or denial of driving privileges, a  
6 person may drive only a motor vehicle equipped with a functioning  
7 ignition interlock device if the person is convicted of a violation of  
8 RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state  
9 statute or ordinance. The department shall require that a person may  
10 drive only a motor vehicle equipped with a functioning ignition  
11 interlock device if the person is convicted of a violation of RCW  
12 46.61.5249 or 46.61.500 and is required under RCW 46.61.5249(4) or  
13 46.61.500(3) (a) or (b) to install an ignition interlock device on all  
14 vehicles operated by the person.

15 ~~((The department may waive the requirement for the use of such a  
16 device if it concludes that such devices are not reasonably available  
17 in the local area.))~~

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

28 (ii) The employer exemption does not apply:

29 (A) When the employer's vehicle is assigned exclusively to the  
30 restricted driver and used solely for commuting to and from  
31 employment((, the employer exemption does not apply));

32 (B) For the first thirty days after an ignition interlock device  
33 has been installed as the result of a first conviction of a violation  
34 of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state  
35 statute or ordinance; or

36 (C) For the first three hundred sixty-five days after an ignition  
37 interlock device has been installed as the result of a second or

1 subsequent conviction of a violation of RCW 46.61.502 or 46.61.504 or  
2 an equivalent local or out-of-state statute or ordinance.

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

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

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

12 ~~((c))~~ (iii) For a person who has previously been restricted under  
13 ~~((b))~~ (c)(ii) of 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)~~ Any attempt to start the vehicle with a breath alcohol  
21 concentration of 0.04 or more unless a subsequent test performed within  
22 ten minutes registers a breath alcohol concentration lower than 0.04  
23 and the digital image confirms the same person provided both samples;

24 (b) Failure to take ~~((or pass))~~ any ~~((required retest))~~ random test  
25 unless a review of the digital image confirms that the vehicle was not  
26 occupied by the driver at the time of the missed test; ~~((or))~~

27 (c) Failure to pass any random retest with a breath alcohol  
28 concentration of 0.025 or lower unless a subsequent test performed  
29 within ten minutes registers a breath alcohol concentration lower than  
30 0.025, and the digital image confirms the same person provided both  
31 samples; or

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

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

1 (6) In addition to any other costs associated with the use of an  
2 ignition interlock device imposed on the person restricted under this  
3 section, the person shall pay an additional fee of twenty dollars per  
4 month. Payments must be made directly to the ignition interlock  
5 company. The company shall remit the additional twenty dollar fee to  
6 the department to be deposited into the ignition interlock device and  
7 alcohol/drug monitoring revolving account.

8 **Sec. 13.** RCW 46.20.308 and 2013 c 3 s 31 (Initiative Measure No.  
9 502), 2012 c 183 s 7, and 2012 c 80 s 12 are each reenacted and amended  
10 to read as follows:

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

22 (2) The test or tests of breath shall be administered at the  
23 direction of a law enforcement officer having reasonable grounds to  
24 believe the person to have been driving or in actual physical control  
25 of a motor vehicle within this state while under the influence of  
26 intoxicating liquor or any drug or the person to have been driving or  
27 in actual physical control of a motor vehicle while having alcohol or  
28 THC in a concentration in violation of RCW 46.61.503 in his or her  
29 system and being under the age of twenty-one. However, in those  
30 instances where the person is incapable due to physical injury,  
31 physical incapacity, or other physical limitation, of providing a  
32 breath sample or where the person is being treated in a hospital,  
33 clinic, doctor's office, emergency medical vehicle, ambulance, or other  
34 similar facility or where the officer has reasonable grounds to believe  
35 that the person is under the influence of a drug, a blood test shall be  
36 administered by a qualified person as provided in RCW 46.61.506(5).  
37 The officer shall inform the person of his or her right to refuse the

1 breath or blood test, and of his or her right to have additional tests  
2 administered by any qualified person of his or her choosing as provided  
3 in RCW 46.61.506. The officer shall warn the driver, in substantially  
4 the following language, that:

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

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

10 (c) If the driver submits to the test and the test is administered,  
11 the driver's license, permit, or privilege to drive will be suspended,  
12 revoked, or denied for at least ninety days if:

13 (i) The driver is age twenty-one or over and the test indicates  
14 either that the alcohol concentration of the driver's breath or blood  
15 is 0.08 or more or that the THC concentration of the driver's blood is  
16 5.00 or more; or

17 (ii) The driver is under age twenty-one and the test indicates  
18 either that the alcohol concentration of the driver's breath or blood  
19 is 0.02 or more or that the THC concentration of the driver's blood is  
20 above 0.00; or

21 (iii) The driver is under age twenty-one and the driver is in  
22 violation of RCW 46.61.502 or 46.61.504; and

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

26 (3) Except as provided in this section, the test administered shall  
27 be of the breath only. If an individual is unconscious or is under  
28 arrest for the crime of felony driving under the influence of  
29 intoxicating liquor or drugs under RCW 46.61.502(6), felony physical  
30 control of a motor vehicle while under the influence of intoxicating  
31 liquor or any drug under RCW 46.61.504(6), vehicular homicide as  
32 provided in RCW 46.61.520, or vehicular assault as provided in RCW  
33 46.61.522, or if an individual is under arrest for the crime of driving  
34 while under the influence of intoxicating liquor or drugs as provided  
35 in RCW 46.61.502, which arrest results from an accident in which there  
36 has been serious bodily injury to another person, a breath or blood  
37 test may be administered without the consent of the individual so  
38 arrested.

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

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

12 (6) If, after arrest and after the other applicable conditions and  
13 requirements of this section have been satisfied, a test or tests of  
14 the person's blood or breath is administered and the test results  
15 indicate that the alcohol concentration of the person's breath or blood  
16 is 0.08 or more, or the THC concentration of the person's blood is 5.00  
17 or more, if the person is age twenty-one or over, or that the alcohol  
18 concentration of the person's breath or blood is 0.02 or more, or the  
19 THC concentration of the person's blood is above 0.00, if the person is  
20 under the age of twenty-one, or the person refuses to submit to a test,  
21 the arresting officer or other law enforcement officer at whose  
22 direction any test has been given, or the department, where applicable,  
23 if the arrest results in a test of the person's blood, shall:

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

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

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

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

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

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

10 (i) That the officer had reasonable grounds to believe the arrested  
11 person had been driving or was in actual physical control of a motor  
12 vehicle within this state while under the influence of intoxicating  
13 liquor or drugs, or both, or was under the age of twenty-one years and  
14 had been driving or was in actual physical control of a motor vehicle  
15 while having an alcohol or THC concentration in violation of RCW  
16 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, or the THC concentration of the person's blood was 5.00 or  
22 more, if the person is age twenty-one or over, or that the alcohol  
23 concentration of the person's breath or blood was 0.02 or more, or the  
24 THC concentration of the person's blood was above 0.00, if the person  
25 is under the age of twenty-one; and

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

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

37 (8) A person receiving notification under subsection (6)(b) of this  
38 section may, within twenty days after the notice has been given,

1 request in writing a formal hearing before the department. The person  
2 shall pay a fee of three hundred seventy-five dollars as part of the  
3 request. If the request is mailed, it must be postmarked within twenty  
4 days after receipt of the notification. Upon timely receipt of such a  
5 request for a formal hearing, including receipt of the required three  
6 hundred seventy-five dollar fee, the department shall afford the person  
7 an opportunity for a hearing. The department may waive the required  
8 three hundred seventy-five dollar fee if the person is an indigent as  
9 defined in RCW 10.101.010. Except as otherwise provided in this  
10 section, the hearing is subject to and shall be scheduled and conducted  
11 in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be  
12 conducted in the county of the arrest, except that all or part of the  
13 hearing may, at the discretion of the department, be conducted by  
14 telephone or other electronic means. The hearing shall be held within  
15 sixty days following the arrest or following the date notice has been  
16 given in the event notice is given by the department following a blood  
17 test, unless otherwise agreed to by the department and the person, in  
18 which case the action by the department shall be stayed, and any valid  
19 temporary license marked under subsection (6)((+e+)) of this section  
20 extended, if the person is otherwise eligible for licensing. For the  
21 purposes of this section, the scope of the hearing shall cover the  
22 issues of whether a law enforcement officer had reasonable grounds to  
23 believe the person had been driving or was in actual physical control  
24 of a motor vehicle within this state while under the influence of  
25 intoxicating liquor or any drug or had been driving or was in actual  
26 physical control of a motor vehicle within this state while having  
27 alcohol in his or her system in a concentration of 0.02 or more, or THC  
28 in his or her system in a concentration above 0.00, if the person was  
29 under the age of twenty-one, whether the person was placed under  
30 arrest, and (a) whether the person refused to submit to the test or  
31 tests upon request of the officer after having been informed that such  
32 refusal would result in the revocation of the person's license, permit,  
33 or privilege to drive, or (b) if a test or tests were administered,  
34 whether the applicable requirements of this section were satisfied  
35 before the administration of the test or tests, whether the person  
36 submitted to the test or tests, or whether a test was administered  
37 without express consent as permitted under this section, and whether  
38 the test or tests indicated that the alcohol concentration of the

1 person's breath or blood was 0.08 or more, or the THC concentration of  
2 the person's blood was 5.00 or more, if the person was age twenty-one  
3 or over at the time of the arrest, or that the alcohol concentration of  
4 the person's breath or blood was 0.02 or more, or the THC concentration  
5 of the person's blood was above 0.00, if the person was under the age  
6 of twenty-one at the time of the arrest. The sworn report or report  
7 under a declaration authorized by RCW 9A.72.085 submitted by a law  
8 enforcement officer is prima facie evidence that the officer had  
9 reasonable grounds to believe the person had been driving or was in  
10 actual physical control of a motor vehicle within this state while  
11 under the influence of intoxicating liquor or drugs, or both, or the  
12 person had been driving or was in actual physical control of a motor  
13 vehicle within this state while having alcohol in his or her system in  
14 a concentration of 0.02 or more, or THC in his or her system in a  
15 concentration above 0.00, and was under the age of twenty-one and that  
16 the officer complied with the requirements of this section.

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

32 (9) If the suspension, revocation, or denial is sustained after  
33 such a hearing, the person whose license, privilege, or permit is  
34 suspended, revoked, or denied has the right to file a petition in the  
35 superior court of the county of arrest to review the final order of  
36 revocation by the department in the same manner as an appeal from a  
37 decision of a court of limited jurisdiction. Notice of appeal must be  
38 filed within thirty days after the date the final order is served or

1 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ  
2 1.1, or other statutes or rules referencing de novo review, the appeal  
3 shall be limited to a review of the record of the administrative  
4 hearing. The appellant must pay the costs associated with obtaining  
5 the record of the hearing before the hearing officer. The filing of  
6 the appeal does not stay the effective date of the suspension,  
7 revocation, or denial. A petition filed under this subsection must  
8 include the petitioner's grounds for requesting review. Upon granting  
9 petitioner's request for review, the court shall review the  
10 department's final order of suspension, revocation, or denial as  
11 expeditiously as possible. The review must be limited to a  
12 determination of whether the department has committed any errors of  
13 law. The superior court shall accept those factual determinations  
14 supported by substantial evidence in the record: (a) That were  
15 expressly made by the department; or (b) that may reasonably be  
16 inferred from the final order of the department. The superior court  
17 may reverse, affirm, or modify the decision of the department or remand  
18 the case back to the department for further proceedings. The decision  
19 of the superior court must be in writing and filed in the clerk's  
20 office with the other papers in the case. The court shall state the  
21 reasons for the decision. If judicial relief is sought for a stay or  
22 other temporary remedy from the department's action, the court shall  
23 not grant such relief unless the court finds that the appellant is  
24 likely to prevail in the appeal and that without a stay the appellant  
25 will suffer irreparable injury. If the court stays the suspension,  
26 revocation, or denial it may impose conditions on such stay.

27 (10)(a) If a person whose driver's license, permit, or privilege to  
28 drive has been or will be suspended, revoked, or denied under  
29 subsection (7) of this section, other than as a result of a breath or  
30 blood test refusal, and who has not committed an offense for which he  
31 or she was granted a deferred prosecution under chapter 10.05 RCW,  
32 petitions a court for a deferred prosecution on criminal charges  
33 arising out of the arrest for which action has been or will be taken  
34 under subsection (7) of this section, or notifies the department of  
35 licensing of the intent to seek such a deferred prosecution, then the  
36 license suspension or revocation shall be stayed pending entry of the  
37 deferred prosecution. The stay shall not be longer than one hundred  
38 fifty days after the date charges are filed, or two years after the

1 date of the arrest, whichever time period is shorter. If the court  
2 stays the suspension, revocation, or denial, it may impose conditions  
3 on such stay. If the person is otherwise eligible for licensing, the  
4 department shall issue a temporary license, or extend any valid  
5 temporary license ((marked)) under subsection (6) of this section, for  
6 the period of the stay. If a deferred prosecution treatment plan is  
7 not recommended in the report made under RCW 10.05.050, or if treatment  
8 is rejected by the court, or if the person declines to accept an  
9 offered treatment plan, or if the person violates any condition imposed  
10 by the court, then the court shall immediately direct the department to  
11 cancel the stay and any temporary marked license or extension of a  
12 temporary license issued under this subsection.

13 (b) A suspension, revocation, or denial imposed under this section,  
14 other than as a result of a breath or blood test refusal, shall be  
15 stayed if the person is accepted for deferred prosecution as provided  
16 in chapter 10.05 RCW for the incident upon which the suspension,  
17 revocation, or denial is based. If the deferred prosecution is  
18 terminated, the stay shall be lifted and the suspension, revocation, or  
19 denial reinstated. If the deferred prosecution is completed, the stay  
20 shall be lifted and the suspension, revocation, or denial canceled.

21 (c) The provisions of (b) of this subsection relating to a stay of  
22 a suspension, revocation, or denial and the cancellation of any  
23 suspension, revocation, or denial do not apply to the suspension,  
24 revocation, denial, or disqualification of a person's commercial  
25 driver's license or privilege to operate a commercial motor vehicle.

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

32 **Sec. 14.** RCW 46.20.270 and 2010 c 249 s 11 are each amended to  
33 read as follows:

34 (1) (~~Whenever any person is convicted of any offense for which~~  
35 ~~this title makes mandatory the withholding of the driving privilege of~~  
36 ~~such person by the department, the court in which such conviction is~~  
37 ~~had shall forthwith mark the person's Washington state driver's license~~

1 ~~or permit to drive, if any, in a manner authorized by the department.~~  
2 ~~A valid driver's license or permit to drive marked under this~~  
3 ~~subsection shall remain in effect until the person's driving privilege~~  
4 ~~is withheld by the department pursuant to notice given under RCW~~  
5 ~~46.20.245, unless the license or permit expires or otherwise becomes~~  
6 ~~invalid prior to the effective date of this action. Perfection of~~  
7 ~~notice of appeal shall stay the execution of sentence including the~~  
8 ~~withholding of the driving privilege.~~

9 (2)) Every court having jurisdiction over offenses committed under  
10 this chapter, or any other act of this state or municipal ordinance  
11 adopted by a local authority regulating the operation of motor vehicles  
12 on highways, or any federal authority having jurisdiction over offenses  
13 substantially the same as those set forth in this title which occur on  
14 federal installations within this state, shall immediately forward to  
15 the department a forfeiture of bail or collateral deposited to secure  
16 the defendant's appearance in court, a payment of a fine, penalty, or  
17 court cost, a plea of guilty or nolo contendere or a finding of guilt,  
18 or a finding that any person has committed a traffic infraction an  
19 abstract of the court record in the form prescribed by rule of the  
20 supreme court, showing the conviction of any person or the finding that  
21 any person has committed a traffic infraction in said court for a  
22 violation of any said laws other than regulations governing standing,  
23 stopping, parking, and pedestrian offenses.

24 ((3)) (2) Every state agency or municipality having jurisdiction  
25 over offenses committed under this chapter, or under any other act of  
26 this state or municipal ordinance adopted by a state or local authority  
27 regulating the operation of motor vehicles on highways, may forward to  
28 the department within ten days of failure to respond, failure to pay a  
29 penalty, failure to appear at a hearing to contest the determination  
30 that a violation of any statute, ordinance, or regulation relating to  
31 standing, stopping, parking, or civil penalties issued under RCW  
32 46.63.160 has been committed, or failure to appear at a hearing to  
33 explain mitigating circumstances, an abstract of the citation record in  
34 the form prescribed by rule of the department, showing the finding by  
35 such municipality that two or more violations of laws governing  
36 standing, stopping, and parking or one or more civil penalties issued  
37 under RCW 46.63.160 have been committed and indicating the nature of  
38 the defendant's failure to act. Such violations or infractions may not

1 have occurred while the vehicle is stolen from the registered owner or  
2 is leased or rented under a bona fide commercial vehicle lease or  
3 rental agreement between a lessor engaged in the business of leasing  
4 vehicles and a lessee who is not the vehicle's registered owner. The  
5 department may enter into agreements of reciprocity with the duly  
6 authorized representatives of the states for reporting to each other  
7 violations of laws governing standing, stopping, and parking.

8 ~~((+4))~~ (3) For the purposes of this title and except as defined in  
9 RCW 46.25.010, "conviction" means a final conviction in a state or  
10 municipal court or by any federal authority having jurisdiction over  
11 offenses substantially the same as those set forth in this title which  
12 occur on federal installations in this state, an unvacated forfeiture  
13 of bail or collateral deposited to secure a defendant's appearance in  
14 court, the payment of a fine or court cost, a plea of guilty or nolo  
15 contendere, or a finding of guilt on a traffic law violation charge,  
16 regardless of whether the imposition of sentence or sanctions are  
17 deferred or the penalty is suspended, but not including entry into a  
18 deferred prosecution agreement under chapter 10.05 RCW.

19 (4) Perfection of a notice of appeal shall stay the execution of  
20 the sentence pertaining to the withholding of the driving privilege.

21 (5) For the purposes of this title, "finding that a traffic  
22 infraction has been committed" means a failure to respond to a notice  
23 of infraction or a determination made by a court pursuant to this  
24 chapter. Payment of a monetary penalty made pursuant to RCW  
25 46.63.070(2) is deemed equivalent to such a finding.

26 **Sec. 15.** RCW 9.94A.603 and 2006 c 73 s 4 are each amended to read  
27 as follows:

28 (1) When sentencing an offender convicted of a violation of RCW  
29 46.61.502(6) or 46.61.504(6), the court, in addition to imposing the  
30 provisions of this chapter, shall order the offender to undergo alcohol  
31 or chemical dependency treatment services during incarceration. The  
32 offender shall be liable for the cost of treatment unless the court  
33 finds the offender indigent and no third-party insurance coverage is  
34 available.

35 (2) The provisions under RCW 46.61.5055 ~~((+8))~~ (9) and ~~((+9))~~  
36 (10) regarding the suspension, revocation, or denial of the offender's

1 license, permit, or nonresident privilege to drive shall apply to an  
2 offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6).

3 (3) The provisions under RCW 46.20.720 and 46.61.5055(~~(+5)~~) (6)  
4 regarding ignition interlock devices shall apply to an offender  
5 convicted of a violation of RCW 46.61.502(6) or 46.61.504(6).

6 **Sec. 16.** RCW 46.25.090 and 2011 c 227 s 4 are each amended to read  
7 as follows:

8 (1) A person is disqualified from driving a commercial motor  
9 vehicle for a period of not less than one year if a report has been  
10 received by the department pursuant to RCW 46.20.308 or 46.25.120, or  
11 if the person has been convicted of a first violation, within this or  
12 any other jurisdiction, of:

13 (a) Driving or in physical control of a motor vehicle under the  
14 influence of alcohol or any drug;

15 (b)(i) Driving a commercial motor vehicle while the alcohol  
16 concentration in the person's system is 0.04 or more(~~(, or driving a~~  
17 noncommercial motor vehicle while the alcohol concentration in the  
18 person's system is 0.08 or more, or is 0.02 or more)); (ii) driving a  
19 commercial motor vehicle with any measurable amount of THC  
20 concentration; (iii) driving a noncommercial motor vehicle while the  
21 alcohol concentration in the person's system is 0.08 or more; (iv)  
22 driving a noncommercial motor vehicle while the alcohol concentration  
23 in the person's system is 0.02 or more if the person is under age  
24 twenty-one; (v) driving a noncommercial motor vehicle with a THC  
25 concentration of 5.00 or more; or (vi) driving a noncommercial motor  
26 vehicle with a THC concentration above 0.00 if the person is under age  
27 twenty-one, as determined by any testing methods approved by law in  
28 this state or any other state or jurisdiction;

29 (c) Leaving the scene of an accident involving a motor vehicle  
30 driven by the person;

31 (d) Using a motor vehicle in the commission of a felony;

32 (e) Refusing to submit to a test or tests to determine the driver's  
33 alcohol concentration or the presence of any drug while driving a motor  
34 vehicle;

35 (f) Driving a commercial motor vehicle when, as a result of prior  
36 violations committed while operating a commercial motor vehicle, the

1 driver's commercial driver's license is revoked, suspended, or  
2 canceled, or the driver is disqualified from operating a commercial  
3 motor vehicle;

4 (g) Causing a fatality through the negligent operation of a  
5 commercial motor vehicle, including but not limited to the crimes of  
6 vehicular homicide and negligent homicide.

7 If any of the violations set forth in this subsection occurred  
8 while transporting hazardous material, the person is disqualified for  
9 a period of not less than three years.

10 (2) A person is disqualified for life if it has been determined  
11 that the person has committed or has been convicted of two or more  
12 violations of any of the offenses specified in subsection (1) of this  
13 section, or any combination of those offenses, arising from two or more  
14 separate incidents.

15 (3) The department may adopt rules, in accordance with federal  
16 regulations, establishing guidelines, including conditions, under which  
17 a disqualification for life under subsection (2) of this section may be  
18 reduced to a period of not less than ten years.

19 (4) A person is disqualified from driving a commercial motor  
20 vehicle for life who uses a motor vehicle in the commission of a felony  
21 involving the manufacture, distribution, or dispensing of a controlled  
22 substance, as defined by chapter 69.50 RCW, or possession with intent  
23 to manufacture, distribute, or dispense a controlled substance, as  
24 defined by chapter 69.50 RCW.

25 (5)(a) A person is disqualified from driving a commercial motor  
26 vehicle for a period of:

27 (i) Not less than sixty days if:

28 (A) Convicted of or found to have committed a second serious  
29 traffic violation while driving a commercial motor vehicle; or

30 (B) Convicted of reckless driving, where there has been a prior  
31 serious traffic violation; or

32 (ii) Not less than one hundred twenty days if:

33 (A) Convicted of or found to have committed a third or subsequent  
34 serious traffic violation while driving a commercial motor vehicle; or

35 (B) Convicted of reckless driving, where there has been two or more  
36 prior serious traffic violations.

37 (b) The disqualification period under (a)(ii) of this subsection  
38 must be in addition to any other previous period of disqualification.

1 (c) For purposes of determining prior serious traffic violations  
2 under this subsection, each conviction of or finding that a driver has  
3 committed a serious traffic violation while driving a commercial motor  
4 vehicle or noncommercial motor vehicle, arising from a separate  
5 incident occurring within a three-year period, must be counted.

6 (6) A person is disqualified from driving a commercial motor  
7 vehicle for a period of:

8 (a) Not less than one hundred eighty days nor more than one year if  
9 convicted of or found to have committed a first violation of an out-of-  
10 service order while driving a commercial vehicle;

11 (b) Not less than two years nor more than five years if, during a  
12 ten-year period, the person is convicted of or is found to have  
13 committed two violations of out-of-service orders while driving a  
14 commercial motor vehicle in separate incidents;

15 (c) Not less than three years nor more than five years if, during  
16 a ten-year period, the person is convicted of or is found to have  
17 committed three or more violations of out-of-service orders while  
18 driving commercial motor vehicles in separate incidents;

19 (d) Not less than one hundred eighty days nor more than two years  
20 if the person is convicted of or is found to have committed a first  
21 violation of an out-of-service order while transporting hazardous  
22 materials, or while operating motor vehicles designed to transport  
23 sixteen or more passengers, including the driver. A person is  
24 disqualified for a period of not less than three years nor more than  
25 five years if, during a ten-year period, the person is convicted of or  
26 is found to have committed subsequent violations of out-of-service  
27 orders, in separate incidents, while transporting hazardous materials,  
28 or while operating motor vehicles designed to transport sixteen or more  
29 passengers, including the driver.

30 (7) A person is disqualified from driving a commercial motor  
31 vehicle if a report has been received by the department under RCW  
32 46.25.125 that the person has received a verified positive drug test or  
33 positive alcohol confirmation test as part of the testing program  
34 conducted under 49 C.F.R. 40. A disqualification under this subsection  
35 remains in effect until the person undergoes a drug and alcohol  
36 assessment by a substance abuse professional meeting the requirements  
37 of 49 C.F.R. 40, and the person presents evidence of satisfactory  
38 participation in or successful completion of a drug or alcohol

1 treatment and/or education program as recommended by the substance  
2 abuse professional, and until the person has met the requirements of  
3 RCW 46.25.100. The substance abuse professional shall forward a  
4 diagnostic evaluation and treatment recommendation to the department of  
5 licensing for use in determining the person's eligibility for driving  
6 a commercial motor vehicle. Persons who are disqualified under this  
7 subsection more than twice in a five-year period are disqualified for  
8 life.

9 (8)(a) A person is disqualified from driving a commercial motor  
10 vehicle for the period of time specified in (b) of this subsection if  
11 he or she is convicted of or is found to have committed one of the  
12 following six offenses at a railroad-highway grade crossing while  
13 operating a commercial motor vehicle in violation of a federal, state,  
14 or local law or regulation:

15 (i) For drivers who are not required to always stop, failing to  
16 slow down and check that the tracks are clear of an approaching train;

17 (ii) For drivers who are not required to always stop, failing to  
18 stop before reaching the crossing, if the tracks are not clear;

19 (iii) For drivers who are always required to stop, failing to stop  
20 before driving onto the crossing;

21 (iv) For all drivers, failing to have sufficient space to drive  
22 completely through the crossing without stopping;

23 (v) For all drivers, failing to obey a traffic control device or  
24 the directions of an enforcement officer at the crossing;

25 (vi) For all drivers, failing to negotiate a crossing because of  
26 insufficient undercarriage clearance.

27 (b) A person is disqualified from driving a commercial motor  
28 vehicle for a period of:

29 (i) Not less than sixty days if the driver is convicted of or is  
30 found to have committed a first violation of a railroad-highway grade  
31 crossing violation;

32 (ii) Not less than one hundred twenty days if the driver is  
33 convicted of or is found to have committed a second railroad-highway  
34 grade crossing violation in separate incidents within a three-year  
35 period;

36 (iii) Not less than one year if the driver is convicted of or is  
37 found to have committed a third or subsequent railroad-highway grade  
38 crossing violation in separate incidents within a three-year period.

1 (9) A person is disqualified from driving a commercial motor  
2 vehicle for not more than one year if a report has been received by the  
3 department from the federal motor carrier safety administration that  
4 the person's driving has been determined to constitute an imminent  
5 hazard as defined by 49 C.F.R. 383.5. A person who is simultaneously  
6 disqualified from driving a commercial motor vehicle under this  
7 subsection and under other provisions of this chapter, or under 49  
8 C.F.R. 383.52, shall serve those disqualification periods concurrently.

9 (10) Within ten days after suspending, revoking, or canceling a  
10 commercial driver's license or disqualifying a driver from operating a  
11 commercial motor vehicle, the department shall update its records to  
12 reflect that action.

13 **Sec. 17.** RCW 46.25.120 and 2006 c 327 s 5 are each amended to read  
14 as follows:

15 (1) A person who drives a commercial motor vehicle within this  
16 state is deemed to have given consent, subject to RCW 46.61.506, to  
17 take a test or tests of that person's blood or breath for the purpose  
18 of determining that person's alcohol concentration or the presence of  
19 other drugs.

20 (2) A test or tests may be administered at the direction of a law  
21 enforcement officer, who after stopping or detaining the commercial  
22 motor vehicle driver, has probable cause to believe that driver was  
23 driving a commercial motor vehicle while having alcohol in his or her  
24 system or while under the influence of any drug.

25 (3) The law enforcement officer requesting the test under  
26 subsection (1) of this section shall warn the person requested to  
27 submit to the test that a refusal to submit will result in that person  
28 being disqualified from operating a commercial motor vehicle under RCW  
29 46.25.090.

30 (4) If the person refuses testing, or submits to a test that  
31 discloses an alcohol concentration of 0.04 or more or any measurable  
32 amount of THC concentration, the law enforcement officer shall submit  
33 a sworn report to the department certifying that the test was requested  
34 pursuant to subsection (1) of this section and that the person refused  
35 to submit to testing, or submitted to a test that disclosed an alcohol  
36 concentration of 0.04 or more or any measurable amount of THC  
37 concentration.

1 (5) Upon receipt of the sworn report of a law enforcement officer  
2 under subsection (4) of this section, the department shall disqualify  
3 the driver from driving a commercial motor vehicle under RCW 46.25.090,  
4 subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The  
5 hearing shall be conducted in the county of the arrest. For the  
6 purposes of this section, the hearing shall cover the issues of whether  
7 a law enforcement officer had reasonable grounds to believe the person  
8 had been driving or was in actual physical control of a commercial  
9 motor vehicle within this state while having alcohol in the person's  
10 system or while under the influence of any drug, whether the person  
11 refused to submit to the test or tests upon request of the officer  
12 after having been informed that the refusal would result in the  
13 disqualification of the person from driving a commercial motor vehicle,  
14 and, if the test was administered, whether the results indicated an  
15 alcohol concentration of 0.04 percent or more or any measurable amount  
16 of THC concentration. The department shall order that the  
17 disqualification of the person either be rescinded or sustained. Any  
18 decision by the department disqualifying a person from driving a  
19 commercial motor vehicle is stayed and does not take effect while a  
20 formal hearing is pending under this section or during the pendency of  
21 a subsequent appeal to superior court so long as there is no conviction  
22 for a moving violation or no finding that the person has committed a  
23 traffic infraction that is a moving violation during the pendency of  
24 the hearing and appeal. If the disqualification of the person is  
25 sustained after the hearing, the person who is disqualified may file a  
26 petition in the superior court of the county of arrest to review the  
27 final order of disqualification by the department in the manner  
28 provided in RCW 46.20.334.

29 (6) If a motor carrier or employer who is required to have a  
30 testing program under 49 C.F.R. 382 knows that a commercial driver in  
31 his or her employ has refused to submit to testing under this section  
32 and has not been disqualified from driving a commercial motor vehicle,  
33 the employer may notify law enforcement or his or her medical review  
34 officer or breath alcohol technician that the driver has refused to  
35 submit to the required testing.

36 (7) The hearing provisions of this section do not apply to those  
37 persons disqualified from driving a commercial motor vehicle under RCW  
38 46.25.090(7).

1           **Sec. 18.** RCW 46.25.110 and 1989 c 178 s 13 are each amended to  
2 read as follows:

3           (1) Notwithstanding any other provision of Title 46 RCW, a person  
4 may not drive, operate, or be in physical control of a commercial motor  
5 vehicle while having alcohol or THC in his or her system.

6           (2) Law enforcement or appropriate officials shall issue an out-of-  
7 service order valid for twenty-four hours against a person who drives,  
8 operates, or is in physical control of a commercial motor vehicle while  
9 having alcohol or THC in his or her system or who refuses to take a  
10 test to determine his or her alcohol content or THC concentration as  
11 provided by RCW 46.25.120.

12           **Sec. 19.** RCW 9.94A.535 and 2013 c 256 s 2 and 2013 c 84 s 26 are  
13 each reenacted and amended to read as follows:

14           The court may impose a sentence outside the standard sentence range  
15 for an offense if it finds, considering the purpose of this chapter,  
16 that there are substantial and compelling reasons justifying an  
17 exceptional sentence. Facts supporting aggravated sentences, other  
18 than the fact of a prior conviction, shall be determined pursuant to  
19 the provisions of RCW 9.94A.537.

20           Whenever a sentence outside the standard sentence range is imposed,  
21 the court shall set forth the reasons for its decision in written  
22 findings of fact and conclusions of law. A sentence outside the  
23 standard sentence range shall be a determinate sentence.

24           If the sentencing court finds that an exceptional sentence outside  
25 the standard sentence range should be imposed, the sentence is subject  
26 to review only as provided for in RCW 9.94A.585(4).

27           A departure from the standards in RCW 9.94A.589 (1) and (2)  
28 governing whether sentences are to be served consecutively or  
29 concurrently is an exceptional sentence subject to the limitations in  
30 this section, and may be appealed by the offender or the state as set  
31 forth in RCW 9.94A.585 (2) through (6).

32           (1) Mitigating Circumstances - Court to Consider

33           The court may impose an exceptional sentence below the standard  
34 range if it finds that mitigating circumstances are established by a  
35 preponderance of the evidence. The following are illustrative only and  
36 are not intended to be exclusive reasons for exceptional sentences.

1 (a) To a significant degree, the victim was an initiator, willing  
2 participant, aggressor, or provoker of the incident.

3 (b) Before detection, the defendant compensated, or made a good  
4 faith effort to compensate, the victim of the criminal conduct for any  
5 damage or injury sustained.

6 (c) The defendant committed the crime under duress, coercion,  
7 threat, or compulsion insufficient to constitute a complete defense but  
8 which significantly affected his or her conduct.

9 (d) The defendant, with no apparent predisposition to do so, was  
10 induced by others to participate in the crime.

11 (e) The defendant's capacity to appreciate the wrongfulness of his  
12 or her conduct, or to conform his or her conduct to the requirements of  
13 the law, was significantly impaired. Voluntary use of drugs or alcohol  
14 is excluded.

15 (f) The offense was principally accomplished by another person and  
16 the defendant manifested extreme caution or sincere concern for the  
17 safety or well-being of the victim.

18 (g) The operation of the multiple offense policy of RCW 9.94A.589  
19 results in a presumptive sentence that is clearly excessive in light of  
20 the purpose of this chapter, as expressed in RCW 9.94A.010.

21 (h) The defendant or the defendant's children suffered a continuing  
22 pattern of physical or sexual abuse by the victim of the offense and  
23 the offense is a response to that abuse.

24 (i) The defendant was making a good faith effort to obtain or  
25 provide medical assistance for someone who is experiencing a drug-  
26 related overdose.

27 (j) The current offense involved domestic violence, as defined in  
28 RCW 10.99.020, and the defendant suffered a continuing pattern of  
29 coercion, control, or abuse by the victim of the offense and the  
30 offense is a response to that coercion, control, or abuse.

31 (2) Aggravating Circumstances - Considered and Imposed by the Court  
32 The trial court may impose an aggravated exceptional sentence  
33 without a finding of fact by a jury under the following circumstances:

34 (a) The defendant and the state both stipulate that justice is best  
35 served by the imposition of an exceptional sentence outside the  
36 standard range, and the court finds the exceptional sentence to be  
37 consistent with and in furtherance of the interests of justice and the  
38 purposes of the sentencing reform act.

1 (b) The defendant's prior unscored misdemeanor or prior unscored  
2 foreign criminal history results in a presumptive sentence that is  
3 clearly too lenient in light of the purpose of this chapter, as  
4 expressed in RCW 9.94A.010.

5 (c) The defendant has committed multiple current offenses and the  
6 defendant's high offender score results in some of the current offenses  
7 going unpunished.

8 (d) The failure to consider the defendant's prior criminal history  
9 which was omitted from the offender score calculation pursuant to RCW  
10 9.94A.525 results in a presumptive sentence that is clearly too  
11 lenient.

12 (3) Aggravating Circumstances - Considered by a Jury - Imposed by  
13 the Court

14 Except for circumstances listed in subsection (2) of this section,  
15 the following circumstances are an exclusive list of factors that can  
16 support a sentence above the standard range. Such facts should be  
17 determined by procedures specified in RCW 9.94A.537.

18 (a) The defendant's conduct during the commission of the current  
19 offense manifested deliberate cruelty to the victim.

20 (b) The defendant knew or should have known that the victim of the  
21 current offense was particularly vulnerable or incapable of resistance.

22 (c) The current offense was a violent offense, and the defendant  
23 knew that the victim of the current offense was pregnant.

24 (d) The current offense was a major economic offense or series of  
25 offenses, so identified by a consideration of any of the following  
26 factors:

27 (i) The current offense involved multiple victims or multiple  
28 incidents per victim;

29 (ii) The current offense involved attempted or actual monetary loss  
30 substantially greater than typical for the offense;

31 (iii) The current offense involved a high degree of sophistication  
32 or planning or occurred over a lengthy period of time; or

33 (iv) The defendant used his or her position of trust, confidence,  
34 or fiduciary responsibility to facilitate the commission of the current  
35 offense.

36 (e) The current offense was a major violation of the Uniform  
37 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to

1 trafficking in controlled substances, which was more onerous than the  
2 typical offense of its statutory definition: The presence of ANY of  
3 the following may identify a current offense as a major VUCSA:

4 (i) The current offense involved at least three separate  
5 transactions in which controlled substances were sold, transferred, or  
6 possessed with intent to do so;

7 (ii) The current offense involved an attempted or actual sale or  
8 transfer of controlled substances in quantities substantially larger  
9 than for personal use;

10 (iii) The current offense involved the manufacture of controlled  
11 substances for use by other parties;

12 (iv) The circumstances of the current offense reveal the offender  
13 to have occupied a high position in the drug distribution hierarchy;

14 (v) The current offense involved a high degree of sophistication or  
15 planning, occurred over a lengthy period of time, or involved a broad  
16 geographic area of disbursement; or

17 (vi) The offender used his or her position or status to facilitate  
18 the commission of the current offense, including positions of trust,  
19 confidence or fiduciary responsibility (e.g., pharmacist, physician, or  
20 other medical professional).

21 (f) The current offense included a finding of sexual motivation  
22 pursuant to RCW 9.94A.835.

23 (g) The offense was part of an ongoing pattern of sexual abuse of  
24 the same victim under the age of eighteen years manifested by multiple  
25 incidents over a prolonged period of time.

26 (h) The current offense involved domestic violence, as defined in  
27 RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or  
28 more of the following was present:

29 (i) The offense was part of an ongoing pattern of psychological,  
30 physical, or sexual abuse of a victim or multiple victims manifested by  
31 multiple incidents over a prolonged period of time;

32 (ii) The offense occurred within sight or sound of the victim's or  
33 the offender's minor children under the age of eighteen years; or

34 (iii) The offender's conduct during the commission of the current  
35 offense manifested deliberate cruelty or intimidation of the victim.

36 (i) The offense resulted in the pregnancy of a child victim of  
37 rape.

1 (j) The defendant knew that the victim of the current offense was  
2 a youth who was not residing with a legal custodian and the defendant  
3 established or promoted the relationship for the primary purpose of  
4 victimization.

5 (k) The offense was committed with the intent to obstruct or impair  
6 human or animal health care or agricultural or forestry research or  
7 commercial production.

8 (l) The current offense is trafficking in the first degree or  
9 trafficking in the second degree and any victim was a minor at the time  
10 of the offense.

11 (m) The offense involved a high degree of sophistication or  
12 planning.

13 (n) The defendant used his or her position of trust, confidence, or  
14 fiduciary responsibility to facilitate the commission of the current  
15 offense.

16 (o) The defendant committed a current sex offense, has a history of  
17 sex offenses, and is not amenable to treatment.

18 (p) The offense involved an invasion of the victim's privacy.

19 (q) The defendant demonstrated or displayed an egregious lack of  
20 remorse.

21 (r) The offense involved a destructive and foreseeable impact on  
22 persons other than the victim.

23 (s) The defendant committed the offense to obtain or maintain his  
24 or her membership or to advance his or her position in the hierarchy of  
25 an organization, association, or identifiable group.

26 (t) The defendant committed the current offense shortly after being  
27 released from incarceration.

28 (u) The current offense is a burglary and the victim of the  
29 burglary was present in the building or residence when the crime was  
30 committed.

31 (v) The offense was committed against a law enforcement officer who  
32 was performing his or her official duties at the time of the offense,  
33 the offender knew that the victim was a law enforcement officer, and  
34 the victim's status as a law enforcement officer is not an element of  
35 the offense.

36 (w) The defendant committed the offense against a victim who was  
37 acting as a good samaritan.

1 (x) The defendant committed the offense against a public official  
2 or officer of the court in retaliation of the public official's  
3 performance of his or her duty to the criminal justice system.

4 (y) The victim's injuries substantially exceed the level of bodily  
5 harm necessary to satisfy the elements of the offense. This aggravator  
6 is not an exception to RCW 9.94A.530(2).

7 (z)(i)(A) The current offense is theft in the first degree, theft  
8 in the second degree, possession of stolen property in the first  
9 degree, or possession of stolen property in the second degree; (B) the  
10 stolen property involved is metal property; and (C) the property damage  
11 to the victim caused in the course of the theft of metal property is  
12 more than three times the value of the stolen metal property, or the  
13 theft of the metal property creates a public hazard.

14 (ii) For purposes of this subsection, "metal property" means  
15 commercial metal property, private metal property, or nonferrous metal  
16 property, as defined in RCW 19.290.010.

17 (aa) The defendant committed the offense with the intent to  
18 directly or indirectly cause any benefit, aggrandizement, gain, profit,  
19 or other advantage to or for a criminal street gang as defined in RCW  
20 9.94A.030, its reputation, influence, or membership.

21 (bb) The current offense involved paying to view, over the internet  
22 in violation of RCW 9.68A.075, depictions of a minor engaged in an act  
23 of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through  
24 (g).

25 (cc) The offense was intentionally committed because the defendant  
26 perceived the victim to be homeless, as defined in RCW 9.94A.030.

27 (dd) The current offense involved a felony crime against persons,  
28 except for assault in the third degree pursuant to RCW 9A.36.031(1)(k),  
29 that occurs in a courtroom, jury room, judge's chamber, or any waiting  
30 area or corridor immediately adjacent to a courtroom, jury room, or  
31 judge's chamber. This subsection shall apply only: (i) During the  
32 times when a courtroom, jury room, or judge's chamber is being used for  
33 judicial purposes during court proceedings; and (ii) if signage was  
34 posted in compliance with section 3, chapter 256, Laws of 2013 at the  
35 time of the offense.

36 (ee) During the commission of the current offense, the defendant  
37 was driving in the opposite direction of the normal flow of traffic on

1 a multiple lane highway, as defined by RCW 46.04.350, with a posted  
2 speed limit of forty-five miles per hour or greater.

3 **Sec. 20.** RCW 46.61.5249 and 2012 c 183 s 13 are each amended to  
4 read as follows:

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

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

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

19 (2) For the purposes of this section:

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

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

30 (i) Is in possession of or in close proximity to a container that  
31 has or recently had liquor, marijuana, or any drug in it; or

32 (ii) Is shown by other evidence to have recently consumed liquor,  
33 marijuana, or any drug.

34 (c) "Exhibiting the effects of having consumed (~~(an illegal)~~) any  
35 drug" means that a person by speech, manner, appearance, behavior, lack  
36 of coordination, or otherwise exhibits that he or she has consumed (~~(an~~  
37 ~~illegal)~~) any drug and either:

1 (i) Is in possession of (~~(an illegal)~~) any drug; or

2 (ii) Is shown by other evidence to have recently consumed (~~(an~~  
3 ~~illegal)~~) any drug.

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

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

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

13 (~~((e) "Illegal drug" means a controlled substance under chapter~~  
14 ~~69.50 RCW for which the driver does not have a valid prescription or~~  
15 ~~that is not being consumed in accordance with the prescription~~  
16 ~~directions and warnings, or a legend drug under chapter 69.41 RCW for~~  
17 ~~which the driver does not have a valid prescription or that is not~~  
18 ~~being consumed in accordance with the prescription directions and~~  
19 ~~warnings.))~~)

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

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

28 **Sec. 21.** RCW 46.61.5058 and 2009 c 479 s 38 are each amended to  
29 read as follows:

30 (1) Upon the arrest of a person or upon the filing of a complaint,  
31 citation, or information in a court of competent jurisdiction, based  
32 upon probable cause to believe that a person has violated RCW  
33 46.20.720, 46.61.502, or 46.61.504 or any similar municipal ordinance,  
34 if such person has a prior offense within seven years as defined in RCW  
35 46.61.5055, and where the person has been provided written notice that  
36 any transfer, sale, or encumbrance of such person's interest in the  
37 vehicle over which that person was actually driving or had physical

1 control when the violation occurred, is unlawful pending either  
2 acquittal, dismissal, sixty days after conviction, or other termination  
3 of the charge, such person shall be prohibited from encumbering,  
4 selling, or transferring his or her interest in such vehicle, except as  
5 otherwise provided in (a), (b), and (c) of this subsection, until  
6 either acquittal, dismissal, sixty days after conviction, or other  
7 termination of the charge. The prohibition against transfer of title  
8 shall not be stayed pending the determination of an appeal from the  
9 conviction.

10 (a) A vehicle encumbered by a bona fide security interest may be  
11 transferred to the secured party or to a person designated by the  
12 secured party;

13 (b) A leased or rented vehicle may be transferred to the lessor,  
14 rental agency, or to a person designated by the lessor or rental  
15 agency; and

16 (c) A vehicle may be transferred to a third party or a vehicle  
17 dealer who is a bona fide purchaser or may be subject to a bona fide  
18 security interest in the vehicle unless it is established that (i) in  
19 the case of a purchase by a third party or vehicle dealer, such party  
20 or dealer had actual notice that the vehicle was subject to the  
21 prohibition prior to the purchase, or (ii) in the case of a security  
22 interest, the holder of the security interest had actual notice that  
23 the vehicle was subject to the prohibition prior to the encumbrance of  
24 title.

25 (2) On conviction for a violation of either RCW 46.20.720,  
26 46.61.502, or 46.61.504 or any similar municipal ordinance where the  
27 person convicted has a prior offense within seven years as defined in  
28 RCW 46.61.5055, the motor vehicle the person was driving or over which  
29 the person had actual physical control at the time of the offense, if  
30 the person has a financial interest in the vehicle, (~~is subject to~~  
31 ~~seizure and forfeiture pursuant to this section~~) the court shall  
32 consider at sentencing whether the vehicle shall be seized and  
33 forfeited pursuant to this section if a seizure or forfeiture has not  
34 yet occurred.

35 (3) A vehicle subject to forfeiture under this chapter may be  
36 seized by a law enforcement officer of this state upon process issued  
37 by a court of competent jurisdiction. Seizure of a vehicle may be made

1 without process if the vehicle subject to seizure has been the subject  
2 of a prior judgment in favor of the state in a forfeiture proceeding  
3 based upon this section.

4 (4) Seizure under subsection (3) of this section automatically  
5 commences proceedings for forfeiture. The law enforcement agency under  
6 whose authority the seizure was made shall cause notice of the seizure  
7 and intended forfeiture of the seized vehicle to be served within  
8 fifteen days after the seizure on the owner of the vehicle seized, on  
9 the person in charge of the vehicle, and on any person having a known  
10 right or interest in the vehicle, including a community property  
11 interest. The notice of seizure may be served by any method authorized  
12 by law or court rule, including but not limited to service by certified  
13 mail with return receipt requested. Service by mail is complete upon  
14 mailing within the fifteen-day period after the seizure. Notice of  
15 seizure in the case of property subject to a security interest that has  
16 been perfected on a certificate of title shall be made by service upon  
17 the secured party or the secured party's assignee at the address shown  
18 on the financing statement or the certificate of title.

19 (5) If no person notifies the seizing law enforcement agency in  
20 writing of the person's claim of ownership or right to possession of  
21 the seized vehicle within forty-five days of the seizure, the vehicle  
22 is deemed forfeited.

23 (6) If a person notifies the seizing law enforcement agency in  
24 writing of the person's claim of ownership or right to possession of  
25 the seized vehicle within forty-five days of the seizure, the law  
26 enforcement agency shall give the person or persons a reasonable  
27 opportunity to be heard as to the claim or right. The hearing shall be  
28 before the chief law enforcement officer of the seizing agency or the  
29 chief law enforcement officer's designee, except where the seizing  
30 agency is a state agency as defined in RCW 34.12.020, the hearing shall  
31 be before the chief law enforcement officer of the seizing agency or an  
32 administrative law judge appointed under chapter 34.12 RCW, except that  
33 any person asserting a claim or right may remove the matter to a court  
34 of competent jurisdiction. Removal may only be accomplished according  
35 to the rules of civil procedure. The person seeking removal of the  
36 matter must serve process against the state, county, political  
37 subdivision, or municipality that operates the seizing agency, and any  
38 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,

1 within forty-five days after the person seeking removal has notified  
2 the seizing law enforcement agency of the person's claim of ownership  
3 or right to possession. The court to which the matter is to be removed  
4 shall be the district court when the aggregate value of the vehicle is  
5 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
6 before the seizing agency and any appeal therefrom shall be under Title  
7 34 RCW. In a court hearing between two or more claimants to the  
8 vehicle involved, the prevailing party shall be entitled to a judgment  
9 for costs and reasonable attorneys' fees. The burden of producing  
10 evidence shall be upon the person claiming to be the legal owner or the  
11 person claiming to have the lawful right to possession of the vehicle.  
12 The seizing law enforcement agency shall promptly return the vehicle to  
13 the claimant upon a determination by the administrative law judge or  
14 court that the claimant is the present legal owner under this title  
15 (~~(46-RCW)~~) or is lawfully entitled to possession of the vehicle.

16 (7) When a vehicle is forfeited under this chapter the seizing law  
17 enforcement agency may sell the vehicle, retain it for official use, or  
18 upon application by a law enforcement agency of this state release the  
19 vehicle to that agency for the exclusive use of enforcing this title;  
20 provided, however, that the agency shall first satisfy any bona fide  
21 security interest to which the vehicle is subject under subsection  
22 (1)(a) or (c) of this section.

23 (8) When a vehicle is forfeited, the seizing agency shall keep a  
24 record indicating the identity of the prior owner, if known, a  
25 description of the vehicle, the disposition of the vehicle, the value  
26 of the vehicle at the time of seizure, and the amount of proceeds  
27 realized from disposition of the vehicle.

28 (9) Each seizing agency shall retain records of forfeited vehicles  
29 for at least seven years.

30 (10) Each seizing agency shall file a report including a copy of  
31 the records of forfeited vehicles with the state treasurer each  
32 calendar quarter.

33 (11) The quarterly report need not include a record of a forfeited  
34 vehicle that is still being held for use as evidence during the  
35 investigation or prosecution of a case or during the appeal from a  
36 conviction.

37 (12) By January 31st of each year, each seizing agency shall remit

1 to the state treasurer an amount equal to ten percent of the net  
2 proceeds of vehicles forfeited during the preceding calendar year.  
3 Money remitted shall be deposited in the state general fund.

4 (13) The net proceeds of a forfeited vehicle is the value of the  
5 forfeitable interest in the vehicle after deducting the cost of  
6 satisfying a bona fide security interest to which the vehicle is  
7 subject at the time of seizure; and in the case of a sold vehicle,  
8 after deducting the cost of sale, including reasonable fees or  
9 commissions paid to independent selling agents.

10 (14) The value of a sold forfeited vehicle is the sale price. The  
11 value of a retained forfeited vehicle is the fair market value of the  
12 vehicle at the time of seizure, determined when possible by reference  
13 to an applicable commonly used index, such as the index used by the  
14 department of licensing. A seizing agency may, but need not, use an  
15 independent qualified appraiser to determine the value of retained  
16 vehicles. If an appraiser is used, the value of the vehicle appraised  
17 is net of the cost of the appraisal.

18 NEW SECTION. **Sec. 22.** (1) The Washington impaired driving work  
19 group is established to study effective strategies to reducing vehicle  
20 related deaths and serious injuries that are a result of impaired  
21 driving incidents in Washington.

22 (2) Members of the work group shall consist of the following  
23 members:

24 (a) One member from each of the two largest caucuses of the senate,  
25 appointed by the president of the senate;

26 (b) One member from each of the two largest caucuses of the house  
27 of representatives, appointed by the speaker of the house of  
28 representatives;

29 (c) The chief of the Washington state patrol, or the chief's  
30 designee;

31 (d) The director of the liquor control board, or the director's  
32 designee;

33 (e) The director of the department of licensing, or the director's  
34 designee;

35 (f) The secretary of the department of corrections, or the  
36 secretary's designee;

1 (g) The secretary of the department of social and health services,  
2 or the secretary's designee;

3 (h) One member representing the Washington traffic safety  
4 commission;

5 (i) The executive director of the Washington association of  
6 sheriffs and police chiefs, or the executive director's designee;

7 (j) One member representing the superior court judges' association;

8 (k) One member representing the district and municipal court  
9 judges' association;

10 (l) One member representing the Washington state association of  
11 counties;

12 (m) One member representing the Washington association of  
13 prosecuting attorneys;

14 (n) One member representing the Washington defender's association  
15 or the Washington association of criminal defense lawyers;

16 (o) One member representing the Washington state association of  
17 drug court professionals;

18 (p) One member representing the ignition interlock industry;

19 (q) One member representing the Washington retail association;

20 (r) One member representing the Washington state association of  
21 cities;

22 (s) One member representing treatment providers;

23 (t) One representative representing driving under the influence  
24 victim impact panels; and

25 (u) Representatives, appointed by the governor, that shall include,  
26 but are not limited to:

27 (i) City law enforcement;

28 (ii) County law enforcement;

29 (iii) Court administrators; and

30 (iv) Driving under the influence victims or family members of a  
31 victim.

32 (3) The director of the Washington traffic safety commission or the  
33 director's designee shall convene the initial meeting of the work  
34 group.

35 (4) Members of the work group shall select the chair of the work  
36 group.

37 (5) At a minimum, the work group shall research, review, and make  
38 recommendations on the following:

- 1 (a) Providing effective strategies for reducing motor vehicle-  
2 related deaths and serious injuries due to impaired driving;
- 3 (b) Considering the minimum number of previous impaired driving  
4 convictions that must be counted before constituting and being  
5 punishable as a felony offense;
- 6 (c) Increasing mandatory minimum penalties and fines for repeat  
7 offenders;
- 8 (d) Promoting and monitoring the use of mandatory ignition  
9 interlocks;
- 10 (e) The advantages and disadvantages of creating sobriety  
11 checkpoints;
- 12 (f) Requiring mandatory arrests for a first offense for an impaired  
13 driving offense;
- 14 (g) Increasing treatment and rehabilitation for repeat offenders;
- 15 (h) Reviewing the penalties for refusing to take a breath or blood  
16 test for the purpose of determining the alcohol concentration or  
17 presence of any drugs;
- 18 (i) Increasing funding for prevention, intervention, suppression,  
19 and prosecution of impaired driving offenses;
- 20 (j) Prohibiting the sale of alcohol to offenders convicted of  
21 repeat impaired driving offenses;
- 22 (k) Improving prosecution and encouraging prosecutors to  
23 aggressively enforce impaired driving laws;
- 24 (l) Increasing the number of driving under the influence courts and  
25 court-related services;
- 26 (m) Creating state and local impaired driving enforcement task  
27 forces to increase the visibility of enforcement;
- 28 (n) Promoting education and prevention strategies; and
- 29 (o) Encouraging private sector collaboration.
- 30 (6) The work group shall compile its findings and recommendations  
31 into a final report and provide its report to the legislature and  
32 governor by December 1, 2013.
- 33 (7) The work group shall function within existing resources and no  
34 specific budget may be provided to complete the study. The  
35 participants of the study group are encouraged to donate their time to  
36 offset any costs.
- 37 (8) This section expires January 1, 2014.

1           **Sec. 23.** RCW 46.20.385 and 2012 c 183 s 8 are each amended to read  
2 as follows:

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

13           (b) A person may apply for an ignition interlock driver's license  
14 anytime, including immediately after receiving the notices under RCW  
15 46.20.308 or after his or her license is suspended, revoked, or denied.  
16 A person receiving an ignition interlock driver's license waives his or  
17 her right to a hearing or appeal under RCW 46.20.308.

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

21           (i) The department shall require the person to maintain the device  
22 on all vehicles operated by the person and shall restrict the person to  
23 operating only vehicles equipped with the device, for the remainder of  
24 the period of suspension, revocation, or denial. Subject to the  
25 provisions of RCW 46.20.720(3)(b)(ii), the installation of an ignition  
26 interlock device is not necessary on vehicles owned, leased, or rented  
27 by a person's employer and on those vehicles whose care and/or  
28 maintenance is the temporary responsibility of the employer, and driven  
29 at the direction of a person's employer as a requirement of employment  
30 during working hours. The person must provide the department with a  
31 declaration pursuant to RCW 9A.72.085 from his or her employer stating  
32 that the person's employment requires the person to operate a vehicle  
33 owned by the employer or other persons during working hours.  
34 ~~((However, when the employer's vehicle is assigned exclusively to the~~  
35 ~~restricted driver and used solely for commuting to and from employment,~~  
36 ~~the employer exemption does not apply.))~~

37           (ii) Subject to any periodic renewal requirements established by  
38 the department under this section and subject to any applicable

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

7 (iii) The time period during which the person is licensed under  
8 this section shall apply on a day-for-day basis toward satisfying the  
9 period of time the ignition interlock device restriction is required  
10 under RCW 46.20.720 and 46.61.5055. Beginning with incidents occurring  
11 on or after September 1, 2011, when calculating the period of time for  
12 the restriction under RCW 46.20.720(3), the department must also give  
13 the person a day-for-day credit for the time period, beginning from the  
14 date of the incident, during which the person kept an ignition  
15 interlock device installed on all vehicles the person operates. For  
16 the purposes of this subsection (1)(c)(iii), the term "all vehicles"  
17 does not include vehicles that would be subject to the employer  
18 exception under RCW 46.20.720(3).

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

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

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

1 (5) The director shall cancel an ignition interlock driver's  
2 license after receiving notice that the holder thereof has been  
3 convicted of operating a motor vehicle in violation of its  
4 restrictions, no longer meets the eligibility requirements, or has been  
5 convicted of or found to have committed a separate offense or any other  
6 act or omission that under this chapter would warrant suspension or  
7 revocation of a regular driver's license. The department must give  
8 notice of the cancellation as provided under RCW 46.20.245. A person  
9 whose ignition interlock driver's license has been canceled under this  
10 section may reapply for a new ignition interlock driver's license if he  
11 or she is otherwise qualified under this section and pays the fee  
12 required under RCW 46.20.380.

13 (6)(a)(i) Unless costs are waived by the ignition interlock company  
14 or the person is indigent under RCW 10.101.010, the applicant shall pay  
15 the cost of installing, removing, and leasing the ignition interlock  
16 device and shall pay an additional fee of twenty dollars per month.  
17 Payments shall be made directly to the ignition interlock company. The  
18 company shall remit the additional twenty dollar fee to the department.

19 ~~((b))~~ (ii) The department shall deposit the proceeds of the  
20 twenty dollar fee into the ignition interlock device and alcohol/drug  
21 monitoring revolving account.

22 (b)(i) Any person participating in the 24/7 alcohol/drug monitoring  
23 shall pay the cost of alcohol/drug monitoring pursuant to RCW  
24 46.61.5055(15).

25 (ii) The department shall deposit the proceeds of the twenty dollar  
26 fee into the ignition interlock device and alcohol/drug monitoring  
27 revolving account.

28 (c) Expenditures from the ignition interlock device and  
29 alcohol/drug monitoring revolving account may be used only to: (i)  
30 Administer and operate the ignition interlock device revolving account  
31 program; (ii) assist in covering the monetary costs of purchasing,  
32 leasing, maintaining, and using 24/7 alcohol/drug monitoring devices  
33 for indigent persons who are required under RCW 46.61.5055 and section  
34 1 of this act to participate in 24/7 alcohol/drug monitoring; and (iii)  
35 administer and operate 24/7 monitoring by the Washington association of  
36 sheriffs and police chiefs. The department shall adopt rules to  
37 provide monetary assistance according to greatest need and when funds  
38 are available.

1 (7) The department shall adopt rules to implement ignition  
2 interlock licensing. The department shall consult with the  
3 administrative office of the courts, the state patrol, the Washington  
4 association of sheriffs and police chiefs, ignition interlock  
5 companies, and any other organization or entity the department deems  
6 appropriate.

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

12 (b) A person who does not have any driver's license under this  
13 chapter, but who would otherwise be eligible under this section to  
14 apply for an ignition interlock license, may submit to the department  
15 an application for an ignition interlock license. The department may  
16 require the person to take any driver's licensing examination under  
17 this chapter (~~(46.20-RCW)~~) and may require the person to also apply and  
18 qualify for a temporary restricted driver's license under RCW  
19 46.20.391.

20 **Sec. 24.** RCW 10.05.140 and 2011 c 293 s 8 are each amended to read  
21 as follows:

22 As a condition of granting a deferred prosecution petition, the  
23 court shall order that the petitioner shall not operate a motor vehicle  
24 upon the public highways without a valid operator's license and proof  
25 of liability insurance. The amount of liability insurance shall be  
26 established by the court at not less than that established by RCW  
27 46.29.490. As a condition of granting a deferred prosecution petition  
28 on any alcohol-dependency based case, the court shall also order the  
29 installation of an ignition interlock under RCW 46.20.720. The  
30 required periods of use of the interlock shall be not less than the  
31 periods provided for in RCW 46.20.720(3) (~~((a), (b), and (c))~~). As a  
32 condition of granting a deferred prosecution petition, the court may  
33 order the petitioner to make restitution and to pay costs as defined in  
34 RCW 10.01.160. To help ensure continued sobriety and reduce the  
35 likelihood of reoffense, the court may order reasonable conditions  
36 during the period of the deferred prosecution including, but not  
37 limited to, attendance at self-help recovery support groups for

1 alcoholism or drugs, complete abstinence from alcohol and all  
2 nonprescribed mind-altering drugs, periodic urinalysis or breath  
3 analysis, and maintaining law-abiding behavior. The court may  
4 terminate the deferred prosecution program upon violation of the  
5 deferred prosecution order.

6 NEW SECTION. **Sec. 25.** There is created 24/7 alcohol/drug  
7 monitoring to be administered by the Washington association of sheriffs  
8 and police chiefs. The monitoring shall coordinate efforts among  
9 various local government entities for the purpose of implementing  
10 alcohol and drug monitoring for offenders charged or convicted under  
11 RCW 46.61.502, 46.61.504, or 46.61.5055.

12 NEW SECTION. **Sec. 26.** The court may condition any bond or  
13 pretrial release upon participation in 24/7 alcohol/drug monitoring and  
14 payment of associated costs and expenses, if available.

15 NEW SECTION. **Sec. 27.** The Washington association of sheriffs and  
16 police chiefs may adopt policies for the administration of 24/7  
17 alcohol/drug monitoring to:

- 18 (1) Provide for procedures and apparatus for testing;  
19 (2) Work in conjunction with counties and municipalities to  
20 establish fees and costs for participation to be paid by the  
21 participants, which shall include an added twenty dollar assessment to  
22 cover the cost of indigent offenders participating;  
23 (3) Require the submission of reports and information by law  
24 enforcement agencies within this state.

25 NEW SECTION. **Sec. 28.** Any daily user fee, indigent offender  
26 assessment fee, installation fee, deactivation fee, enrollment fee, or  
27 any other fees and costs collected for participation and monitoring  
28 under the 24/7 alcohol/drug monitoring shall be collected by the  
29 sheriff or chief, or an entity designated by the sheriff or chief, and  
30 deposited with the county or city treasurer of the proper county or  
31 city.

- 32 (1) Proceeds shall be applied and used only to defray the recurring  
33 costs of 24/7 alcohol/drug monitoring.

1 (2) Any participation fee collected in the administration of the  
2 24/7 alcohol/drug monitoring to cover administration costs incurred by  
3 the Washington association of sheriffs and police chiefs shall be  
4 collected by the sheriff or chief, or an entity designated by the  
5 sheriff or chief, and deposited in the ignition interlock device and  
6 alcohol/drug monitoring revolving account.

7 (3) The additional twenty dollar fee shall be transmitted to the  
8 department of licensing for deposit in the ignition interlock device  
9 and alcohol/drug monitoring revolving account under RCW 46.68.340 to  
10 defray 24/7 alcohol/drug monitoring costs for indigent offenders.

11 NEW SECTION. **Sec. 29.** The court shall not waive or reduce fees or  
12 associated costs charged for participation in the 24/7 alcohol/drug  
13 monitoring.

14 **Sec. 30.** RCW 46.68.340 and 2008 c 282 s 3 are each amended to read  
15 as follows:

16 The ignition interlock device and alcohol/drug monitoring revolving  
17 account is created in the state treasury. All receipts from the fee  
18 assessed under RCW 46.20.385(6) and 46.61.5055(15) must be deposited  
19 into the account. Moneys in the account may be spent only after  
20 appropriation. Expenditures from the account may be used only for  
21 administering and operating the ignition interlock device revolving  
22 account program and the 24/7 alcohol/drug monitoring program under RCW  
23 46.61.5055 and section 1 of this act.

24 **Sec. 31.** RCW 4.24.545 and 2006 c 130 s 3 are each amended to read  
25 as follows:

26 Local governments, their subdivisions and employees, the department  
27 of corrections and its employees, and the Washington association of  
28 sheriffs and police chiefs and its employees are immune from civil  
29 liability for damages arising from incidents involving offenders who  
30 are placed on electronic monitoring or who are participating in 24/7  
31 alcohol/drug monitoring, unless it is shown that an employee acted with  
32 gross negligence or bad faith.

33 NEW SECTION. **Sec. 32.** A new section is added to chapter 43.43 RCW  
34 to read as follows:

1 (1) Any officer conducting field inspections of ignition interlock  
2 devices under the ignition interlock program shall report violations by  
3 program participants to the court.

4 (2) The Washington state patrol may not be held liable for any  
5 damages resulting from any act or omission in conducting activities  
6 under the ignition interlock program, other than acts or omissions  
7 constituting gross negligence or willful or wanton misconduct.

8 NEW SECTION. **Sec. 33.** (1) A participant who violates 24/7  
9 alcohol/drug monitoring under RCW 46.61.5055 shall:

10 (a) Receive a term of one to three days of imprisonment for five or  
11 less violations; and

12 (b) Receive a term of imprisonment of thirty days for six or more  
13 violations.

14 (2) A sheriff or chief, or the designee of a sheriff or chief, who  
15 has probable cause to believe that a participant has violated the terms  
16 of the 24/7 alcohol/drug monitoring shall immediately take the  
17 participant into custody and cause him or her to be held until an  
18 appearance before a judge on the next judicial day.

19 NEW SECTION. **Sec. 34.** If any provision of this act or its  
20 application to any person or circumstance is held invalid, the  
21 remainder of the act or the application of the provision to other  
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 35.** Sections 25 through 29 of this act are each  
24 added to chapter 36.28A RCW."

25 Correct the title.

EFFECT: Eliminates the provisions that:

(1) Increased mandatory minimum sentences for DUI offenses.

(2) Made it a class C felony offense if a person is convicted of  
three or more prior DUI convictions.

(3) Provided an option for repeat DUI offenders to spend either  
additional time in jail or participate in alcohol/drug monitoring; as  
a result, requires all offenders to spend a period of time on  
alcohol/drug monitoring instead.

(4) Required that the DOC provide community custody supervision for felony level DUI offenders.

(5) Exempted the fine for a DUI offense with a child in the vehicle from the PSEA fee.

(6) Created a new \$100 monetary penalty assessment for various driving offenses to fund efforts to reduce impaired driving injuries.

(7) Removed all references to mandatory blood draws relating to implied consent and denying or revoking of a driver's license.

Clarifies the alcohol/drug monitoring program, penalties for violations, and its funding mechanism.

Makes other technical corrections and clarifications.

--- END ---