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**SUBSTITUTE HOUSE BILL 1482**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** House Public Safety (originally sponsored by Representatives Goodman, Habib, Kirby, Orwall, Hurst, Moscoso, Takko, Sequist, Bergquist, Ryu, Fey, Appleton, McCoy, Green, Lytton, Pollet, Lias, and Stonier)

READ FIRST TIME 02/19/13.

1 AN ACT Relating to impaired driving; amending RCW 2.28.175,  
2 3.66.068, 3.66.067, 3.50.320, 3.50.330, 35.20.255, 9.94A.525,  
3 10.31.100, 43.43.395, 9.94A.533, 46.20.720, 46.20.270, 9.94A.603,  
4 46.25.090, 46.25.120, 46.25.110, 9.94A.535, and 3.62.090; reenacting  
5 and amending RCW 46.61.5055 and 46.20.308; and prescribing penalties.

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

7 **Sec. 1.** RCW 2.28.175 and 2012 c 183 s 1 are each amended to read  
8 as follows:

9 (1) Counties and municipalities may establish and operate DUI  
10 courts. Municipalities may also enter into cooperative agreements with  
11 counties that have DUI courts to provide DUI court services.

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

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

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

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

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

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

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

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

25 (A) That is a sex offense;

26 (B) That is a serious violent offense;

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

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

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

31 **Sec. 2.** RCW 3.66.068 and 2010 c 274 s 405 are each amended to read  
32 as follows:

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

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

1       **(b)** Two years after imposition of sentence for all other  
2 offenses(~~(, the)~~).

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

7       **(i)** Five years after imposition of sentence for a defendant  
8 sentenced for a domestic violence offense; and

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

10       **(b)** A court shall not defer sentence for an offense sentenced under  
11 RCW 46.61.5055.

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

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

20       **(5)** 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. 3.** RCW 3.66.067 and 2001 c 94 s 1 are each amended to read as  
23 follows:

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

1       **Sec. 4.** RCW 3.50.320 and 2001 c 94 s 4 are each amended to read as  
2 follows:

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

16       **Sec. 5.** RCW 3.50.330 and 2010 c 274 s 406 are each amended to read  
17 as follows:

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

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

23       (b) Two years after imposition of sentence for all other  
24 offenses((, the)).

25       (2)(a) Except as provided in (b) of this subsection, a court shall  
26 have continuing jurisdiction and authority to ((suspend or)) defer the  
27 execution of all or any part of the sentence upon stated terms,  
28 including installment payment of fines for a period not to exceed:

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

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

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

34       (3) A defendant who has been sentenced, or whose sentence has been  
35 deferred, and who then fails to appear for any hearing to address the  
36 defendant's compliance with the terms of probation when ordered to do

1 so by the court, shall have the term of probation tolled until such  
2 time as the defendant makes his or her presence known to the court on  
3 the record.

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

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

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

11 **Sec. 6.** RCW 35.20.255 and 2010 c 274 s 407 are each amended to  
12 read as follows:

13 (1) Except as provided in subsection (3) of this section, judges of  
14 the municipal court, in their discretion, shall have the power in all  
15 criminal proceedings within their jurisdiction including violations of  
16 city ordinances, to defer imposition of any sentence, suspend all or  
17 part of any sentence including installment payment of fines, fix the  
18 terms of any such deferral or suspension, and provide for such  
19 probation as in their opinion is reasonable and necessary under the  
20 circumstances of the case, but in no case shall it extend for more than  
21 five years from the date of conviction for a defendant to be sentenced  
22 for a domestic violence offense or under RCW 46.61.5055 and two years  
23 from the date of conviction for all other offenses. A defendant who  
24 has been sentenced, or whose sentence has been deferred, and who then  
25 fails to appear for any hearing to address the defendant's compliance  
26 with the terms of probation when ordered to do so by the court, shall  
27 have the term of probation tolled until such time as the defendant  
28 makes his or her presence known to the court on the record. However,  
29 the jurisdiction period in this section does not apply to the  
30 enforcement of orders issued under RCW 46.20.720. Any time before  
31 entering an order terminating probation, the court may modify or revoke  
32 its order suspending or deferring the imposition or execution of the  
33 sentence. For the purposes of this subsection, "domestic violence  
34 offense" means a crime listed in RCW 10.99.020 that is not a felony  
35 offense.

36 (2)(a) If a defendant whose sentence has been deferred requests  
37 permission to travel or transfer to another state, the director of

1 probation services or a designee thereof shall determine whether such  
2 request is subject to RCW 9.94A.745, the interstate compact for adult  
3 offender supervision. If such request is subject to the compact, the  
4 director or designee shall:

5 (i) Notify the department of corrections of the defendant's  
6 request;

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

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

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

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

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

17 (c) If the probationer is returned to the state at the request of  
18 the receiving state under rules of the interstate compact for adult  
19 offender supervision, the department of corrections is responsible for  
20 the cost of returning the probationer.

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

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

27 **Sec. 7.** RCW 9.94A.525 and 2011 c 166 s 3 are each amended to read  
28 as follows:

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

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

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

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

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

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

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

22 (e) If the present conviction is felony driving while under the  
23 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or  
24 felony physical control of a vehicle while under the influence of  
25 intoxicating liquor or any drug (RCW 46.61.504(6)), ~~((prior convictions  
26 of felony driving while under the influence of intoxicating liquor or  
27 any drug, felony physical control of a vehicle while under the  
28 influence of intoxicating liquor or any drug, and serious traffic  
29 offenses shall be included in the offender score if: (i) The prior  
30 convictions were committed within five years since the last date of  
31 release from confinement (including full-time residential treatment) or  
32 entry of judgment and sentence; or (ii) the prior convictions would be  
33 considered "prior offenses within ten years" as defined in RCW  
34 46.61.5055))~~ all predicate crimes for the offense as defined by RCW  
35 46.61.5055(14) shall be included in the offender score, and prior  
36 convictions for felony driving while under the influence of  
37 intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical  
38 control of a vehicle while under the influence of intoxicating liquor

1 or any drug (RCW 46.61.504(6)) shall always be included in the offender  
2 score. All other convictions of the defendant shall be scored  
3 according to this section.

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

10 (g) This subsection applies to both adult and juvenile prior  
11 convictions.

12 (3) Out-of-state convictions for offenses shall be classified  
13 according to the comparable offense definitions and sentences provided  
14 by Washington law. Federal convictions for offenses shall be  
15 classified according to the comparable offense definitions and  
16 sentences provided by Washington law. If there is no clearly  
17 comparable offense under Washington law or the offense is one that is  
18 usually considered subject to exclusive federal jurisdiction, the  
19 offense shall be scored as a class C felony equivalent if it was a  
20 felony under the relevant federal statute.

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

24 (5)(a) In the case of multiple prior convictions, for the purpose  
25 of computing the offender score, count all convictions separately,  
26 except:

27 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to  
28 encompass the same criminal conduct, shall be counted as one offense,  
29 the offense that yields the highest offender score. The current  
30 sentencing court shall determine with respect to other prior adult  
31 offenses for which sentences were served concurrently or prior juvenile  
32 offenses for which sentences were served consecutively, whether those  
33 offenses shall be counted as one offense or as separate offenses using  
34 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and  
35 if the court finds that they shall be counted as one offense, then the  
36 offense that yields the highest offender score shall be used. The  
37 current sentencing court may presume that such other prior offenses



1 were not the same criminal conduct from sentences imposed on separate  
2 dates, or in separate counties or jurisdictions, or in separate  
3 complaints, indictments, or informations;

4 (ii) In the case of multiple prior convictions for offenses  
5 committed before July 1, 1986, for the purpose of computing the  
6 offender score, count all adult convictions served concurrently as one  
7 offense, and count all juvenile convictions entered on the same date as  
8 one offense. Use the conviction for the offense that yields the  
9 highest offender score.

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

16 (6) If the present conviction is one of the anticipatory offenses  
17 of criminal attempt, solicitation, or conspiracy, count each prior  
18 conviction as if the present conviction were for a completed offense.  
19 When these convictions are used as criminal history, score them the  
20 same as a completed crime.

21 (7) If the present conviction is for a nonviolent offense and not  
22 covered by subsection (11), (12), or (13) of this section, count one  
23 point for each adult prior felony conviction and one point for each  
24 juvenile prior violent felony conviction and 1/2 point for each  
25 juvenile prior nonviolent felony conviction.

26 (8) If the present conviction is for a violent offense and not  
27 covered in subsection (9), (10), (11), (12), or (13) of this section,  
28 count two points for each prior adult and juvenile violent felony  
29 conviction, one point for each prior adult nonviolent felony  
30 conviction, and 1/2 point for each prior juvenile nonviolent felony  
31 conviction.

32 (9) If the present conviction is for a serious violent offense,  
33 count three points for prior adult and juvenile convictions for crimes  
34 in this category, two points for each prior adult and juvenile violent  
35 conviction (not already counted), one point for each prior adult  
36 nonviolent felony conviction, and 1/2 point for each prior juvenile  
37 nonviolent felony conviction.

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

6 (11) If the present conviction is for a felony traffic offense  
7 count two points for each adult or juvenile prior conviction for  
8 Vehicular Homicide or Vehicular Assault; for each felony offense count  
9 one point for each adult and 1/2 point for each juvenile prior  
10 conviction; for each serious traffic offense, other than those used for  
11 an enhancement pursuant to RCW 46.61.520(2), count one point for each  
12 adult and 1/2 point for each juvenile prior conviction; count one point  
13 for each adult and 1/2 point for each juvenile prior conviction for  
14 operation of a vessel while under the influence of intoxicating liquor  
15 or any drug.

16 (12) If the present conviction is for homicide by watercraft or  
17 assault by watercraft count two points for each adult or juvenile prior  
18 conviction for homicide by watercraft or assault by watercraft; for  
19 each felony offense count one point for each adult and 1/2 point for  
20 each juvenile prior conviction; count one point for each adult and 1/2  
21 point for each juvenile prior conviction for driving under the  
22 influence of intoxicating liquor or any drug, actual physical control  
23 of a motor vehicle while under the influence of intoxicating liquor or  
24 any drug, or operation of a vessel while under the influence of  
25 intoxicating liquor or any drug.

26 (13) If the present conviction is for manufacture of  
27 methamphetamine count three points for each adult prior manufacture of  
28 methamphetamine conviction and two points for each juvenile manufacture  
29 of methamphetamine offense. If the present conviction is for a drug  
30 offense and the offender has a criminal history that includes a sex  
31 offense or serious violent offense, count three points for each adult  
32 prior felony drug offense conviction and two points for each juvenile  
33 drug offense. All other adult and juvenile felonies are scored as in  
34 subsection (8) of this section if the current drug offense is violent,  
35 or as in subsection (7) of this section if the current drug offense is  
36 nonviolent.

37 (14) If the present conviction is for Escape from Community

1 Custody, RCW 72.09.310, count only prior escape convictions in the  
2 offender score. Count adult prior escape convictions as one point and  
3 juvenile prior escape convictions as 1/2 point.

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

7 (16) If the present conviction is for Burglary 2 or residential  
8 burglary, count priors as in subsection (7) of this section; however,  
9 count two points for each adult and juvenile prior Burglary 1  
10 conviction, two points for each adult prior Burglary 2 or residential  
11 burglary conviction, and one point for each juvenile prior Burglary 2  
12 or residential burglary conviction.

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

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

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

28 (20) If the present conviction is for Theft of a Motor Vehicle,  
29 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without  
30 Permission 1, or Taking a Motor Vehicle Without Permission 2, count  
31 priors as in subsections (7) through (18) of this section; however  
32 count one point for prior convictions of Vehicle Prowling 2, and three  
33 points for each adult and juvenile prior Theft 1 (of a motor vehicle),  
34 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a  
35 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),  
36 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a  
37 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without  
38 Permission 2 conviction.

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

5 (a) Count two points for each adult prior conviction where domestic  
6 violence as defined in RCW 9.94A.030 was plead and proven after August  
7 1, 2011, for the following offenses: A violation of a no-contact order  
8 that is a felony offense, a violation of a protection order that is a  
9 felony offense, a felony domestic violence harassment offense, a felony  
10 domestic violence stalking offense, a domestic violence Burglary 1  
11 offense, a domestic violence Kidnapping 1 offense, a domestic violence  
12 Kidnapping 2 offense, a domestic violence unlawful imprisonment  
13 offense, a domestic violence Robbery 1 offense, a domestic violence  
14 Robbery 2 offense, a domestic violence Assault 1 offense, a domestic  
15 violence Assault 2 offense, a domestic violence Assault 3 offense, a  
16 domestic violence Arson 1 offense, or a domestic violence Arson 2  
17 offense;

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

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

26 (22) The fact that a prior conviction was not included in an  
27 offender's offender score or criminal history at a previous sentencing  
28 shall have no bearing on whether it is included in the criminal history  
29 or offender score for the current offense. Prior convictions that were  
30 not counted in the offender score or included in criminal history under  
31 repealed or previous versions of the sentencing reform act shall be  
32 included in criminal history and shall count in the offender score if  
33 the current version of the sentencing reform act requires including or  
34 counting those convictions. Prior convictions that were not included  
35 in criminal history or in the offender score shall be included upon any  
36 resentencing to ensure imposition of an accurate sentence.

1       **Sec. 8.** RCW 10.31.100 and 2010 c 274 s 201 are each amended to  
2 read as follows:

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

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

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

20       (a) An order has been issued of which the person has knowledge  
21 under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26,  
22 26.50, or 74.34 RCW restraining the person and the person has violated  
23 the terms of the order restraining the person from acts or threats of  
24 violence, or restraining the person from going onto the grounds of or  
25 entering a residence, workplace, school, or day care, or prohibiting  
26 the person from knowingly coming within, or knowingly remaining within,  
27 a specified distance of a location or, in the case of an order issued  
28 under RCW 26.44.063, imposing any other restrictions or conditions upon  
29 the person; or

30       (b) A foreign protection order, as defined in RCW 26.52.010, has  
31 been issued of which the person under restraint has knowledge and the  
32 person under restraint has violated a provision of the foreign  
33 protection order prohibiting the person under restraint from contacting  
34 or communicating with another person, or excluding the person under  
35 restraint from a residence, workplace, school, or day care, or  
36 prohibiting the person from knowingly coming within, or knowingly  
37 remaining within, a specified distance of a location, or a violation of

1 any provision for which the foreign protection order specifically  
2 indicates that a violation will be a crime; or

3 (c) The person is sixteen years or older and within the preceding  
4 four hours has assaulted a family or household member as defined in RCW  
5 10.99.020 and the officer believes: (i) A felonious assault has  
6 occurred; (ii) an assault has occurred which has resulted in bodily  
7 injury to the victim, whether the injury is observable by the  
8 responding officer or not; or (iii) that any physical action has  
9 occurred which was intended to cause another person reasonably to fear  
10 imminent serious bodily injury or death. Bodily injury means physical  
11 pain, illness, or an impairment of physical condition. When the  
12 officer has probable cause to believe that family or household members  
13 have assaulted each other, the officer is not required to arrest both  
14 persons. The officer shall arrest the person whom the officer believes  
15 to be the primary physical aggressor. In making this determination,  
16 the officer shall make every reasonable effort to consider: (i) The  
17 intent to protect victims of domestic violence under RCW 10.99.010;  
18 (ii) the comparative extent of injuries inflicted or serious threats  
19 creating fear of physical injury; and (iii) the history of domestic  
20 violence of each person involved, including whether the conduct was  
21 part of an ongoing pattern of abuse.

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

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

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

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

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

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

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

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

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

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

9 (6) An officer may act upon the request of a law enforcement  
10 officer in whose presence a traffic infraction was committed, to stop,  
11 detain, arrest, or issue a notice of traffic infraction to the driver  
12 who is believed to have committed the infraction. The request by the  
13 witnessing officer shall give an officer the authority to take  
14 appropriate action under the laws of the state of Washington.

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

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

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

26 (10) A police officer having probable cause to believe that a  
27 person illegally possesses or illegally has possessed a firearm or  
28 other dangerous weapon on private or public elementary or secondary  
29 school premises shall have the authority to arrest the person.

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

33 (11) Except as specifically provided in subsections (2), (3), (4),  
34 and (6) of this section, nothing in this section extends or otherwise  
35 affects the powers of arrest prescribed in Title 46 RCW.

36 (12) No police officer may be held criminally or civilly liable for  
37 making an arrest pursuant to subsection (2) or (8) of this section if  
38 the police officer acts in good faith and without malice.

1           **Sec. 9.** RCW 46.61.5055 and 2012 c 183 s 12, 2012 c 42 s 2, and  
2 2012 c 28 s 1 are each reenacted and amended to read as follows:

3           (1) **No prior offenses in seven years.** Except as provided in RCW  
4 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation  
5 of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven  
6 years shall be punished as follows:

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

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

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

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



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

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

23 (2) One prior offense in seven years. Except as provided in RCW  
24 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation  
25 of RCW 46.61.502 or 46.61.504 and who has one prior offense within  
26 seven years shall be punished as follows:

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

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

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

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

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

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

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

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

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

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

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

37 (b) **Penalty for alcohol concentration at least 0.15.** In the case  
38 of a person whose alcohol concentration was at least 0.15, or for whom

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

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

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

27 (4) **Four or more prior offenses in ten years.** A person who is  
28 convicted of a violation of RCW 46.61.502 or 46.61.504 shall be  
29 punished under chapter 9.94A RCW if:

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

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

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

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

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

1 (5)(a) **Mandated alcohol monitoring device.** The court shall require  
2 any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an  
3 equivalent local ordinance to comply with the rules and requirements of  
4 the department regarding the installation and use of a functioning  
5 ignition interlock device installed on all motor vehicles operated by  
6 the person.

7 (b) If the court orders that a person refrain from consuming any  
8 alcohol, the court may order the person to submit to alcohol monitoring  
9 through an alcohol detection breathalyzer device, transdermal sensor  
10 device, or other technology designed to detect alcohol in a person's  
11 system. The person shall pay for the cost of the monitoring, unless  
12 the court specifies that the cost of monitoring will be paid with funds  
13 that are available from an alternative source identified by the court.  
14 The county or municipality where the penalty is being imposed shall  
15 determine the cost.

16 (6) **Penalty for having a minor passenger in vehicle.** In addition  
17 to any other mandatory penalty provided by law pursuant to subsections  
18 (1) through (3) of this section, if it is found by the court that a  
19 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
20 committed the offense while a passenger under the age of sixteen was in  
21 the vehicle(, the court shall):

22 (a) The department of licensing shall order the use of an ignition  
23 interlock or other device for an additional six months; and

24 (b) ~~((In any case in which the person has no prior offenses within~~  
25 ~~seven years, and except as provided in RCW 46.61.502(6) or~~  
26 ~~46.61.504(6), order a penalty by a fine of not less than one thousand~~  
27 ~~dollars and not more than five thousand dollars. One thousand dollars~~  
28 ~~of the fine may not be suspended or deferred unless the court finds the~~  
29 ~~offender to be indigent;~~

30 (c) ~~In any case in which the person has one prior offense within~~  
31 ~~seven years, and except as provided in RCW 46.61.502(6) or~~  
32 ~~46.61.504(6), order a penalty by a fine of not less than two thousand~~  
33 ~~dollars and not more than five thousand dollars. One thousand dollars~~  
34 ~~of the fine may not be suspended or deferred unless the court finds the~~  
35 ~~offender to be indigent;~~

36 (d) ~~In any case in which the person has two or three prior offenses~~  
37 ~~within seven years, and except as provided in RCW 46.61.502(6) or~~  
38 ~~46.61.504(6), order a penalty by a fine of not less than three thousand~~

1 ~~dollars and not more than ten thousand dollars. One thousand dollars~~  
2 ~~of the fine may not be suspended or deferred unless the court finds the~~  
3 ~~offender to be indigent.)) The court shall order that the person pay a~~  
4 ~~mandatory fine of five hundred dollars, which is in addition to any~~  
5 ~~fine and fee imposed by the court and as required under this section.~~

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

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

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

15 (c) Whether the driver was driving in the opposite direction of the  
16 normal flow of traffic on a multiple lane highway, as defined by RCW  
17 46.04.350, with a posted speed limit of forty-five miles per hour or  
18 greater; and

19 (d) Whether a child passenger under the age of sixteen was an  
20 occupant in the driver's car.

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

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

28 (a) **Penalty for alcohol concentration less than 0.15.** If the  
29 person's alcohol concentration was less than 0.15, or if for reasons  
30 other than the person's refusal to take a test offered under RCW  
31 46.20.308 there is no test result indicating the person's alcohol  
32 concentration:

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

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

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

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

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

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

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

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

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

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

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

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

22           Upon its own motion or upon motion by a person, a court may find,  
23 on the record, that notice to the department under RCW 46.20.270 has  
24 been delayed for three years or more as a result of a clerical or court  
25 error. If so, the court may order that the person's license, permit,  
26 or nonresident privilege shall not be revoked, suspended, or denied for  
27 that offense. The court shall send notice of the finding and order to  
28 the department and to the person. Upon receipt of the notice from the  
29 court, the department shall not revoke, suspend, or deny the license,  
30 permit, or nonresident privilege of the person for that offense.

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

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

1           (11) Conditions of probation.       (a) In addition to any  
2 nonsuspendable and nondeferrable jail sentence required by this  
3 section, whenever the court imposes up to three hundred sixty-four days  
4 in jail, the court shall also suspend but shall not defer a period of  
5 confinement for a period not exceeding five years. The court shall  
6 impose conditions of probation that include: (i) Not driving a motor  
7 vehicle within this state without both a valid license to drive and  
8 proof of liability insurance or other financial responsibility for the  
9 future pursuant to RCW 46.30.020; (ii) not driving or being in physical  
10 control of a motor vehicle within this state while having an alcohol  
11 concentration of 0.08 or more within two hours after driving, a THC  
12 concentration of 5.00 nanograms per milliliter of whole blood or higher  
13 within two hours after driving; and (iii) not refusing to submit to a  
14 test of his or her breath or blood to determine alcohol or drug  
15 concentration upon request of a law enforcement officer who has  
16 reasonable grounds to believe the person was driving or was in actual  
17 physical control of a motor vehicle within this state while under the  
18 influence of intoxicating liquor or drug. The court may impose  
19 conditions of probation that include nonrepetition, installation of an  
20 ignition interlock device on the probationer's motor vehicle, alcohol  
21 or drug treatment, supervised probation, or other conditions that may  
22 be appropriate. The sentence may be imposed in whole or in part upon  
23 violation of a condition of probation during the suspension period.

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

28           (c) For each incident involving a violation of a mandatory  
29 condition of probation imposed under this subsection, the license,  
30 permit, or privilege to drive of the person shall be suspended by the  
31 court for thirty days or, if such license, permit, or privilege to  
32 drive already is suspended, revoked, or denied at the time the finding  
33 of probation violation is made, the suspension, revocation, or denial  
34 then in effect shall be extended by thirty days. The court shall  
35 notify the department of any suspension, revocation, or denial or any  
36 extension of a suspension, revocation, or denial imposed under this  
37 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, additional jail time, work crew, or work  
19 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) A "prior offense" means any of the following:

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

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

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

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

13 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
14 9A.36.050 or an equivalent local ordinance, if the conviction is the  
15 result of a charge that was originally filed as a violation of RCW  
16 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
17 46.61.520 or 46.61.522;

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

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

24 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
25 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
26 ordinance, if the charge under which the deferred prosecution was  
27 granted was originally filed as a violation of RCW 46.61.502 or  
28 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
29 46.61.522; (~~(ix)~~)

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

36 (x) If a deferred prosecution is revoked based on a subsequent  
37 conviction for an offense listed in this subsection (14)(a), the

1 subsequent conviction shall not be treated as a prior offense of the  
2 revoked deferred prosecution for the purposes of sentencing; or

3 (xi) A deferred sentence imposed in a prosecution for a violation  
4 of 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 (b) "Within seven years" means that the arrest for a prior offense  
10 occurred within seven years before or after the arrest for the current  
11 offense; and

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

15 **Sec. 10.** RCW 43.43.395 and 2012 c 183 s 16 are each amended to  
16 read as follows:

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

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

35 (b) A certified service provider or individual installer whose  
36 certification is suspended or revoked for noncompliance has a right to  
37 an administrative hearing under chapter 34.05 RCW to contest the

1 suspension or revocation, or both. For the administrative hearing, the  
2 procedure and rules of evidence are as specified in chapter 34.05 RCW,  
3 except as otherwise provided in this chapter. Any request for an  
4 administrative hearing must be made in writing and must be received by  
5 the state patrol within twenty days after the receipt of the notice of  
6 suspension or revocation.

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

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

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

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

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

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

1       **Sec. 11.** RCW 9.94A.533 and 2012 c 42 s 3 are each amended to read  
2 as follows:

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

5       (2) For persons convicted of the anticipatory offenses of criminal  
6 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the  
7 standard sentence range is determined by locating the sentencing grid  
8 sentence range defined by the appropriate offender score and the  
9 seriousness level of the completed crime, and multiplying the range by  
10 seventy-five percent.

11       (3) The following additional times shall be added to the standard  
12 sentence range for felony crimes committed after July 23, 1995, if the  
13 offender or an accomplice was armed with a firearm as defined in RCW  
14 9.41.010 and the offender is being sentenced for one of the crimes  
15 listed in this subsection as eligible for any firearm enhancements  
16 based on the classification of the completed felony crime. If the  
17 offender is being sentenced for more than one offense, the firearm  
18 enhancement or enhancements must be added to the total period of  
19 confinement for all offenses, regardless of which underlying offense is  
20 subject to a firearm enhancement. If the offender or an accomplice was  
21 armed with a firearm as defined in RCW 9.41.010 and the offender is  
22 being sentenced for an anticipatory offense under chapter 9A.28 RCW to  
23 commit one of the crimes listed in this subsection as eligible for any  
24 firearm enhancements, the following additional times shall be added to  
25 the standard sentence range determined under subsection (2) of this  
26 section based on the felony crime of conviction as classified under RCW  
27 9A.28.020:

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

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

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

37       (d) If the offender is being sentenced for any firearm enhancements  
38 under (a), (b), and/or (c) of this subsection and the offender has

1 previously been sentenced for any deadly weapon enhancements after July  
2 23, 1995, under (a), (b), and/or (c) of this subsection or subsection  
3 (4)(a), (b), and/or (c) of this section, or both, all firearm  
4 enhancements under this subsection shall be twice the amount of the  
5 enhancement listed;

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

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

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

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

1 the crimes listed in this subsection as eligible for any deadly weapon  
2 enhancements, the following additional times shall be added to the  
3 standard sentence range determined under subsection (2) of this section  
4 based on the felony crime of conviction as classified under RCW  
5 9A.28.020:

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

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

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

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

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

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

35 (g) If the standard sentence range under this section exceeds the  
36 statutory maximum sentence for the offense, the statutory maximum  
37 sentence shall be the presumptive sentence unless the offender is a  
38 persistent offender. If the addition of a deadly weapon enhancement

1 increases the sentence so that it would exceed the statutory maximum  
2 for the offense, the portion of the sentence representing the  
3 enhancement may not be reduced.

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

15 (a) Eighteen months for offenses committed under RCW 69.50.401(2)  
16 (a) or (b) or 69.50.410;

17 (b) Fifteen months for offenses committed under RCW 69.50.401(2)  
18 (c), (d), or (e);

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

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

23 (6) An additional twenty-four months shall be added to the standard  
24 sentence range for any ranked offense involving a violation of chapter  
25 69.50 RCW if the offense was also a violation of RCW 69.50.435 or  
26 9.94A.827. All enhancements under this subsection shall run  
27 consecutively to all other sentencing provisions, for all offenses  
28 sentenced under this chapter.

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

36 (8)(a) The following additional times shall be added to the  
37 standard sentence range for felony crimes committed on or after July 1,  
38 2006, if the offense was committed with sexual motivation, as that term



1 is defined in RCW 9.94A.030. If the offender is being sentenced for  
2 more than one offense, the sexual motivation enhancement must be added  
3 to the total period of total confinement for all offenses, regardless  
4 of which underlying offense is subject to a sexual motivation  
5 enhancement. If the offender committed the offense with sexual  
6 motivation and the offender is being sentenced for an anticipatory  
7 offense under chapter 9A.28 RCW, the following additional times shall  
8 be added to the standard sentence range determined under subsection (2)  
9 of this section based on the felony crime of conviction as classified  
10 under RCW 9A.28.020:

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

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

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

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

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

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

35 (d) If the standard sentence range under this subsection exceeds  
36 the statutory maximum sentence for the offense, the statutory maximum  
37 sentence shall be the presumptive sentence unless the offender is a  
38 persistent offender. If the addition of a sexual motivation

1 enhancement increases the sentence so that it would exceed the  
2 statutory maximum for the offense, the portion of the sentence  
3 representing the enhancement may not be reduced;

4 (e) The portion of the total confinement sentence which the  
5 offender must serve under this subsection shall be calculated before  
6 any earned early release time is credited to the offender;

7 (f) Nothing in this subsection prevents a sentencing court from  
8 imposing a sentence outside the standard sentence range pursuant to RCW  
9 9.94A.535.

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

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

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

4 (c) The increased penalty specified in (a) of this subsection is  
5 unavailable in the event that the prosecution gives notice that it will  
6 seek an exceptional sentence based on an aggravating factor under RCW  
7 9.94A.535.

8 (11) An additional twelve months and one day shall be added to the  
9 standard sentence range for a conviction of attempting to elude a  
10 police vehicle as defined by RCW 46.61.024, if the conviction included  
11 a finding by special allegation of endangering one or more persons  
12 under RCW 9.94A.834. The enhancement under this subsection shall be  
13 mandatory, shall be served in total confinement, and shall run  
14 consecutively with all other sentencing provisions.

15 (12) An additional twelve months shall be added to the standard  
16 sentence range for an offense that is also a violation of RCW  
17 9.94A.831.

18 (13) An additional twelve months shall be added to the standard  
19 sentence range for vehicular homicide committed while under the  
20 influence of intoxicating liquor or any drug as defined by RCW  
21 46.61.520 or for vehicular assault committed while under the influence  
22 of intoxicating liquor or any drug as defined by RCW 46.61.522, or for  
23 any felony driving under the influence (RCW 46.61.502(6)) or felony  
24 physical control under the influence (RCW 46.61.504(6)) for each child  
25 passenger under the age of sixteen who is an occupant in the  
26 defendant's vehicle. These enhancements shall be mandatory, shall be  
27 served in total confinement, and shall run consecutively to all other  
28 sentencing provisions. If the addition of a minor child enhancement  
29 increases the sentence so that it would exceed the statutory maximum  
30 for the offense, the portion of the sentence representing the  
31 enhancement may not be reduced.

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

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

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

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

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

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

1 employer's vehicle is assigned exclusively to the restricted driver and  
2 used solely for commuting to and from employment, the employer  
3 exemption does not apply.

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

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

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

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

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

21 (a) ~~((An))~~ Any attempt to start the vehicle with a breath alcohol  
22 concentration of 0.04 or more unless a subsequent test performed within  
23 ten minutes registers a breath alcohol concentration lower than 0.04  
24 and the digital image confirms the same person provided both samples;

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

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

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

36 (5) For a person required to install an ignition interlock device  
37 pursuant to RCW 46.61.5249(4) or 46.61.500(3), the period of time of

1 the restriction shall be for six months and shall be subject to  
2 subsection (4) of this section.

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

10 **Sec. 13.** RCW 46.20.308 and 2013 c 3 s 31 (Initiative Measure No.  
11 502), 2012 c 183 s 7, and 2012 c 80 s 12 are each reenacted and amended  
12 to read as follows:

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

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

1 administered by a qualified person as provided in RCW 46.61.506(5).  
2 The officer shall inform the person of his or her right to refuse the  
3 breath or blood test, and of his or her right to have additional tests  
4 administered by any qualified person of his or her choosing as provided  
5 in RCW 46.61.506. The officer shall warn the driver, in substantially  
6 the following language, that:

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

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

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

15 (i) The driver is age twenty-one or over and the test indicates  
16 either that the alcohol concentration of the driver's breath or blood  
17 is 0.08 or more or that the THC concentration of the driver's blood is  
18 5.00 or more; or

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

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

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

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

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

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

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

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

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

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

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



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

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

14       (i) That the officer had reasonable grounds to believe the arrested  
15 person had been driving or was in actual physical control of a motor  
16 vehicle within this state while under the influence of intoxicating  
17 liquor or drugs, or both, or was under the age of twenty-one years and  
18 had been driving or was in actual physical control of a motor vehicle  
19 while having an alcohol or THC concentration in violation of RCW  
20 46.61.503;

21       (ii) That after receipt of the warnings required by subsection (2)  
22 of this section the person refused to submit to a test of his or her  
23 blood or breath, or a test was administered and the results indicated  
24 that the alcohol concentration of the person's breath or blood was 0.08  
25 or more, or the THC concentration of the person's blood was 5.00 or  
26 more, if the person is age twenty-one or over, or that the alcohol  
27 concentration of the person's breath or blood was 0.02 or more, or the  
28 THC concentration of the person's blood was above 0.00, if the person  
29 is under the age of twenty-one; and

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

31       (7) The department of licensing, upon the receipt of a sworn report  
32 or report under a declaration authorized by RCW 9A.72.085 under  
33 subsection (6)~~(e)~~) (d) of this section, shall suspend, revoke, or  
34 deny the person's license, permit, or privilege to drive or any  
35 nonresident operating privilege, as provided in RCW 46.20.3101, such  
36 suspension, revocation, or denial to be effective beginning sixty days  
37 from the date of arrest or from the date notice has been given in the

1 event notice is given by the department following a blood test, or when  
2 sustained at a hearing pursuant to subsection (8) of this section,  
3 whichever occurs first.

4 (8) A person receiving notification under subsection (6)(b) of this  
5 section may, within twenty days after the notice has been given,  
6 request in writing a formal hearing before the department. The person  
7 shall pay a fee of three hundred seventy-five dollars as part of the  
8 request. If the request is mailed, it must be postmarked within twenty  
9 days after receipt of the notification. Upon timely receipt of such a  
10 request for a formal hearing, including receipt of the required three  
11 hundred seventy-five dollar fee, the department shall afford the person  
12 an opportunity for a hearing. The department may waive the required  
13 three hundred seventy-five dollar fee if the person is an indigent as  
14 defined in RCW 10.101.010. Except as otherwise provided in this  
15 section, the hearing is subject to and shall be scheduled and conducted  
16 in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be  
17 conducted in the county of the arrest, except that all or part of the  
18 hearing may, at the discretion of the department, be conducted by  
19 telephone or other electronic means. The hearing shall be held within  
20 sixty days following the arrest or following the date notice has been  
21 given in the event notice is given by the department following a blood  
22 test, unless otherwise agreed to by the department and the person, in  
23 which case the action by the department shall be stayed, and any valid  
24 temporary license marked under subsection (6)((+e+)) of this section  
25 extended, if the person is otherwise eligible for licensing. For the  
26 purposes of this section, the scope of the hearing shall cover the  
27 issues of whether a law enforcement officer had reasonable grounds to  
28 believe the person had been driving or was in actual physical control  
29 of a motor vehicle within this state while under the influence of  
30 intoxicating liquor or any drug or had been driving or was in actual  
31 physical control of a motor vehicle within this state while having  
32 alcohol in his or her system in a concentration of 0.02 or more, or THC  
33 in his or her system in a concentration above 0.00, if the person was  
34 under the age of twenty-one, whether the person was placed under  
35 arrest, and (a) whether the person refused to submit to the test or  
36 tests upon request of the officer after having been informed that such  
37 refusal would result in the revocation of the person's license, permit,  
38 or privilege to drive, or (b) if a test or tests were administered,

1 whether the applicable requirements of this section were satisfied  
2 before the administration of the test or tests, whether the person  
3 submitted to the test or tests, or whether a test was administered  
4 without express consent as permitted under this section, and whether  
5 the test or tests indicated that the alcohol concentration of the  
6 person's breath or blood was 0.08 or more, or the THC concentration of  
7 the person's blood was 5.00 or more, if the person was age twenty-one  
8 or over at the time of the arrest, or that the alcohol concentration of  
9 the person's breath or blood was 0.02 or more, or the THC concentration  
10 of the person's blood was above 0.00, if the person was under the age  
11 of twenty-one at the time of the arrest. The sworn report or report  
12 under a declaration authorized by RCW 9A.72.085 submitted by a law  
13 enforcement officer is prima facie evidence that the officer had  
14 reasonable grounds to believe the person had been driving or was in  
15 actual physical control of a motor vehicle within this state while  
16 under the influence of intoxicating liquor or drugs, or both, or the  
17 person had been driving or was in actual physical control of a motor  
18 vehicle within this state while having alcohol in his or her system in  
19 a concentration of 0.02 or more, or THC in his or her system in a  
20 concentration above 0.00, and was under the age of twenty-one and that  
21 the officer complied with the requirements of this section.

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

37 (9) If the suspension, revocation, or denial is sustained after  
38 such a hearing, the person whose license, privilege, or permit is

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

32 (10)(a) If a person whose driver's license, permit, or privilege to  
33 drive has been or will be suspended, revoked, or denied under  
34 subsection (7) of this section, other than as a result of a breath or  
35 blood test refusal, and who has not committed an offense for which he  
36 or she was granted a deferred prosecution under chapter 10.05 RCW,  
37 petitions a court for a deferred prosecution on criminal charges  
38 arising out of the arrest for which action has been or will be taken

1 under subsection (7) of this section, or notifies the department of  
2 licensing of the intent to seek such a deferred prosecution, then the  
3 license suspension or revocation shall be stayed pending entry of the  
4 deferred prosecution. The stay shall not be longer than one hundred  
5 fifty days after the date charges are filed, or two years after the  
6 date of the arrest, whichever time period is shorter. If the court  
7 stays the suspension, revocation, or denial, it may impose conditions  
8 on such stay. If the person is otherwise eligible for licensing, the  
9 department shall issue a temporary license, or extend any valid  
10 temporary license marked under subsection (6) of this section, for the  
11 period of the stay. If a deferred prosecution treatment plan is not  
12 recommended in the report made under RCW 10.05.050, or if treatment is  
13 rejected by the court, or if the person declines to accept an offered  
14 treatment plan, or if the person violates any condition imposed by the  
15 court, then the court shall immediately direct the department to cancel  
16 the stay and any temporary marked license or extension of a temporary  
17 license issued under this subsection.

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

26 (c) The provisions of (b) of this subsection relating to a stay of  
27 a suspension, revocation, or denial and the cancellation of any  
28 suspension, revocation, or denial do not apply to the suspension,  
29 revocation, denial, or disqualification of a person's commercial  
30 driver's license or privilege to operate a commercial motor vehicle.

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

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

3           ~~(1) ((Whenever any person is convicted of any offense for which~~  
4 ~~this title makes mandatory the withholding of the driving privilege of~~  
5 ~~such person by the department, the court in which such conviction is~~  
6 ~~had shall forthwith mark the person's Washington state driver's license~~  
7 ~~or permit to drive, if any, in a manner authorized by the department.~~  
8 ~~A valid driver's license or permit to drive marked under this~~  
9 ~~subsection shall remain in effect until the person's driving privilege~~  
10 ~~is withheld by the department pursuant to notice given under RCW~~  
11 ~~46.20.245, unless the license or permit expires or otherwise becomes~~  
12 ~~invalid prior to the effective date of this action. Perfection of~~  
13 ~~notice of appeal shall stay the execution of sentence including the~~  
14 ~~withholding of the driving privilege.~~

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

30           ~~((3))~~ (2) Every state agency or municipality having jurisdiction  
31 over offenses committed under this chapter, or under any other act of  
32 this state or municipal ordinance adopted by a state or local authority  
33 regulating the operation of motor vehicles on highways, may forward to  
34 the department within ten days of failure to respond, failure to pay a  
35 penalty, failure to appear at a hearing to contest the determination  
36 that a violation of any statute, ordinance, or regulation relating to  
37 standing, stopping, parking, or civil penalties issued under RCW  
38 46.63.160 has been committed, or failure to appear at a hearing to

1 explain mitigating circumstances, an abstract of the citation record in  
2 the form prescribed by rule of the department, showing the finding by  
3 such municipality that two or more violations of laws governing  
4 standing, stopping, and parking or one or more civil penalties issued  
5 under RCW 46.63.160 have been committed and indicating the nature of  
6 the defendant's failure to act. Such violations or infractions may not  
7 have occurred while the vehicle is stolen from the registered owner or  
8 is leased or rented under a bona fide commercial vehicle lease or  
9 rental agreement between a lessor engaged in the business of leasing  
10 vehicles and a lessee who is not the vehicle's registered owner. The  
11 department may enter into agreements of reciprocity with the duly  
12 authorized representatives of the states for reporting to each other  
13 violations of laws governing standing, stopping, and parking.

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

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

27 (5) For the purposes of this title, "finding that a traffic  
28 infraction has been committed" means a failure to respond to a notice  
29 of infraction or a determination made by a court pursuant to this  
30 chapter. Payment of a monetary penalty made pursuant to RCW  
31 46.63.070(2) is deemed equivalent to such a finding.

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

34 (1) When sentencing an offender convicted of a violation of RCW  
35 46.61.502(6) or 46.61.504(6), the court, in addition to imposing the  
36 provisions of this chapter, shall order the offender to undergo alcohol  
37 or chemical dependency treatment services during incarceration. The

1 offender shall be liable for the cost of treatment unless the court  
2 finds the offender indigent and no third-party insurance coverage is  
3 available.

4 (2) The provisions under RCW 46.61.5055 (~~((+8+))~~) (9) and (~~((+9+))~~)  
5 (10) regarding the suspension, revocation, or denial of the offender's  
6 license, permit, or nonresident privilege to drive shall apply to an  
7 offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6).

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

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

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

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

20 (b) Driving a commercial motor vehicle while the alcohol  
21 concentration in the person's system is 0.04 or more or with any  
22 measurable amount of THC concentration, or driving a noncommercial  
23 motor vehicle while the alcohol concentration in the person's system is  
24 0.08 or more, or is 0.02 or more if the person is under age twenty-one,  
25 or with a THC concentration of 5.00 or more, as determined by any  
26 testing methods approved by law in this state or any other state or  
27 jurisdiction;

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

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

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

34 (f) Driving a commercial motor vehicle when, as a result of prior  
35 violations committed while operating a commercial motor vehicle, the  
36 driver's commercial driver's license is revoked, suspended, or



1 canceled, or the driver is disqualified from operating a commercial  
2 motor vehicle;

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

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

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

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

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

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

26 (i) Not less than sixty days if:

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

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

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

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

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

36 (b) The disqualification period under (a)(ii) of this subsection  
37 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 2011 c 87 s 1 are each amended to read  
13 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, and one or more of the following was present:

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

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

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

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

37 (j) The defendant knew that the victim of the current offense was

1 a youth who was not residing with a legal custodian and the defendant  
2 established or promoted the relationship for the primary purpose of  
3 victimization.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (x) The defendant committed the offense against a public official

1 or officer of the court in retaliation of the public official's  
2 performance of his or her duty to the criminal justice system.

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

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

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

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

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

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

26 (dd) During the commission of the current offense, the defendant  
27 was driving in the opposite direction of the normal flow of traffic on  
28 a multiple lane highway, as defined by RCW 46.04.350, with a posted  
29 speed limit of forty-five miles per hour or greater.

30 **Sec. 20.** RCW 3.62.090 and 2004 c 15 s 5 are each amended to read  
31 as follows:

32 (1) There shall be assessed and collected in addition to any fines,  
33 forfeitures, or penalties assessed, other than for parking infractions,  
34 by all courts organized under Title 3 or 35 RCW a public safety and  
35 education assessment equal to seventy percent of such fines,  
36 forfeitures, or penalties, which shall be remitted as provided in  
37 chapters 3.46, 3.50, 3.62, and 35.20 RCW. The assessment required by

1 this section shall not be suspended or waived by the court. This  
2 public safety and education assessment shall not be applied to the  
3 mandatory fine imposed under RCW 46.61.5055(6) for defendants convicted  
4 of a violation of RCW 46.61.502 or 46.61.504 committed while a  
5 passenger under the age of sixteen was in the vehicle.

6 (2) There shall be assessed and collected in addition to any fines,  
7 forfeitures, or penalties assessed, other than for parking infractions  
8 and for fines levied under RCW 46.61.5055, and in addition to the  
9 public safety and education assessment required under subsection (1) of  
10 this section, by all courts organized under Title 3 or 35 RCW, an  
11 additional public safety and education assessment equal to fifty  
12 percent of the public safety and education assessment required under  
13 subsection (1) of this section, which shall be remitted to the state  
14 treasurer and deposited as provided in RCW 43.08.250. The additional  
15 assessment required by this subsection shall not be suspended or waived  
16 by the court.

17 (3) This section does not apply to the fee imposed under RCW  
18 46.63.110(7), the penalty imposed under RCW 46.63.110(8), or the  
19 penalty assessment imposed under RCW 10.99.080.

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